



Marketing Government:  
The public service and the  
permanent campaign

Prepared by  
Kathy MacDermott

for the  
Democratic Audit  
of Australia

School of Social Sciences  
The Australian National University

Report No.10 October 2008



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# Table of Contents

Tables	iv	PAGE iii
Figures	v	
The Democratic Audit of Australia		
—Testing the strength of Australian democracy	vi	
Executive Summary	viii	
<b>Chapter 1: Introduction and overview</b>	<b>1</b>	
<b>Chapter 2: The public service and the 'permanent campaign'</b>	<b>14</b>	
Role of public servants: Public affairs and ministerial support	15	
Role of public servants: Program management	19	
Role of public servants: Policy development	22	
<b>Chapter 3: Case studies</b>	<b>30</b>	
The distinction between explaining and marketing government policy: The <i>WorkChoices</i> campaign	31	
The distinction between objective data and politically loaded data: <i>Agreement making in Australia under the Workplace Relations     Act 2004 to 2006</i>	38	
The distinction between legal advice and political direction: <i>The Community and Public Sector Union v Commonwealth     of Australia</i>	45	

The distinction between privacy and the denial of access to politically inconvenient information: The Workplace Authority's refusal to give researchers access to AWAs	49
The distinction between confidentiality and concealment: FOI and electorate briefing	51
Conclusion	56

## Chapter 4: Government machinery 58

Agency public affairs units	58
Government Communications Unit	63
From agency logos to Australian government branding: A case study in the management of government marketing	69
Impact of government machinery	72

## Chapter 5: Governance 75

High-level governance: <i>Combet v Commonwealth of Australia</i>	76
Parliamentary guidance	79
The APS Values and Code of Conduct	81
<i>Supporting Ministers, Upholding the Values</i>	87
Agency protocols	90

## Chapter 6: After 2007 97

Machinery of government	99
High level governance: Government appropriations and ministerial accountability	100
APS governance: Agency and individual accountability	102

## Chapter 7: Conclusion 113

Further reading	117
On Australian theory and practice	117
On campaigns	118
On the role of the public service	118
On advertising guidelines	118

## Tables

1.1: <i>Australian Commonwealth Government advertising placed through the Central Advertising System</i>	6
1.2: <i>Commonwealth Government advertising expenditure (for campaigns over \$10 000), 1991–2006</i>	7

5.1: <i>Extract from Schedule 1 of Appropriation Act (No. 1) 2005–2006</i>	77
5.2: <i>Whistleblower reports received during 2006–07</i>	86
6.1: <i>Rudd Government Changes</i>	98
6.2: <i>Government advertising: Further proposals</i>	109

## Figures

2.1: <i>Market research: Dominant negative pathways relating to unions</i>	26
4.1: <i>The MCGC process</i>	65
4.2: <i>Role and relationship of the GMS within government and party</i>	68

## Abbreviations

ABC	Australian Broadcasting Corporation
ACT	Australian Capital Territory
ACTU	Australian Council of Trade Unions
AGS	Australian Government Solicitor
ALP	Australian Labor Party
ANAO	Australian National Audit Office
APS	Australian Public Service
AWA	Australian Workplace Agreement
CCSTU	Caucus Committee Support and Training Unit
COAG	Council of Australian Governments
COI	Central Office of Information (UK)
CPSU	Community and Public Sector Union
DEWR	Department of Employment and Workplace Relations
FOI	Freedom of Information
GCU	Government Communications Unit
GMS	Government Members Secretariat
GST	goods and services tax
HREOC	Human Rights and Equal Opportunity Commission
MCGC	Ministerial Committee on Government Communications
OEA	Office of the Employment Advocate
OGIA	Office of Government Information and Advertising
OWS	Office of Workplace Services
PACCD	Public Affairs and Corporate Communications Division
PBS	Portfolio Budget Statements
PM&C	Department of the Prime Minister and Cabinet
SARS	sudden acute respiratory syndrome
UK	United Kingdom
USA	United States of America

# The Democratic Audit of Australia—Testing the strength of Australian Democracy

PAGE vi

Since 2002, the Democratic Audit of Australia, led by Marian Sawer at the Australian National University, has been conducting an audit to assess Australia's strengths and weaknesses as a democracy. From 2008 the bulk of the administrative responsibility for the Democratic Audit of Australia has shifted to the Institute for Social Research at Swinburne University.

The Audit has three specific aims:

1. *Contributing to methodology*: to make a major methodological contribution to the assessment of democracy—particularly through incorporating disagreements about 'democracy' into the research design;
2. *Benchmarking*: to provide benchmarks for monitoring and international comparisons—our data can be used, for example, to track the progress of government reforms as well as to compare Australia with other countries;
3. *Promoting debate*: to promote public debate about democratic issues and how Australia's democratic arrangements might be improved. The Audit website hosts lively debate and complements the production of reports like this.



## Background

The Audit approach recognises that democracy is a complex notion; therefore we are applying a detailed set of Audit questions already field-tested in various overseas countries. These questions were pioneered in the United Kingdom with related studies in Sweden, then further developed under the auspices of the International Institute for Democracy and Electoral Assistance—IDEA—in Stockholm, which arranged testing in eight countries including New Zealand. We have devised additional questions to take account of differing views about democracy and because Australia is the first country with a federal system to use the full Audit framework.

## Further Information

For further information about the Audit, please see the Audit website at:  
<http://democratic.audit.anu.edu.au>

PAGE vii

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## About the author

Dr Kathy MacDermott has worked in the senior executive service of the Australian Public Service in industrial relations policy and public sector governance. Her responsibilities have included managing applied evaluations of the APS Values and Code of Conduct and the conduct of the annual State of the Service Report. Her most recent publication is: *Whatever happened to frank and fearless? The impact of new public management on the Australian Public Service* (ANU E-Press, 2008).

## Executive Summary

PAGE viii

This study addresses the role of public servants in government marketing in the light of claims that both have become progressively politicised. It complements previous Audit work on the emergence of the 'PR state' or 'permanent campaign' in Australia.<sup>1</sup> That work has built a picture of how political parties have progressively reduced their reliance on grass-roots support and increased their reliance on market research, polling and media advertising, drawing on public resources for public information campaigns outside formal election campaigns. It was unlikely that the work of the public service would be quarantined from such a development. This study begins with the observation that, in the absence of grass roots support, a permanent campaign may be managed by politicians, but it will involve public servants.

While the analysis pursued in the report is specific to Commonwealth arrangements, the issues raised are relevant to State governments. The majority of submissions made to the Finance and Public Administration References Committee's 2005 Inquiry into Government Advertising and Accountability argued, for example, that misuse of government advertising has occurred on both sides of politics and across jurisdictions,<sup>2</sup> and State governments are as likely as those of the Commonwealth to draw on the services of public servants for their public marketing campaigns.

<sup>1</sup> The author wishes to thank Marian Sawyer, David Webster, Norm Kelly, Catherine Strong and the three anonymous reviewers of the draft report. For previous Audit publications on political finance and government advertising see especially those by Graeme Orr, Sally Young and Joo-Cheong Tham. <[http://arts.anu.edu.au/democraticaudit/categories/polfin\\_gafm.htm](http://arts.anu.edu.au/democraticaudit/categories/polfin_gafm.htm)>

<sup>2</sup> Senate Finance and Public Administration References Committee, 2005, *Report of the Inquiry into Government advertising and accountability*, p. 9 para 1.44. See also Sally Young, 2005, 'Theories for understanding government advertising in Australia', Democratic Audit of Australia Discussion Paper, p. 2. <[http://democratic.audit.anu.edu.au/papers/200508\\_young.pdf](http://democratic.audit.anu.edu.au/papers/200508_young.pdf)>

This report:

- explores the recent history of public service roles in communication/ advertising activities, with a focus on the specific example of the *WorkChoices* campaigns;
- builds on this exploration with analysis of the nature and robustness of public service structures, legislation, guidance and practices relating to marketing activities; and
- considers actions recently taken, or promised by the recently elected Government, to clarify and entrench clearer government/public service relations; and
- suggests further options for distinguishing public service and political roles.

It is argued that over the period of the Hawke, Keating and Howard Governments, public servants have been expected to both broaden and deepen their engagement with government marketing activities. This engagement now extends well beyond the activities of agency public relations units to the core business of government, policy development and program design. Successful programs and policies depend on a positive public relations environment and agencies are expected to take this into account as part of the ongoing risk management of their work. As a consequence the distinction between administrative support and political support has been weakened; in some of the cases examined in the study it has disappeared altogether.

The cases examined—mainly associated with the *WorkChoices* campaign—occurred within conventional public service organisational structures and under conventional governance arrangements. The study considers both at some length, and argues that the organisational structures in place until 2007 were designed to increase the public service responsiveness to the requirements of government in relation to its presentation in the media, while governance arrangements did little to provide guidance about propriety or establish lines of accountability for government marketing activities.

Following the change of government in 2007, both organisational structures and governance arrangements have undergone significant changes. Further changes are recommended in this report, but overall the conclusion here is that recent initiatives should make a substantial contribution to rebalancing public service responsiveness and accountability. For this to occur, however, the government would have to maintain its reforms as it moves from the perspective of opposition to the perspective of incumbency. Better still, the government could also make use of forums such as the Council of Australian Governments (COAG) to encourage the adoption of similar reforms in other Australian jurisdictions.



# Chapter 1: Introduction and overview

Over the past two decades, concerns have been raised with increasing frequency about whether public services in both federal and State governments have become more politically exposed in many of their activities. In summary, many commentators have suggested that the Westminster tradition of an independent public service providing frank and fearless advice to its political masters was being displaced by a USA-style model, in which the public service operates as part of the political (as well as administrative) machinery of the governing party of the day.<sup>3</sup>

This study does not attempt to cover comprehensively the ongoing debate on public service politicisation. Rather it considers one crucial aspect of this debate, namely the changing roles of the public service in communication, marketing and advertising government policies and programs. If there is a politicisation iceberg out there, then marketing is its tip, because it is the aspect of the government/public service relationship that is most available to public scrutiny and analysis. However, despite its public nature, the marketing produced by public servants is not easy to analyse. There is often a problem in making definitive distinctions between apolitical and partisan content: where does 'informing the public about accessing government programs' stop and 'engaging in party-political propaganda' begin? It is not enough to say that anything produced by the public service and called a 'fact sheet' is pure and any television advertisement that dismisses opposition policies is impure. There are shades of grey in both of these formats and in many more in between.

<sup>3</sup> For an overview of this line of argument, see Richard Mulgan, 1998, 'Politicising the Australian Public Service?' Parliamentary Library Research Paper 3, 1998-99. <<http://www.aph.gov.au/library/pubs/rp/1998-99/99rp03.htm>>

The purpose of the following chapters is to cast some light into these grey areas. The aim is to:

- explore the recent history of public service roles in communication/ advertising activities, with a focus on the example of the *WorkChoices* campaigns;
- build on this exploration with analysis of the nature and robustness of public service structures, legislation, guidance and practices relating to marketing activities;
- consider actions recently taken, or promised by, the Labor Government elected in 2007 to clarify and entrench clearer government/public service relations; and
- to suggest further options for distinguishing public service and political roles.

PAGE 2

Given the rapidly increasing amounts of money spent by government on advertising and communication, it is in the interests of the Australian public to know whether taxpayers' dollars are being spent appropriately on public priorities, or whether, as increasingly appears to be the case, taxpayers' funds are being drawn on as a bottomless purse to replace or supplement party-political campaigns funded (at much lower costs) from within the political parties themselves. Australians who are also public servants could also benefit from a clearer sense of the framework that applies to government marketing, the guidelines and values that apply to their involvement, and the support mechanisms and processes to which they can turn for assistance when needed.

For many public servants, there is no easy or definitive 'fix', in terms of legislation, guidelines or a sanctions regime, that will clarify once and for all a demarcation between appropriate and politicised relations between governments and public servants, in advertising or elsewhere. These relations are shaped by circumstances as well as by principles, and will change as circumstances change. The strength of Australian democratic institutions into the future will depend, in part, on a willingness to identify emerging risks in the crucial relationship between the political parties, the government and the public service, and to address those risks in the full gaze of the Australian public. The willingness to be open about emerging risks itself is part of the solution.

The objective of this study, then, is not to discuss whether or not large numbers of public servants have, in Mulgan's terms, crossed the line between proper

responsiveness to the elected government and undue involvement in the government's electoral fortunes.<sup>4</sup> Neither is it to participate in a conventional blame game in terms of the examples used of past events. Rather the aim is to use the examples cited and analysis to identify a range of recent and emerging problem areas and systemic risks and to look at how these can be addressed at this point in time.

## Overview

When both State and federal government advertising is taken into account, Australia spends more than double the amount spent by other countries whose national governments rank among their top ten advertisers in terms of advertising expenditure per head of population.<sup>5</sup> As Table 1.1 below makes clear, spending by the Commonwealth government has been trending upward in real terms. Recent research into the growth and content of such advertising<sup>6</sup> suggests that it has been increasingly characterised by the permeability of the boundary between information campaigns and political campaigns. This is not a pedantic issue: public information campaigns can legitimately be funded with government revenue, while political campaigns should not. What is more, if government is using taxpayers' money and public information campaigns to get its political messages out, it is likely to be using public servants to get much of this work done. That is, the continued weakening of the distinction between public information campaigns and political campaigns is associated with the increasing involvement of the public service in government political marketing activities.

Ian Ward has argued that political parties in Australia, as elsewhere, have decreased their reliance on grass roots support and increased their reliance on marketing government, and in so doing have introduced a 'permanent campaign' or 'PR state'.<sup>7</sup> Ian Marsh has pursued this line of reasoning, arguing that 'direct marketing, polling, media advertising and packaging promised to make dispensable organisational policy development and a large party membership base'.<sup>8</sup> Marsh argues that this increased media reliance has been associated with

<sup>4</sup> Richard Mulgan, 2007, 'Truth in Government and the Politicisation of Public Service Advice', *Public Administration* 85(3), p. 570.

<sup>5</sup> Sally Young and Joo-Cheong Tham, 2006, *Political finance in Australia: A skewed and secret system*, Democratic Audit of Australia Report No. 7, p. 80. Australian data includes State expenditure, and is set against data of countries without federal systems. The countries in question are: Belgium, Ireland, the United Kingdom, Singapore, Spain, South Africa, Mexico, Thailand, Brazil, Peru, and Paraguay. Australian figures are based on an average yearly spending on advertisements for an eight-year period between 1996 and 2003. Other countries' spending on advertising refers to 2003.

<sup>6</sup> See, for example, Sally Young, 2004, *The Persuaders: Inside the hidden machine of political advertising*, Sydney, Pluto Press; Graeme Orr, 2006, 'Government advertising: Informational or self-promotional?', Democratic Audit of Australia.

<sup>7</sup> Ian Ward, 2003, 'An Australian PR state?' *Australian Journal of Communication*, 30 (1): pp. 25–42.

<sup>8</sup> Ian Marsh, 2007, 'Australia's Political Institutions and the Corruption of Public Opinion', *Australian Journal of Public Administration*, 66 (3): p. 335.

an increased promotional focus on fewer, higher profile political leaders, including the prime minister and other ministers. At the same time, Peter van Onselen and Wayne Errington have reviewed recent criticism of the concept of the permanent campaign, and its varying applicability in the United States and Australia, arguing for its greater relevance to parliamentary systems without fixed terms, and noting an explicit tradition of continuous campaigning running from Sir Robert Menzies to the previous Prime Minister.<sup>9</sup> It was never going to be the case that the work of the public service would be quarantined from such a change to the role of ministers. In the absence of grass roots support, a permanent campaign may be managed by politicians, but it implicitly involves public servants.

Public servants' engagement in government marketing activities now extends well beyond direct ministerial media support; marketing has now become part of the work of many public servants engaged in policy development and program design. It will also be argued below that as their involvement in government marketing widens, their level of engagement deepens. How is this increasing involvement affecting public service culture? Public servants have always been required to advise on the likely public acceptability of a policy, and to articulate government policies to the public after they have been adopted, but there have always been strong views in the public service about the need for clear boundaries around its 'apolitical professionalism'.<sup>10</sup> In the case of government marketing, these boundaries have been characterised by the distinction between providing factual information about a government policy and offering partisan advocacy for a government policy. The same distinction has also been assumed to apply to the public information campaigns on which public servants are employed. Sometimes this distinction has dissolved into shades of grey and sometimes it has been overridden, but even in these instances the accompanying robust debate (see the cases of Labor's 1995–96 'Working Nation' campaign, or the Coalition's 1998–2000 'Unchain my heart' GST campaign, for example<sup>11</sup>) has been an indication of the importance attached to it. In recent years, however, as marketing and market research are being integrated with program and policy work, the distinction is becoming increasingly difficult to sustain.

<sup>9</sup> Peter van Onselen and Wayne Errington, 2007, 'Managing expectations: The Howard government's WorkChoices information campaign', *Media International Australia*, 123: pp. 5–17.

<sup>10</sup> Section 10(1)(a) of the 1999 Public Service Act provides that 'the APS is apolitical, performing its functions in an impartial and professional manner.'

<sup>11</sup> See Young, 'A history of government advertising in Australia', pp. 194–97.



## Expenditure on marketing

It is necessary to open the discussion with a set of working definitions. The first is of 'government', which unless otherwise specified here means the Commonwealth Government. This is not to suggest that the issues raised below are exclusive to Commonwealth governments. On the contrary, according to the 2005 report of the Finance and Public Administration References Committee's Inquiry into Government Advertising and Accountability 'the majority of submissions ... expressed the view that there is a "problem" with the use of government advertising by both State and Commonwealth governments'.<sup>12</sup> The misuse of government advertising is said to occur on both sides of politics, with the trend escalating over the past decade.<sup>13</sup> Nevertheless, the material below describes how machinery of government and governance arrangements intersect with the marketing of government by public servants, and such arrangements are specific to particular jurisdictions. For this reason the discussion that follows is confined to the Commonwealth jurisdiction. Some of the machinery of government and governance arrangements have been subject to change following the change of federal government in 2007. Accordingly, one of the questions to be posed later in the discussion is how far the proposed changes may go towards addressing the pressures that government advertising has created over time for a formally apolitical public service.

PAGE 5

Definitions are also required for the vocabulary around marketing government. While definitions in this area create artificial categories where in fact there is overlap, they at least serve to illustrate how many such categories are crossed by actual practice. Australian students are offered a broad definition of marketing as 'the systematic planning, implementation and control of a mix of business activities intended to bring together buyers and sellers for the mutually advantageous exchange or transfer of products'.<sup>14</sup> For the purposes of the following discussion, where marketing involves paying media to place material, the process is called advertising. Where it does not, the process is called public relations. A given government campaign is very likely to encompass both advertising and public relations elements. Where public relations and advertising are conducted by non-specialist government employees, the process may also be called communications. Where the content of marketing is confined to facts, the process is called a public information campaign.

<sup>12</sup> Senate Finance and Public Administration References Committee, 2005, *Report of the Inquiry into Government advertising and accountability*, p. 9 para 1.44. See also Orr, 'Government advertising: Informational or self-promotional?', pp. 8-9; and Tim Addington (ed), 2008, 'Top 50 advertisers named', B & T Today, <<http://www.nielsenmedia.com.au/files/Top50B&T2007Mar%202808.pdf>> pp. 1-2, citing figures released from Nielsen Media Research on the top 50 media advertisers in 2007.

<sup>13</sup> Senate Finance and Public Administration References Committee, *Report of the Inquiry into Government Advertising and Accountability*, p. 9 para 1.44. See also Young, 'Theories for understanding government advertising in Australia', p. 2.

<sup>14</sup> Monash Business and Economics Faculty Marketing Dictionary. <<http://www.buseco.monash.edu.au/mkt/dictionary>>

While there is broad agreement that all of these activities are being increasingly undertaken by public servants,<sup>15</sup> the data available means that it is easiest to measure the actual growth of paid advertising. Table 1.1 shows the cost of government advertising placed through the public service Central Advertising System between 1994–95 and March 2008, according to data published by the Special Minister of State and the Minister for Finance and Deregulation.

**Table 1.1: Australian Commonwealth Government advertising placed through the Central Advertising System**

Financial Year	Campaign \$	Non-Campaign* \$	Total \$
2007–2008 (to Mar 2008)	184.7m	53.9m	238.6m
2006–2007	196.4m	84.8m	281.2m
2005–2006	137.8m	70.7m	208.5m
2004–2005	88.0m	49.7m	137.7m
2003–2004	97.8m	45.5m	143.3m
2002–2003	51.8m	47.7m	99.5m
2001–2002	83.9m	31.1m	115.0m
2000–2001	133.2m	29.9m	~163.1m
1999–2000	186.8m	241m	210.9m
1998–1999	54.0m	19.4m	73.4m
1997–1998	551.m	21.5m	76.6m
1996–1997	29.4m	16.9m	46.3m
1995–1996	47.6m	23.4m	71.0m
1994–1995	43.1m	23.1m	66.2m

Source: Joint Media Release from John Faulkner and Lindsay Tanner, 2008, 'New Advertising Guidelines'.  
<[http://www.smos.gov.au/media/2008/mr\\_222008\\_joint.html](http://www.smos.gov.au/media/2008/mr_222008_joint.html)>

\* Non-campaign advertising comprises job advertising, tenders and routine advertising related to their operational activities.

^ The 2000–01 Financial Year Non-Campaign figure is \$6.6 million higher than reported in the Department of the Prime Minister and Cabinet (PM&C) *Annual Report* for that year as the non-campaign placement agency had failed to include expenditure by untied government agencies in their end of year reporting.

These numbers represent actual advertising costs only: they exclude costs of 'market research, creating and producing the advertisements themselves, producing and distributing other advertising material such as booklets, posters, and mail-outs, testing the material, and evaluating the effectiveness of the campaign'<sup>16</sup> as well as public relations activities, and the salaries and administrative costs of public servants undertaking or overseeing these tasks. Other data taken by

<sup>15</sup> See Australian Government, 2005, Public Sector Management Unit 2: *Managing out: The public sector in the community*, Topic Eight: 'Managing the media and public relations', sections 8.1 and 8.2.

<sup>16</sup> Senate Finance and Public Administration References Committee, *Report of the Inquiry into Government advertising and accountability*, p. 17 para 2.17.

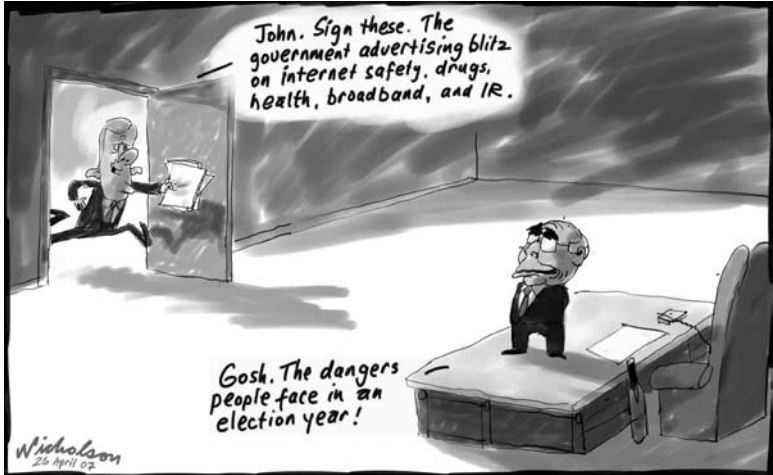
Young<sup>17</sup> (Table 1.2 below) from a wider range of sources (including annual reports, Senate Estimates, Senate inquiries and the Parliamentary Library) and adjusted for inflation, indicates that aggregate expenditures for advertising campaigns costing \$10 000 or more, more than doubled in real terms between 1991–92 and 2004–05 to \$146.6 million, spiking in the run up to federal elections in 1993, 1996, 1998, 2001 and 2004, and for unpopular policies like the introduction of the GST (1998–2000) and the *WorkChoices* legislation (2005–07).

**Table 1.2: Commonwealth Government advertising expenditure (for campaigns over \$10 000), 1991–2006**

Year	Nominal spending (\$millions)	Real spending (\$ millions) (inflation-adjusted using 2006 values)
1991–92	48	69.5
1992–93	70	100.4
1993–94	63	88.8
1994–95	78	107.9
1995–96	85	112.3
1996–97	46	59.2
1997–98	76	96.7
1998–99	86	109.5
1999–2000	211	264.9
2000–01	156	187.5
2001–02	114	131.2
2002–03	99	110.6
2003–04	143	155.5
2004–05	138	146.6
2005–06	208	215.3
<b>Total</b>	<b>1621</b>	<b>1956.8</b>

Sources: Parliamentary Library 2006; Grant 2004–05; Senate Standing Committee on Finance and Public Administration, Estimates (Supplementary Budget Estimates), Parliament of Australia, Canberra, 30 October 2006; PM&C Annual Reports. Updates and corrections to earlier figures for 1998–99 and 2001–01 were provided at a SFAPRC hearing, 7 October 2005, *Hansard*, p. 14 (update has been made for 1998–99 but details were not provided for amount for 2000–01). Real spending (inflation adjusted) calculated using rounded figures from first year of financial year using the Reserve Bank 'Inflation Calculator' <<http://www.rba.gov.au/calculator/calc.gov.au>>

<sup>17</sup> Sally Young, 2007, 'Following the money trail: Government advertising, the missing millions and the unknown effects', *Public Policy*, 2 (2): p. 109. See also Fiona Childs, 2007, 'Federal government advertising 2004–05', Parliamentary Library Research Note 2, 2006–07, Table 1. <<http://www.aph.gov.au/library/pubs/rn/2006-07/07m02.htm>>



Cartoon by Nicholson in the *Australian*

In 2006, the Commonwealth Government was ranked second out of the top 50 advertisers in Australia. In 2007, an election year, there was an estimated year-on-year 52 per cent increase in expenditure by the Commonwealth Government estimated to be between \$215 and \$222 million, and as a consequence it became the highest spending Australian advertiser<sup>18</sup>—above Coles, Telstra, Harvey Holdings and Nestle Australia/L'Oreal, although not above State governments taken in aggregate.<sup>19</sup>

According to Nielsen Media Research, the Commonwealth agencies that were the main advertisers were the Departments of Employment and Workplace Relations, Defence, and Health and Ageing, and the Electoral Commission.<sup>20</sup> Advertising for the electorally unpopular *WorkChoices* contributed substantially to this spike in government advertising expenditure. By 2005–06, the *WorkChoices* campaign by itself had cost nearly as much as the total inflation-adjusted government advertising expenditure for 1996–97. Partly as a consequence of this single campaign, total expenditure on advertising alone in the 2006–07 financial year was more than \$281 million.<sup>21</sup> According to the Appendix of the 2007–08 Mid-year Economic and Fiscal Outlook, a further \$61 million was spent on

<sup>18</sup> Main media measured include metropolitan and regional TV, metropolitan radio, all national, metropolitan and major regional newspapers, consumer magazines, outdoor, cinema and direct mail.

<sup>19</sup> Addington, 'Top 50 Media Advertisers in 2007', p. 1.

<sup>20</sup> Loc. cit.

<sup>21</sup> This total includes \$196.4 million for campaign costs and \$84.9 million for non-campaign costs. See Department of the Prime Minister and Cabinet, 2007, *Annual Report 2006–07*, p. 76. <[http://www.pmc.gov.au/annual\\_reports/2006-07/pdf/performance\\_reporting\\_group4.pdf](http://www.pmc.gov.au/annual_reports/2006-07/pdf/performance_reporting_group4.pdf)>

*WorkChoices* during the fifteen weeks between the start of the 2007–08 financial year and the calling of the 2007 federal election.<sup>22</sup>

## Content of marketing

Setting aside the question of how the \$4 million per week spent on advertising *WorkChoices* after 30 June 2007 could otherwise have been spent, there remains the important issue of just what it was used for. That is, to what extent was it used for a public information campaign, as the government argued, and to what extent was any actual information on offer being used as a vehicle to carry images promoting the government's softer, more battler-friendly side, as its opponents argued? Such debates are critical to government expenditure on marketing because access to funds for advertising is only available to incumbent governments. All politicians get fixed parliamentary allowances for printing and for communication with their constituents;<sup>23</sup> governments, however, get money for 'public information and awareness' activities.<sup>24</sup> Some of these activities are part of the ordinary business of government, such as that conducted for defence recruitment, tenders and general public service recruitment (although some agency advertisements rely heavily on government achievement-based rhetoric to describe their work). The ordinary business of government also includes information campaigns that explain administrative or legislative decisions such as the application of welfare arrangements or the operation of health and safety provisions, although arguably these can be used to serve the political interests of government if they are presented in a partisan fashion or sold well beyond their target.<sup>25</sup>

There are other ways of turning 'information activities' to political account: the information that is being communicated can be used more or less as a vehicle for the more important 'feel good' message that government is behaving responsibly or patriotically. The Labor Government's 1986 'True Blue' campaign falls into this category.<sup>26</sup> Coalition Government advertising resourced by the Department of Environment and Heritage also fell into this category, according to the Finance and Public Administration References Committee report on government advertising and accountability. The Committee quoted at length a description

<sup>22</sup> Australian Government, 2007–08 Mid-Year Economic and Fiscal Outlook, Table A2: Expense measures since the 2007–08 Budget(a). <[http://www.budget.gov.au/2007-08/myefo/html/05\\_appendix\\_a-01a.htm](http://www.budget.gov.au/2007-08/myefo/html/05_appendix_a-01a.htm)>

<sup>23</sup> See Young and Tham, *Political finance in Australia*, pp. 50ff.

<sup>24</sup> This is the expression employed for such activities in the Australian Public Service Commission's 2008 'Guidelines on the involvement of public servants in public information and awareness initiatives'. <[www.apsc.gov.au/publications07/publicinformation.htm](http://www.apsc.gov.au/publications07/publicinformation.htm)>

<sup>25</sup> See, for example, Orr, 'Government advertising: Informational or self-promotional?', p. 10.

<sup>26</sup> See Young, *The Persuaders*, pp. 89–93.

of this advertising provided to it by a witness and former Deputy Secretary with responsibility for the Office of Government Information and Advertising:

Environment department television advertising ‘lend the land a hand’ is virtually devoid of semantic content. Other than the arguably misleading claim that the current government is spending more on the environment than any other (a highly contestable political claim) it consists of frequent repetitions of the title slogan and accompanying images. It is hard to see how this specifically relates to the responsibilities of the department ... This advertising seems designed solely for emotional effect.<sup>27</sup>

‘Lend the land a hand’ is only one in a line of campaigns that appear to exhibit slippage between explaining a policy and selling a government. The *WorkChoices* campaign considered in Chapter 3 is another. This slippage can become increasingly questionable when emotive overtones are associated with statements that are misleading or highly selective, or when campaigns are used to promote policies that are not in fact authorised by legislation or by a specific appropriation of government.

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

The considerable resistance of long-term incumbent Commonwealth and State governments to criticism of their practice and to improving their governance around marketing<sup>28</sup> indicates the importance they have attached to existing arrangements, which offer them a clear political advantage over their oppositions. The content of government marketing thus throws up two issues that are critical to the Democratic Audit: political equality—what should be the level playing field of electoral competition; and the quality of public debate. These have been considered at some length by contributors to the audit website.<sup>29</sup> The purpose of

<sup>27</sup> Senate Finance and Public Administration References Committee, *Report of the Inquiry into Government advertising and accountability*, p. 30 para 3.19.

<sup>28</sup> See discussion in Sally Young, 2007, ‘The regulation of government advertising in Australia: The politicisation of a public policy issue’, *Australian Journal of Public Administration*, 66 (4): pp. 438–52.

<sup>29</sup> <[http://arts.anu.edu.au/democraticaudit/categories/pollin\\_gafm.htm](http://arts.anu.edu.au/democraticaudit/categories/pollin_gafm.htm)>

this report is to add another perspective: if there are doubts about the content of government marketing, what about the public servants who administer it?

## Public servants and marketing

The Australian government is political by nature; public servants are apolitical by law. This means that in the case of government advertising, responsibilities are asymmetrical: a government may see no problem with government advertising that slips into selling government, while public servants should see their own involvement in such work as problematic. For them 'there is a fine line between explaining government policy and selling it, and between using marketing to achieve program objectives and implement policy initiatives, and becoming partisan'.<sup>30</sup> Further, there is no guidance to establish a common understanding of what governments can legitimately ask or what public servants can legitimately provide. Governance arrangements applying to government advertising will be set out in Chapter 5. So far, they have not been exacting. In 2004–05 the Senate Finance and Public Administration References Committee inquired into government advertising and accountability and found that the guidelines for government advertising, which the then government thought were adequate for the purpose, were silent on the 'major question before this inquiry, namely the potential for the misuse of government advertising for political advantage'.<sup>31</sup> The report cited a similar view put in 1998 by the Auditor-General (who had been looking into aspects of the government's pre-election GST advertising campaign), that 'there are currently no guidelines on the use of the central advertising system for *party-political* advertising in particular, which distinguish between government program and party political advertising'.<sup>32</sup>

PAGE 11

The public service is put into 'caretaker' mode when an election campaign is formally called, and advertising is then restricted to those activities that have bipartisan agreement.<sup>33</sup> The so-called 'permanent campaign', however, has no formal status and no formal standards, and there is no guidance governing its conduct. The high-level, legislated Australian Public Service (APS) Values, considered in more detail in Chapter 5, broadly require public servants to strike a balance with conduct that is responsive to government and conduct that is

<sup>30</sup> Andrew Podger, 2003, 'Citizen involvement—The Australian experience', Presentation to the CAPAM Malaysia High Level Seminar, Kuala Lumpur. <<http://www.apsc.gov.au/media/podger081003.htm>>

<sup>31</sup> Senate Finance and Public Administration References Committee, *Report on Government Advertising and Accountability*, p. 72 para 6.19.

<sup>32</sup> Senate Finance and Public Administration References Committee, *Report on Government Advertising and Accountability*, p. 72 para 6.20 (emphases retained) quoting Auditor-General, 1998, *Taxation Reform: Community Education and Information Programme*, Audit Report No. 12, p. 22 para 1.9. <[http://www.anao.gov.au/uploads/documents/1998-99\\_Audit\\_Report\\_12.pdf](http://www.anao.gov.au/uploads/documents/1998-99_Audit_Report_12.pdf)>

<sup>33</sup> See Department of the Prime Minister and Cabinet, 2007, *Guidance on Caretaker Conventions*, p. 3 para 6.1.1. <[http://www.pmc.gov.au/guidelines/docs/caretaker\\_conventions.rtf](http://www.pmc.gov.au/guidelines/docs/caretaker_conventions.rtf)>

apolitical. According to s10(1)(a) of the Public Service Act, this means that the APS should perform its functions ‘in an impartial and professional manner’. As public servants are expected to take increasing responsibility for the day to day conduct of government marketing, their understanding of ‘impartial and professional’ is subject to redefinition. According to advice prepared for the public service and drawing on interviews with ministers, secretaries and advisers, the ‘willingness to market government policies’ has become a key value-creating factor for good policy advising.<sup>34</sup> According to the former Prime Minister John Howard: ‘[t]he public service is a lot more conscious now of the need to explain, the need to justify, the need to defend’.<sup>35</sup> So far as public policy is concerned, explaining is the work of public servants; justifying and defending is the work of politicians. Thus government marketing throws up a third issue for the audit of democratic institutions in addition to political equality versus the advantages of incumbency, and the quality of public debate—namely, how can public servants be responsive to the expectation that they will do such work and nevertheless remain impartial in its conduct?

In the UK, this asymmetry of responsibility between politicians and public servants has been addressed through rules governing the propriety of government publicity and advertising that are provided by the Government Information and Communication Service of the Cabinet Office and explicitly linked to the ethical and propriety standards in the Civil Service Code. These rules establish a common understanding that government publicity should be:

- relevant to government responsibilities;
- objective and explanatory, not tendentious or polemical;
- not liable to misrepresentation as being party political; and
- conducted in an economic and appropriate way, having regard to the need to be able to justify the cost as expenditure of public funds.<sup>36</sup>

Under these rules accountability for public expenditure on government advertising ultimately rests with the accounting officers of the departments or other government bodies that pay for it. At the same time, the Central Office of Information (COI)—which procures advertising services for agencies on request—is charged with advising government on communication strategy, and this includes the propriety of the advice the Office provides to government bodies. In effect, agencies and

<sup>34</sup> Allan Behm, Lynne Bennington and James Cummane, 2000, ‘A Value-creating Model for Effective Policy Services’, *Journal of Management Development*, 19 (3): p. 171.

<sup>35</sup> John Howard, 1996, ‘Ethical Standards and Values in the Australian Public Service’, *Canberra Bulletin of Public Administration*, 80: p. 3.

<sup>36</sup> National Audit Office, 2003, *Government Advertising*, p. 10 para 3.1. <[http://www.nao.org.uk/publications/Government\\_advertising\\_note.htm](http://www.nao.org.uk/publications/Government_advertising_note.htm)UK pdf>



the COI are each accountable at different levels for the propriety of the advertising for which they are financially or operationally responsible. In Australia, as will be seen, the 1995 Senate inquiry had great difficulty establishing who was ultimately accountable for government advertising, and whether responsibility lay at a political or administrative level.<sup>37</sup> The UK mechanism creates a line of accountability for public servants and in so doing sets limits to their responsiveness to government. In 2003 their National Audit Office conducted a review of the application of guidelines and found that several campaigns had been dropped or modified because of propriety concerns, including pamphlets prepared before the relevant legislation had been passed, or electoral office posters whose dominant colour was associated with a particular political party.<sup>38</sup>

The UK approach is not seamless: the Audit Office made a number of recommendations to increase its effectiveness, including the preparation of a checklist that would serve as a formal record confirming that the propriety of a given campaign had been considered against Cabinet Office guidance, and approved. Nor is the UK alone in struggling to deal with government advertising: New Zealand and Canada have also introduced reforms to their systems of government advertising addressing campaign content, use of parliamentary mail and the management of competition for government advertising contracts. Australian State jurisdictions are also grappling with the issue and four of them have put some broad standards and accountability arrangements in place. In all Australian jurisdictions, however, the issue has become increasingly politicised, and incumbents have become increasingly resistant to criticism.<sup>39</sup>

Public servants have continued to provide marketing services to government in this environment. As the following chapter illustrates, the 'need to explain, the need to justify, the need to defend' has become increasingly entrenched, spreading into policy development, program management and regulatory oversight. There is now a question as to whether the role of public servants in government marketing has compromised the broader institution of an impartial and professional public service. Governments and Ministers still routinely rely on the public expectation of an impartial public service ('research conducted by my department has found...'; 'I am advised by my department that...'). Can the public persist in the expectation that such research and such advice are impartial and professional as well as responsive to government?

<sup>37</sup> See Senate Finance and Public Administration References Committee, *Report on Government Advertising and Accountability*, p. 3 para 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'.

<sup>38</sup> See National Audit Office, *Government Advertising*, p. 11.

<sup>39</sup> See Young, 'The regulation of government advertising in Australia', pp. 444–49.

## Chapter 2: The public service and the 'permanent campaign'

Over the period of the Hawke, Keating and Howard Governments, public servants have been expected to both broaden and deepen their involvement in government marketing activities. It is not possible to set clear timelines for this process because it was of its nature incremental and varied between agencies, and because key data sources, especially the *State of the Service* data, are limited. It has been argued by Young that from the late 1980s, and especially the early and mid 1990s, Australian governments 'began to produce more controversial advertisements which opponents argued broke the old conventions and were being used to carry a partisan, political message promoting (and defending) the government and its policies in ways calculated to obtain electoral advantage'.<sup>40</sup> The Parliamentary Library has identified 20 major marketing campaigns conducted by government between 1991 and 2004.<sup>41</sup> Public servants had to manage these campaigns. It is known that over this period media demands on ministers increased substantially and that these pressures were passed, through growing numbers of ministerial advisers, to public servants providing public affairs support.<sup>42</sup> This coincided with a series of institutional changes to the public service that were intended to increase the responsiveness of public servants to the explicit and anticipated requirements of government.<sup>43</sup> The intersection of these factors has meant that marketing activities have become more commonplace, more seamlessly integrated into the broader duties of public servants, and more influential in how public servants understand their role.

<sup>40</sup> Young, 2007, 'The regulation of government advertising in Australia', p. 438.

<sup>41</sup> See Richard Grant, 2004, 'Federal Government Advertising', Parliamentary Library Research Note 62, Table 2. <<http://www.aph.gov.au/library/pubs/rn/2003-04/04rn62.pdf>>

<sup>42</sup> For data on increased numbers of ministerial advisers, see the Public Service Commissioner, 2004, 2003-04 *State of the Service Report*, Canberra, pp. 34-5; for the development of institutional links between public servants and ministerial media advisers, see Ward, 'An Australian PR state?'.

<sup>43</sup> See Kathy MacDermott, 2008, *Whatever happened to frank and fearless? The impact of new public management on the Australian public service*, Canberra, ANU E-Press, Chapter 1. <[http://epress.anu.edu.au/frank\\_fearless\\_citation.html](http://epress.anu.edu.au/frank_fearless_citation.html)>

## Role of public servants: Public affairs and ministerial support

Each Commonwealth department has to be in a position to provide public affairs services along with other ministerial and parliamentary services. This is likely to include at least one public affairs unit, although its name, staffing and resourcing vary. These specialist public affairs units have been areas of significant growth in the public sector over the past decade.<sup>44</sup> According to the Australian National Audit Office (ANAO), the functions performed by such agency units involve monitoring all media coverage of portfolio interests, dealing with media enquiries, advertising, marketing, public relations and market research.<sup>45</sup> Public affairs units characteristically see themselves as conduits between the minister or minister's advisers and their own agency, and between the agency and the media. They are the notional gatekeepers: 'regardless of the journalist asking the question, or the nature of the query, Public Affairs needs to handle it'.<sup>46</sup> According to the advice of one Public Affairs Unit, the advantages of having such a gatekeeper are as follows:

- we have a **consistent and coordinated** response
- we are **timely** in our response
- we can keep the **Minister's office** fully informed
- we are aware of what issues are running in the media and can **anticipate future developments**
- **departmental officers are not exposed** should there be inaccurate reporting, or media coverage of which the Minister's office is unaware.<sup>47</sup>

While they can deliver consistency and coordination, agency media affairs officers do not have extensive subject matter expertise. They can liaise with ministerial media advisers; they can monitor and advise and coordinate and watch time lines; but in practice it is not just the media staff but also the policy and program 'line officers' throughout the agency who do much of the public relations and media work for government.

The line officers are, for example, largely responsible for preparing initial drafts of the minister's speeches, and often it is they who initially draft press releases and press kits for launches or new legislation. During sitting weeks they arrive at work by the time the press clips have become available, and, depending on

<sup>44</sup> See Ward, 'An Australian PR State?', pp. 33–35.

<sup>45</sup> Australian National Audit Office, 2003, *Managing Parliamentary Workflow, Better Practice Guide*, p. 44. <[http://www.anao.gov.au/uploads/documents/Managing\\_Parliamentary\\_Workflow.pdf](http://www.anao.gov.au/uploads/documents/Managing_Parliamentary_Workflow.pdf)>

<sup>46</sup> Australian Public Service Commission, 2006, *Supporting Ministers, Upholding the Values*, Canberra, Appendix 3.8, p. 114.

<sup>47</sup> Australian Public Service Commission, *Supporting Ministers*, Appendix 3.8, p. 115.

what has come up, draft responses to possible parliamentary questions from the Opposition, responses to probable parliamentary questions from government backbenchers, letters to the editor, 'opinion editorial' pieces or articles, and ministerial talking points. More senior public servants end their day with the late night postings on the internet news and begin it with the electronic press clips just after six in the morning. Public servants are also likely to be rostered to remain in place until question time actually starts, in case media issues blow up during the course of the morning. In some agencies senior staff have been required to make the daily trip to Parliament House during sitting weeks to help the minister's advisers help the minister with question time practice. The circle of public servants involved in government public relations thus extends well beyond public affairs staff: according to the Public Service Commissioner's *State of the Service* reports, just under a third of all public servants who had direct dealings with ministers and/or their advisers had been involved in the 'provision of public affairs support for the minister (e.g., preparation of speeches, draft media releases)' (30 per cent in 2003–04 and 28 per cent in 2004–05).<sup>48</sup> This would indicate the direct involvement of around eight thousand people in the public relations end of marketing government.

Most of this represents longstanding practice,<sup>49</sup> and has been associated with the longstanding belief that public affairs services can be delivered to ministers without crossing the line between explaining government policy and selling it.<sup>50</sup> According to the Australian Public Service Commission's 2006 guidance on good practice, there are strategies for ensuring that public servants stand on one side of that divide and leave the other to ministers and their advisers. When, for example, asked to assist with media presentations on technical matters, public servants should 'explain the reasons for and implications of government policy, but should avoid advocacy which is the role of the Minister'. When responding to requests for material for the media or for checks on material prepared in Ministers' offices, they 'should, as always, avoid any contribution of a party political nature... ensur[ing] that facts are accurate, and any political comments can be added in the offices'.<sup>51</sup> By 2006, when the Commission's guidance was issued, it had become very clear that interactions between public servants and their ministers' offices were not always going to be as straightforward as the advice suggested.

<sup>48</sup> Australian Public Service Commission, 2005, *Employee Survey Results 2004–05*, Canberra, p. 29 question 43. This is the most recent year for which this data is available.

<sup>49</sup> See Australian Public Service Commission, *Supporting Ministers*, p. 66ff.

<sup>50</sup> See e.g., Podger, 'Citizen involvement' and 'The Public Interest'.

<sup>51</sup> Australian Public Service Commission, *Supporting Ministers*, p. 66.

The numbers of ministerial advisers in Canberra grew continuously following their introduction under the Whitlam Government and institutionalisation under the Hawke Government.<sup>52</sup> According to the *2003–04 State of the Service Report*, at 1 May 2004 the total number of ministerial personal staff was 392, an increase of 89 per cent from the 207 at April 1983. This included 39 media advisers.<sup>53</sup> The Hawke Government had argued that appointing advisers would protect public servants from pressure to become politicised by enabling politically partisan services to be provided from within the minister's own private office. In practice, advisers multiplied the points of entry from the minister's office into the public service, and also multiplied the frequency of contact between the office and the agency. Increasingly, as one adviser put it in 1996, issues were 'often handled iteratively as both minister and the department feel their way forward together on complicated matters'.<sup>54</sup> As a way of working, this approach tended to close the distance between explanation and partisan advocacy. It can be very difficult for a public servant at one end of a telephone or internet link to persist in drawing a line between facts and political commentary at each iteration of any given interaction, and certainly such persistence would be unwelcome.

During the 1990s, as increasing numbers of ministerial advisers made increasing use of new information and communication technology, the iterative approach began to take on the aspect of a partnership in which public servants would be expected to shift from a reactive to a proactive engagement with marketing:

The older defensive approach was largely response-based ... preparation of question time briefs or briefs to respond to critical media stories. The proactive work – such as it was – was largely left to Ministers and their Offices.

This is no longer tenable. Over the last decade the requirement to manage risk in the public sector has become more obvious and this requires a forward-looking approach—one that anticipates problems.<sup>55</sup>

What are the problems that need to be anticipated? Are they just the risks to the operation of a broad policy strategy, or is the effectiveness of the strategy, of necessity, bound up with the government's political profile? Do public servants have any professional responsibility to ensure that the public relations coast is clear for the agency's ongoing implementation of the government's preferred programs? If

<sup>52</sup> See Maria Maley, 2002, 'Australian Ministerial Advisers and the Royal Commission on Government Administration', *Australian Journal of Public Administration*, 61(1): pp. 103–07.

<sup>53</sup> Public Service Commissioner, *2003–04 State of the Service Report*, 34. The data is drawn from a document tabled at Senate Estimates by the Department of Finance on 26 May 2004. <[http://www.aph.gov.au/senate/committee/fapa\\_ctte/estimates/bud\\_0405/finance/tab-doc1-260504.pdf](http://www.aph.gov.au/senate/committee/fapa_ctte/estimates/bud_0405/finance/tab-doc1-260504.pdf)>

<sup>54</sup> Sandy Hollway, 1996, 'Departments and Ministerial Offices: An Essential Partnership', in JR Nethercote and Julian Disney (eds), *The House on Capital Hill: Parliament, Politics and Power in the National Capital*, Sydney, Federation Press, p. 133.

<sup>55</sup> Andrew Podger, quoted in Australian Government, 2005, *Public Sector Management: Managing out: The public sector in the community*, Topic Eight: 'Managing the media and public relations', p. 330.

so, how far should this responsibility take them? In 2001, public servants watched the Department of Defence Public Affairs and Corporate Communications Division play its role in the Certain Maritime Incident (see Chapter 5). In the following years, they watched the Australian security agencies become implicated in the publication and endorsement of questionable intelligence on weapons of mass destruction in the lead up to the Iraq war in 2003.<sup>56</sup> By 2007, public servants were reading allegations in the press that other public servants were being instructed to focus on research to discredit Opposition broadband policy.<sup>57</sup>

As well as watching their colleagues' increasing involvement with these issues, many public servants also had direct experience of the difficulty of sustaining the conventional distinction between political and administrative conduct. Service-wide surveys of APS employees conducted in 2004 found that 35 per cent of public servants who had direct contact with ministers or their advisers in the preceding 12 months reported having experienced a challenge in balancing the relevant APS Values of being apolitical, impartial and professional, responsive to government and openly accountable. The data also showed a correlation between experiencing such a challenge and the type of work being dealt with: employees providing public affairs support were more likely to have faced a challenge than those providing advice or factual information.<sup>58</sup> Focus groups and interviews conducted by the Australian Public Service Commission in 2003–04 also found that managing communications was among the activities particularly likely to give rise to challenges in balancing the APS Values.<sup>59</sup>

The question of whether challenges have arisen during direct interactions with ministers and their advisers has not been asked in State of the Service employee surveys since 2005. There was, however, anecdotal support for the 2004 data cited above from a former Public Service Commissioner, Andrew Podger, who observed that 'it is often the case that the adviser who finds the Service most difficult, and vice versa, is the media adviser'. This he attributed to 'the media adviser's focus on the next hour or two, certainly not the months and years ahead, and her or his focus on the political impact rather than the broader policy strategy'.<sup>60</sup> Podger's comment on the challenge presented by the media adviser to the public servant and by the public servant to the media adviser does not simply reflect the tension associated with meeting media deadlines. It raises the

<sup>56</sup> See Richard Mulgan, 2007, 'Truth in Government and the Politicisation of Public Service Advice', *Public Administration*, 85 (3): pp. 569–86, and his 2008 'How much responsiveness is too much or too little?', paper for IPAA Roundtable on Public Service Independence and Responsiveness, Melbourne, p. 11.

<sup>57</sup> See Jason Koutsoukis, 2007, 'Dirt unit to fight Labor's net plan', *Age*, 14 July.

<sup>58</sup> Public Service Commissioner, 2003–04 *State of the Service Report*, p. 14.

<sup>59</sup> *Ibid.*, p. 38–9.

<sup>60</sup> Andrew Podger, 2004, 'Managing the interface with ministers and the Parliament,' SES Breakfast. <<http://www.apsc.gov.au/media/podger230404.htm>>

higher level issue of whether, from the government's perspective, the agency's implementation of long-term policy strategy can always be separated from the management of that policy's short-term political impact. Is it appropriate that public servants' engagement with government policy should include preserving it from bad press or cultivating it with good press? It is a question of involvement, and it is not just a question for public servants caught up in public affairs support for ministers; it reaches far into program management and ultimately policy development.

## Role of public servants: Program management

To the extent that marketing government programs takes advantage of unpaid media, it has a number of features in common with public relations support for ministers. More recently, this has tended to include the emphasis on proactive engagement that effectively has public servants reading and reacting to public events from the perspective of the government of the day. 'It is important,' the Public Sector Management training coursework material notes, 'to communicate not just when asked for information or to manage a crisis, but also to impart good news stories'.<sup>61</sup> Public servants undertaking this training are to understand that 'promotional media campaigns are increasingly featured in public sector activities (as 'community awareness')'<sup>62</sup> and that public service middle managers with an eye for a good news story and a little media savvy can save the taxpayer the cost of a formal advertising campaign. The coursework refers positively to the appearance by public servants at public meetings or information sessions that they have advertised in newspapers or on radio. It refers to the scope for the promotion of government initiatives by new communication technologies such as the internet. It assumes that promotion is the business of public servants and not just of ministerial media advisers. Such an assumption is benign only as long as both public servants and media advisers continue to understand what is different about their roles. When public servants begin to confuse promotion in the sense of making information available, with promotion in the sense of making information appetising, they are putting that difference at risk.

When the marketing of government programs is undertaken through paid advertising, it throws up a different set of issues for public servants. From one point of view, they have a considerable investment in the success of such campaigns. 'There is little point,' a former Health Secretary comments, 'in implementing a multi-million dollar national health program if we do not also support it with

<sup>61</sup> Australian Government, 'Managing the Media and Public Relations', p. 332.

<sup>62</sup> *Ibid.*, p. 330.

a properly thought out communications strategy'.<sup>63</sup> This observation builds on a history of government service delivery which, beginning in the 1990s, was progressively associated with the model of the citizen as a consumer of services who can most effectively be reached through proven private sector-based models of engagement. During this period members of the public became 'clients' and 'customers';<sup>64</sup> public servants undertook 'client-focused' training;<sup>65</sup> and governments took increasing interest in 'the use of commercial marketing techniques to try to 'sell' a social change (rather than a product or a service) to members of the public as a way of improving society'.<sup>66</sup>

According to the former Government Communications Unit (GCU), such social change campaigns call for the full integration of conventional public relations skills into government program development and implementation. 'The program objectives will provide an overarching context for the campaign,' it advised in *How to Write a Communication Strategy for an Australian Government Campaign*, and 'the communication strategy will integrate with the program to achieve the desired outcomes'.<sup>67</sup> In a more academic vein, the Australian Public Service Commission argued in 2007 that public servants 'require a better understanding of how the traditional policy tools can be supplemented by insights from behavioural change theory and evidence at the individual, interpersonal and community levels'.<sup>68</sup> The tool chests of public service program managers would be improved through the use of behavioural change theories such as classic conditioning, heuristics and biases, social capital theory, and diffusion of innovation theories, including using other groups to deliver messages. According to the Commission, behavioural change campaigns need to draw on these strategies in order to become more sophisticated because:

[i]t has become increasingly clear that a major barrier to governments 'delivering' key policy outcomes is a disengaged and passive public. In the areas of welfare, health, crime, employment, education and the environment, achieving significant progress requires the active involvement and cooperation of citizens ... As a result of the growth in policy problems where influencing human behaviour is very complex, policy makers and programme and service model designers need a more sophisticated

<sup>63</sup> Podger, quoted in 'Managing the Media and Public Relations', p. 330.

<sup>64</sup> According to the 2004–05 *State of the Service Report*, by 2005 the Australian Customs Service had 'clients' (p. 64), as did the Department of Veterans Affairs (p. 60); Centrelink had 'customers' (p. 63)—6.5 million of them in 2003–4—as did AusIndustry (p. 60).

<sup>65</sup> *Ibid.*, p. 65.

<sup>66</sup> Young, 'A history of government advertising in Australia', p. 185.

<sup>67</sup> Government Communications Unit, n.d., *How to Write a Communication Strategy for an Australian Government Campaign*, p. 6. This document was removed from the PM&C website following the 2007 election.

<sup>68</sup> Australian Public Service Commission, 2007, *Changing Behaviour: A Public Policy Perspective*, Canberra, Commissioner's Foreword.



understanding of the factors influencing human behaviour. They require a better understanding of how the traditional policy tools can be supplemented by insights from behavioural change theory and evidence at the individual, interpersonal and community levels.<sup>69</sup>

As public servants deploy increasingly sophisticated insights from behavioural change theory to design and market government programs, they are also of necessity inviting a disengaged and passive public to feel good about its government. This is inevitable. It is difficult to imagine how campaigns around increasing individual health, reducing the incidence of crime, raising educational standards and supporting the environment would not at the same time promote the government that is promoting these goals. Certainly such campaigns argue, if only implicitly, that the government cares about these issues and that it is doing something about them, even if that is only, or largely, investing in advertising. Nor is it a big step from 'feel good' campaigns to 'feel bad' campaigns that remind the public of its dependence on government. The \$15 million National Security Campaign booklet, sent to all Australian households in February 2003, is a case in point. The campaign encouraged Australians to 'be alert but not alarmed' about the possibility of a terrorist incident on home soil. Householders received through the mail a fridge magnet with contact details for a 24-hour National Security Hotline, so that when reaching for the milk they could be constantly reminded in their homes about the terrorist threat and what the government was doing about it. Some Australians evidently saw that particular behavioural change campaign as targeting mainly voting behaviour, and returned the fridge magnets to government. What the episode suggests is that there is a possibility that social change campaigns enter a vicious circle, in which the public becomes increasingly 'disengaged and passive' because it feels increasingly manipulated by government, and government reaches for increasingly sophisticated marketing strategies to manipulate the public.<sup>70</sup> If this is the case, then there is a risk that, even where the social change in question is altogether blameless, public servants may get caught up in the spin cycle.

PAGE 21

There have been and will very likely continue to be considerable procedural disciplines associated with full-scale government advertising campaigns. Under the Howard Government such campaigns—those involving the expenditure of \$100 000 or more in actual advertising costs or any market research, or those addressing 'sensitive' issues—were drawn into a highly centralised and closely monitored process (considered in Chapter 4). The process involved

<sup>69</sup> Loc. cit.

<sup>70</sup> See Michelle Grattan, 1998, 'The politics of spin', *Australian Studies in Journalism*, 7: p. 37: 'I think there is a considerable risk in the fact that the spin process is often accompanied by a high degree of cynicism. The trouble is that the "spin cycle" can produce a "circle of cynics".'

the Prime Minister's department, the Ministerial Committee on Government Communications (MCGC), and the line agency concerned, in an iterative and often exhaustively planned course of action. Once this course of action was settled, key managers involved in such campaigns could be expected to undertake appropriate media interview training and to familiarise themselves with a comprehensive communication strategy prepared by a public relations consultant and including appropriate protocols and response mechanisms to deal with any controversies that might arise.<sup>71</sup> These highly scripted formal campaigns required a more disciplined and sustained form of engagement with government marketing than those smaller or less sensitive programs that were not associated with a substantial advertising budget. The danger in this case is that over time public servants would internalise both the disciplines and the script to the point where they were prepared to adjust or ignore the facts to suit the scripted line. A number of the case studies in the next chapter illustrate what can happen in these circumstances.

## Role of public servants: Policy development

Both media management and the work of developing advertising campaigns have in their turn shaped the kind of policy work that is undertaken by public servants. The media has increasingly brought to bear 'inexorable pressure ... for short term solutions to problems requiring careful analysis and measures which entail some political pain'.<sup>72</sup> The media pressure is directly exerted on ministers and their advisers who then pass it along by telephone, mobile, email and fax to the agencies that are meant to be solving the problems identified. The public servants on the receiving end of requests for advice are as a consequence being asked to be responsive to ministers and ministerial advisers whose attention span is often dominated by the 24-hour news cycle.<sup>73</sup> They want solutions that can be implemented quickly and, if possible, that do not result in politically significant losers. These requirements constrain both the time and the agency resources that can be devoted to long term strategic policy development; they also constrain the kind of advice that is likely to interest many ministers.

Public relations and advertising practices have also affected the process of policy advising. As selling becomes more important to government it also becomes more deeply embedded in agency activities. How deeply will vary by agency. Public sector management educational materials speak of the aspiration of public

<sup>71</sup> Government Communications Unit, *How to Write a Communication Strategy*, p. 13.

<sup>72</sup> Podger, 'Citizen involvement'.

<sup>73</sup> George Megalogenis, 2008, 'Politics of style over substance', *Weekend Australian, Inquirer*, 21–22 June, p. 26.

relations practitioners to sit at the centre of corporate strategy-making, but the likelihood of this aspiration being fulfilled is far from automatic: many specialist groups would like to see themselves in this position. Nevertheless, as they stand the training materials reflect a growing acceptance of public relations activities as shaping, rather than just promoting policies:

The term 'strategic' is used to reflect the aspiration of public relations practitioners to exercise a higher level of influence in an organisation by integrating major goals, policies and action sequences into a cohesive plan in support of an organisation's mission. Communications activities are integrated into the corporate and operational activities of the organisation to increase their effectiveness. Communications and public relations thus become part of the wider strategic management decision-making process rather than functioning in isolation at the end of, or as a last-minute 'add-on' to, the policy-making process.<sup>74</sup>

This suggests that all corporate and operational activities of an agency need to be planned taking into account a public relations perspective. It follows then that policy-making itself can be overshadowed by strategic public relations—not just the old fashioned lobbying kind, involving what the government calls 'stakeholders and opinion leaders', but also the pro-active kind, based on professional market research. The GCU identified the types of market-based research suited to the development of public communications campaigns as including: exploratory research and its subset community-based research; developmental communications research; concept testing research; benchmarking research; tracking research; and post-campaign research—that is, just about any research except substantive research into the determinants of the issue under debate. Community-based research in this context is not research into how policies work themselves out in a particular location, but research about 'what the community thinks are the main concerns and issues'. According to the GCU a grasp of these attitudes 'assists to clearly define the issues and underpin development of the campaign'<sup>75</sup>—whether this is the same as public consultation is a matter of some debate.

There are those who see market research as useful in increasing government's engagement with community views, and for these people its growing influence

<sup>74</sup> Australian Government, 'Managing the Media and Public Relations', p. 328.

<sup>75</sup> Government Communications Unit, 2001, *How to Use Research and Evaluation in Government Communication Campaigns*, Canberra, p. 6. This document was removed from the PM&C website of the following the 2007 election.

is good news.<sup>76</sup> This group includes members of the Management Advisory Committee, which sees market research as a tool that ‘allows informed participation but protects the Government’s obligation to make decisions on behalf of all Australians’.<sup>77</sup> For those who see market research as a means of replacing government/community relations with ever more sophisticated marketing techniques, its growing influence is not good news. It can be used to sell rather than to consult in two ways. The first is to apply market research to discover entrenched public attitudes and then to sell policy by using those attitudes as a proxy for actual policy information. Take the case of industrial relations reform. While government has generally proved resistant to releasing much of its market research,<sup>78</sup> Peter Reith as Minister for Industrial Relations did get a number of State labour ministers (at a time of State Coalition governments) to join him in commissioning and releasing market research conducted by Australasian Research Strategies.<sup>79</sup> The Managing Director and principal investigator for the project was one of the government’s longstanding pollsters, Mark Textor, described by an ABC Radio National program in the following terms: ‘Textor tells the Government how far it can go before it alienates its key voters, those in marginal seats and others needed to keep the Government in power. He tells them how tough they can be. Most controversial policy moves are first researched by Textor.’<sup>80</sup>

The research into employee attitudes to industrial relations arrangements focused on employees’ positive and negative associations with unions, enterprise bargaining and so on. It did not canvas the need for, or nature of, possible industrial relations changes beyond testing the resonance of the words ‘workplace relations reform’ themselves. In fact the Textor market research was not about reforms to the industrial relations system at all but rather about how to sell any reforms the governments concerned may wish to pursue. In the report’s own words, ‘the fundamental premise of values based strategy or policy development is not that one persuades by reason, but that one motivates by tapping into the emotive component of personal values’.<sup>81</sup>

<sup>76</sup> See Australian Government, ‘Managing the media and Public Relations’, p. 320: ‘A key driver of the use of market testing and research is the desire to make decisions more responsive to client and public needs. It can be critical not only for testing new ideas, but also for improving and fine-tuning existing policies; it thus spans the entire ambit of the policy cycle from development to implementation and evaluation’.

<sup>77</sup> Management Advisory Committee, 2004, *Connecting Government: Whole of Government Responses to Australia’s Priority Challenges*, Canberra, p. 92.

<sup>78</sup> Senate Finance and Public Administration References Committee, 2005, Report of the Inquiry into Government Advertising and Accountability, p. 32 para 3.32.

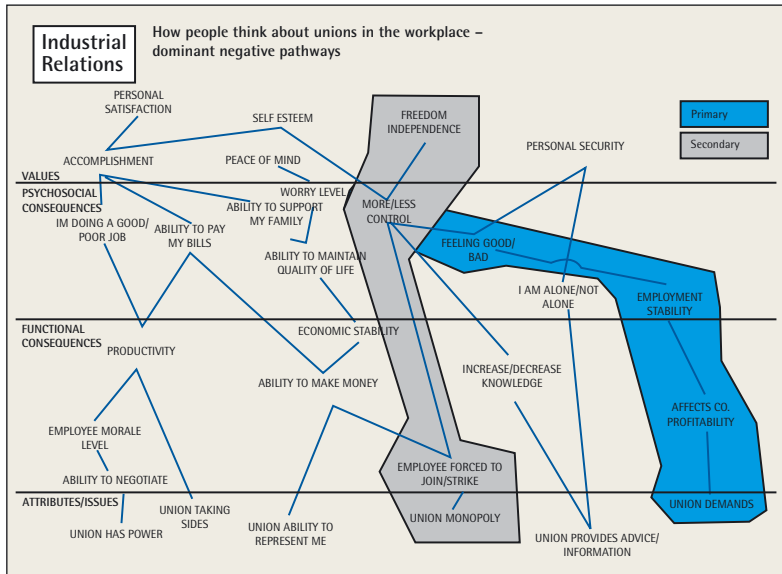
<sup>79</sup> Australasian Research Strategies, 1999, *Employee Attitudes to Workplace Reform: A report prepared on behalf of contributing members of the Labour Ministers Council*, Canberra, p. 6. <<http://www.workplace.gov.au/NR/rdonlyres/71FB2FBE-B164-4DE9-85C5-E108A06118C9/0/employee.pdf>>

<sup>80</sup> Suzanne Smith, 1999, ‘Push Your Vote Our Way’, ABC Background Briefing. <<http://www.abc.net.au/rn/talks/bbing/stories/s19393.htm>>

<sup>81</sup> Australasian Research Strategies, *Employee Attitudes to Workplace Reform*, p. 2.

The research traces trains of thought or associations called pathways. The pathways begin with concrete descriptions or attributes that can be applied to something such as a union, for example 'ability to represent me'. These attributes are then associated with certain consequences—either direct consequences such as 'ability to make money' (functional consequences) or emotional consequences such as 'ability to support my family' (psychosocial consequences). Underlying the whole pathway are values or motivations such as self esteem that are the cause and effect of these associations. The result is the identification of a motivator and a chain of associations that can be used to sell union membership. The methodology also lends itself to the detection of negative pathways, such as those set out in Figure 2.1. There, 'union demands' are associated with the functional consequence of reduced profitability and the emotional consequence of insecure individual employment, which is a bad feeling associated with a lack of individual control. Underlying the whole pathway is the motivator of personal independence or freedom. The words 'union monopoly' are associated with a second negative pathway, involving force, either being forced to join a union or being forced to participate in a strike. The psychosocial consequence of being forced into taking these actions is a loss of personal control. Concern about individual freedom and independence underlies this negative pathway. If instead of union monopoly, the attribute associated with unionism were 'union ability to represent me', a different pathway would emerge running through ability to make money, economic stability, ability to support my family and the motivator self esteem.

Figure 2.1: Market research: Dominant negative pathways relating to unions



Source: Australasian Research Strategies, 1999, *Employee Attitudes to Workplace Reform: A report prepared on behalf of contributing members of the Labour Ministers Council.*

PAGE 26

Clearly, a 'values based' approach to industrial relations can be laid over almost any policy likely to be proposed by any government. It is not tied to policy development any more than it is tied to an evidentiary base. There are no direct links between 'more/less control', for example, and any particular policy; in fact, different policies might increase different types of employee control through different levers. Used in this way, market research is not an aid to policy development any more than it is a genuine form of public consultation. Over time, it may even cause a government to lose touch with what the community actually thinks, because its application is to make the community think what the government wants it to think. Brett argues that this is indeed what happened in the case of the government's presentation of unionism, and that by 2003 the government's rhetoric on union power was out of line with public perceptions of unions reported in the Australian Social Attitudes survey.<sup>82</sup> The more government relies on this kind of an approach, the more its requirements shift from evidence-based policy to policy-based evidence; and when that happens, the public service is expected to follow suit.

<sup>82</sup> Judith Brett, 2007, 'Exit Right: The Unravelling of John Howard,' *Quarterly Essay*, 28: p. 70.

Is market research gradually displacing rational arguments based on statistics and conventional research as the evidence for evidence-based policy? When the Fair Pay Commission employed a market research firm to undertake its consultations on the impact of changes to the Australian minimum wage, what was it really expecting to find out from the individuals in its focus groups?<sup>83</sup> What it received was improved public relations in the form of 'general recognition that the setting of minimum wages was not easy and the role of the Fair Pay Commission was challenging given that many competing factors needed to be considered'.<sup>84</sup> There are concerns, certainly, that conventional public service research resources have been progressively displaced as expenditure on market research has increased;<sup>85</sup> there are also concerns that media management and the 24-hour news cycle are coming to dominate policy development. Anderson, citing Palmer, argues that there are:

three grounds for the claim that media management is dominating policy development. First, politics is now practiced as a 'permanent campaign' with the carefully scripted statements and determination to 'win every headline', which were once reserved for the frenetic weeks leading up to polling day, now being the daily standard operating procedure. Second, communications is central to modern politics, with more resources being moved towards communication and marketing, and a tight focus on central control of message co-ordination. Third, traditional forms of policy development are being supplanted by marketing techniques based on surveys to find the 'hot button' issues so as to devise policies to fit them.<sup>86</sup>

To the extent that market research is really displacing conventional research, there is a problem for public servants. Under s10(1)(f) of the Public Service Act they are required to provide 'frank, honest, comprehensive, accurate and timely advice' to government. Can they be said to have met this standard if their advice consists of frank, honest, comprehensive, accurate and timely market testing? Is there not a risk, as suggested by Marsh, that 'instant public responses and unformed

<sup>83</sup> In 2007 the Australian Fair Pay Commission engaged TNS Social Research Pty Ltd (TNS) to conduct research on the impact on Australians of changes to Federal Minimum Wages. The research was conducted through a series of targeted focus group consultations held during February and March, across all States and Territories as well as general consultation with Australians via secure online bulletin board discussions. The groups involved Australians typically most affected by decisions made by the Commission.

<sup>84</sup> A Southwell, R Zappelli, N Wearne and K Maltman, TNS Social Research, 2007, 'Report on Targeted Focus Group Public Consultations for the Australian Fair Pay Commission's 2007 Minimum Wage Review', p. 85. <[http://www.fairpay.gov.au/NR/rdonlyres/0FA411B5-18F6-41D4-AC20-118CC13E5271/0/Report\\_on\\_Targeted\\_Focus\\_Group\\_Public\\_Consultations\\_2007.pdf](http://www.fairpay.gov.au/NR/rdonlyres/0FA411B5-18F6-41D4-AC20-118CC13E5271/0/Report_on_Targeted_Focus_Group_Public_Consultations_2007.pdf)>

<sup>85</sup> 'There is now widespread use among Australian public service agencies of market research techniques and other consultation mechanisms.' Lynelle Briggs, 2005, 'A passion for policy?' ANZSOG/ANU Public Lecture Series. <<http://www.apsc.gov.au/media/briggs290605.htm>> See also Penny Wong, 2007, 'Labor's Approach to the Australian Public Service', Speech to the Institute of Public Administration Australia, p. 7. <[www.alp.org.au/media/0907/speepaa200.php](http://www.alp.org.au/media/0907/speepaa200.php)>

<sup>86</sup> Anderson, 'Managerialism, the Media and Ministerial staff', pp. 13–14.

public opinion are given an inappropriate standing'?<sup>87</sup> And is there not a risk that policies may be shaped by their promotional effects? This is the second way in which market research can be used to send the electorate a message rather than to receive one. Obesity and recycling campaigns may sit at one end of such an approach to policy development, but dogwhistling sits at the other.

The expression 'dogwhistling' is derived from the capacity of dogs to hear sounds a human cannot. It is used to refer to subliminal political messages that are designed to bypass one part of the electorate while targeting another. It is commonly applied to certain forms of political spin but it can also be applied to policies designed to support such spin. Recent work by Fear has identified a number of cases in which 'the substantive achievements resulting from well-designed public policy are plainly outweighed by the political dividends associated with sending a certain kind of message to the electorate'. These initiatives, he argues, 'would appear to have more to do with electoral manipulation than meeting their stated objectives'.<sup>88</sup> In addition to the National Security Campaign referred to above, Fear cites the requirement for applicants for Australian citizenship to sit the Australian Citizenship Test in order to demonstrate 'a basic knowledge of the English language, adequate knowledge of Australia and the responsibilities and privileges of Australian citizenship, and an understanding of the nature of their application'—including knowledge of historical sports figures such as billiards champion Walter Lindrum. It is doubtful, Fear argues, whether the Australian Citizenship Test will result in more harmonious relations between recent migrants and native-born Australians. It is more likely to function 'as a dog whistle to those Australians who believe that people of other language and cultural backgrounds are not integrated into 'mainstream' culture to a sufficient degree'. Fear cites other policy initiatives with similar possible effects:

- Under the *Flagpole Funding Initiative*, 'a condition of Australian Government general funding to schools is that all schools have a functioning flagpole flying the Australian flag'. The Department of Education, Science and Training's 'recognition requirements' for new flagpoles stipulate that 'Australian Government assistance should be acknowledged with a plaque, through a newsletter to the local school community and/or by providing an opportunity for an Australian Government representative to attend a flag raising ceremony at the school'.

<sup>87</sup> Marsh, 'Australia's Political Institutions and the Corruption of Public opinion', p. 335.

<sup>88</sup> Josh Fear, 2007, 'Under the Radar: Dog-whistle politics in Australia', Australia Institute Discussion Paper 96, pp. 9–10.



- The *Values Education in Schools Program* aims to make ‘values a core part of schooling’. The *National Framework for Values Education in Australian School* lists nine values for Australian schooling, including ‘care and compassion’, ‘doing your best’ and ‘a fair go’. The promotion of ‘Australian values’ in schools could be seen in the context of Federal Education Minister Julie Bishop’s claim that public school students are held hostage to ‘Maoist’ ideology peddled by State education bureaucracies.<sup>89</sup>

These are social change campaigns, certainly, but it is at least arguable that they are not so much about behavioural change as about reinforcing and associating the government of the day with a set of values represented as both fundamentally Australian and at risk. If, as Fear argues, these messages are more about political dividends than about well-designed public policy, then there is a question as to the apolitical professionalism of policy design as well as program delivery by public servants, even down to drafting the speeches for those Australian Government representatives (i.e. Government Members of Parliament) attending flagpole recognition ceremonies in return for funding for schools.

PAGE 29

There are both convincing and unconvincing reasons why the numbers of public servants expected to help with the marketing of government has had to grow. It is, however, a matter of concern that as these numbers grow, their level of engagement is expected to deepen. Public servants work in a system. The system requires them to make distinctions between explaining and selling, but much of the work they are actually required to do conflates them. The case studies set out in the next chapter provide a closer view of how this can happen.

<sup>89</sup> Ibid.

## Chapter 3: Case studies

PAGE 30

The work of marketing government goes on in a large number of agencies, authorised by the call for 'responsiveness to ministers' in the APS Values, and by the management systems that support responsiveness. Thanks to progress in 'strategic communications', the work of marketing goes on well beyond the activities of public relations units, taking place in parts of agencies given over to the routine processes of government policy development and program design. This means that in practice it has become integrated into the more conventional or traditional processes associated with these activities, blurring distinctions between administrative support and political support. As a consequence, the conduct of particular agencies and particular public servants has been increasingly subject to criticism that it is 'reinforc[ing] the perception of a service giving too much weight to responsiveness over apolitical professionalism',<sup>90</sup> 'politicising our public service',<sup>91</sup> 'bending the truth to suit their political masters',<sup>92</sup> and 'a long way short of providing honest, comprehensive and accurate advice'.<sup>93</sup> It is worth looking more closely at some of the more familiar of these cases in order to clarify how public service came to look like just service, and whether the relevant lines were crossed, or blurred beyond recognition.

<sup>90</sup> Andrew Podger, 2007, 'Pride and Prejudice: Ms Bennett as the New Face of a Very Public Service', *Public Sector Informant*, August.

<sup>91</sup> Julia Gillard, 2007, Radio interview with Leon Delaney 2SM. <<http://www.juliagillard.alp.org.au/news/0707/mediaportfolionews17-01.php>>

<sup>92</sup> Ross Gittins, 2007, 'Hard work uncovering truth about pay rises', *Sydney Morning Herald*, 6 October.

<sup>93</sup> Patrick Gourley, 2007, 'Taking the politics out of public service', *Sydney Morning Herald*, 11 December.

## The distinction between explaining and marketing government policy: The *WorkChoices* campaign

There is a consensus, considered in the previous chapter, that where marketing government is concerned, the critical distinction between administrative support and political support relies on a corresponding distinction between facts and advocacy. In its simplest form, this is eminently manageable. In its more complex form, it may not be manageable at all. It is not always easy to find the ‘fine line between explaining government policy and selling it and between using marketing to achieve program objectives and implement policy initiatives, and becoming partisan’.<sup>94</sup> Take the *WorkChoices* campaign. It began following an \$8 million advertising campaign run by the Australian Council of Trade Unions (ACTU) from 19 June 2005, warning (in the same gritty tones favoured by the Howard Government in the 2001 election campaign) that the new legislation would make life harder for working families.<sup>95</sup> In July, the government responded with full-page newspaper and radio advertisements at a cost of around \$5 million. These argued that because misinformation had been put around, there must be information, and this information would take the form of hard facts:

PAGE 31

Woman: Hi honey. Why are you home early?

Man: We’re on strike. The government’s going to cut my holidays in half.

Woman: No, that’s not right. I read about it in the paper. Look, it says here they won’t cut four weeks annual leave, won’t cut award wages or abolish awards.<sup>96</sup>

Man: You know what scares me? With workplace agreements that we won’t be protected anymore.

Woman: That’s not what it says here in the paper (sound of newspaper opening). Look, protected conditions include four weeks annual leave, personal and carer’s leave, parental leave and a maximum number of thirty-eight ordinary working hours per week.<sup>97</sup>

<sup>94</sup> Andrew Podger, 2003, ‘Citizen involvement—The Australian experience’, Presentation to the CAPAM Malaysia High Level Seminar, Kuala Lumpur. <<http://www.apsc.gov.au/media/podger081003.htm>>

<sup>95</sup> For the scripts and the advertisements themselves, see: ACTU, 2005, ‘Advertising campaign puts human face to work changes’. <[http://www.actu.asn.au/work\\_rights/news/1119140356\\_4328.html](http://www.actu.asn.au/work_rights/news/1119140356_4328.html)>

<sup>96</sup> Australian Government, 2005, *WorkChoices* Radio advertisement broadcast 21 July 2005. The Media and Communications Program at the University of Melbourne has posted these and other government advertisements on The Soapbox. <<http://soapbox.unimelb.edu.au>>

<sup>97</sup> Loc. cit.

The reference to the newspaper as a means of verifying the government's legislative intentions, though odd, was necessary given that there was no actual legislation to refer to. The legislation was introduced on 2 November 2005, more than three months after the government's ads were initially broadcast. By that time, between government claims of misinformation and the absence of actual legislation, there was, as the then Minister observed:

a degree of query within the community; people want to know; they want to obviously know what the detail is. And that's why we're responding with the detail of the release ... we'll continue to provide the detail to people (Andrews, 18 October 2005).<sup>98</sup>

According to a study of the rhetoric of *WorkChoices* marketing, the Minister's comment is characteristic of 'a cluster of terms relating to both "details" and "explanation"'<sup>99</sup> that appear in both ministerial and prime ministerial statements relating to the purpose and nature of the *WorkChoices* marketing campaign. Andrew Robb, appointed to manage the *WorkChoices* campaign for the government, told Channel Ten's *Meet the Press*: 'The advertising is seeking to explain the detail of what we're doing'.<sup>100</sup> The emphasis on the factual nature of the campaign was not just about reassuring the public as to the actual content of the forthcoming legislation; it was also about justifying government expenditure on the campaign itself. Expenditure on *WorkChoices* marketing had gone up following the High Court's decision (considered in Chapter 5 below) that the government's campaign was not unconstitutional. On 20 September 2005, the High Court rejected the ACTU challenge and, by November, when the government was reported to have already bought and used 11 000 television spots for the previous month alone,<sup>101</sup> the campaign expenditure itself had become an issue. Graeme Orr has anthologised the views of a number of key commentators as follows:

<sup>98</sup> Andrews, cited in Catherine White and Amanda Roan, 2006, 'An Exploration of the Discursive Construction of *WorkChoices*', p. 156. <[www.qwms.org.au/filestore/OWOL%20Papers/PDF/White%20&%20Roan%20FINAL%20%20-%20DONE.pdf](http://www.qwms.org.au/filestore/OWOL%20Papers/PDF/White%20&%20Roan%20FINAL%20%20-%20DONE.pdf)>

<sup>99</sup> *Ibid.*, p. 155.

<sup>100</sup> Cited in van Onselen and Errington 'Managing expectations', p. 13.

<sup>101</sup> See Young, 'A history of government advertising in Australia', p. 200.

Senior journalists said that:

- ‘the expenditure of so much public money on what are really party political advertisements is disgusting’ (Laurie Oakes),
- the Government is ‘beyond shame’ (Michelle Grattan), and
- the size of the campaign is so ‘obscene’ it risks ‘disappearing up its own fundamentals’ (Glenn Milne).

Even conservative supporters of the industrial relations proposals attacked the advertising campaign, labelling it:

- ‘an advertising rort ... a partisan ploy to prop up an unpopular policy’ (*The Australian*, editorial) and
- ‘the greatest waste of money’ (Jeff Kennett).

Glenn Milne quoted an unnamed government member saying ‘the campaign has been over the top ... an extraordinary display of hubris’.<sup>102</sup>

PAGE 33

Between the profile given to the expenditure by the High Court challenge and the press, and the sustained pressure applied by the Opposition, it was necessary that the *WorkChoices* marketing campaign assert its factual basis. Both the function of ads (‘mythbusting’) and the justification for the expenditure (public information) required that this be so.

At about the time that the legislation was introduced into the House of Representatives, the government also released an overview of the new arrangements in hard copy (together with a poster and a mouse pad for those with very short memories). Working in the wake of the High Court challenge and in the face of press scrutiny, the public servants from the then Department of Employment and Workplace Relations (DEWR) preparing these materials appear to have ensured ‘that facts are accurate, and any political comments can be added in the offices’.<sup>103</sup> Most of the publications (called ‘facts sheets’) are plain in style, and taken together read like a legal briefing for non-specialists with a robust attention span. They are headed by an Australian Government logo without any departmental reference. The main booklet, the one that adds the political comments, also bears the Australian Government logo, but is the only one marked ‘written by the Hon. Eric Abetz, Special Minister of State’. This is

<sup>102</sup> Orr, ‘Government advertising: Informational or self-promotional?’, p. 15.

<sup>103</sup> Australian Public Service Commission, 2006, *Supporting Ministers, Upholding the Values*, Canberra, p. 66.

the document that was reportedly pulped following market research so that the word ‘fairer’ could be added to the cover, and one of the ‘protected by law’ commitments removed from the text.<sup>104</sup>

The Abetz booklet features the political themes of the *WorkChoices* campaign. It emphasises the evolutionary (necessary and irreversible) nature of the changes and their contribution to ‘more choice and flexibility for both employers and employees, so we can find better ways to reward effort, increase wages and balance work and family life’.<sup>105</sup> It is important to bear these claims in mind, as subsequent academic research comprehensively failed to bear them out. The main booklet also contributed a new theme, the big red ‘protected by law’ stamp that appears 14 times in its 15 pages. It is possible that excessive enthusiasm with this stamp led to the pulping of the brochure as the promise that award conditions would be ‘protected by law’ could not be sustained by the terms of the legislation. Those conditions most conspicuously not protected were called ‘Protected Conditions’ in the *WorkChoices* legislation. These were mainly conditions relating to earnings but distinct from actual wages—overtime and shift loadings, penalties, allowances, annual leave loadings, paid breaks, public holiday pay and incentive-based payments and bonuses. Their legal protection consisted of having to be named in agreements in order to be removed. Protected conditions, as subsequent research showed, were not in practice protected.<sup>106</sup> The Fair Pay Commission had fairness removed from its decision-making criteria.<sup>107</sup> As will be shown below, *WorkChoices* had the effect of constraining employee choices. Nevertheless, because legislation used those names, that is what the public service called them, with perfect propriety.

In the same way, the facts sheets prepared for the *WorkChoices* campaign offered facts. Other facts were, of course, omitted. They listed, for example, the criteria that were to guide the decision-making of the Fair Pay Commission, but did not specify that ‘fairness’ had been explicitly removed from the legislation addressing wage-setting. They did not provide any clear view—as did the research published by the Victorian Labor Government’s Employment Advocate—of the legislative provisions formerly protecting employees making agreements that had been

<sup>104</sup> Misha Schubert, 2005, ‘PR-blitz blunder is pulp fiction, scoffs Labor’, *Age*, 8 November.

<sup>105</sup> Australian Government, 2005, *WorkChoices: A simpler, fairer, national Workplace Relations System for Australia*, p. 5.

<sup>106</sup> See Justine Evesson et al., 2007, *Lowering the Standards: From Awards to Work Choices in Retail and Hospitality Collective Agreements: Synthesis Report*; and Brigid van Wanrooy et al., 2007, *Australia@Work: The Synthesis Report*, Workplace Research Centre, University of Sydney. <[http://www.industrialrelations.nsw.gov.au/resources/lowering\\_the\\_standards\\_13sept2007.pdf](http://www.industrialrelations.nsw.gov.au/resources/lowering_the_standards_13sept2007.pdf)><[http://www.wrc.org.au/documents/Australia@Work\\_The\\_Benchmark\\_Report.pdf](http://www.wrc.org.au/documents/Australia@Work_The_Benchmark_Report.pdf)>

<sup>107</sup> See House of Representatives, 2005, *Hansard*, 7 November, p. 30: (Mr Stephen Smith) ‘Minister, isn’t it the case that the government pulped nearly half a million copies of the booklet to insert the word ‘fairer’ into the title at the suggestion of the government’s taxpayer funded market research spin doctors? Prime Minister, doesn’t page 29 of the government’s industrial relations legislation expressly remove the requirement that the minimum wage be fair from the criteria for setting the minimum wage?’

removed or replaced.<sup>108</sup> Nevertheless, they did not run political lines about choice or flexibility. They did not offer spin in the sense that the Abetz booklet offered spin. And if public servants prepared the Abetz booklet, they may only have prepared the factual content. The Abetz material may have represented to some an inappropriate use of public resources—although the Howard Government itself did ‘not regard the public information campaign as being partisan’<sup>109</sup>—but at that stage the public service could be argued to have explained the legislation and left the selling to government.

In the event the marketing ceased to be about facts and became personal. The ACTU campaign had pre-empted the government’s economic arguments about the theoretical benefits of the system by continuing to run the practical experiences of those who had actually worked in it.<sup>110</sup> There was evidently more interest in what had actually happened than in what could in theory happen. By March 2006—five months after their printing— 97 per cent of the government’s booklets and fact sheets remained undistributed, and many of those that had been distributed had been forwarded at the request of students to organisations with inventive and improbable names.<sup>111</sup> By August, some of the individual cases of loss of earnings cited by the ACTU had been investigated by the DEWR Office of Workplace Services (OWS), and its findings leaked to the press. The credibility of the individuals concerned was attacked by the government and the credibility of OWS was attacked by the ACTU.<sup>112</sup> In 2007, the government responded with its own ‘information ads’ representing individuals who were happy with the personal impact of *WorkChoices*. When it was alleged that Damien Richardson, one of the actors in an ad reassuring young workers about the impact of the legislation, had actually exploited a number of young workers, and when his son joined himself to the allegations, it was as if the actor had actually become the person he was acting, and had lied.<sup>113</sup> The Minister suggested that OWS should investigate not only Mr Richardson but also all the actors in the ACTU and State Labor ads as well. It had become personal.

<sup>108</sup> Carolyn Sutherland, 2007, ‘Agreement-making under Work Choices: The impact of the legal framework on bargaining practices and outcomes’, Work and Employment Rights Research Centre and Department of Business Law and Taxation, Monash University. <<http://www.ecruiting.com.au/express/200711/05Sutherland.pdf>>

<sup>109</sup> Schubert, ‘PR-bltz blunder is pulp fiction’.

<sup>110</sup> Australian Council of Trade Unions, 2005, ‘Ad Campaign Background Information, 23 June 2005’. <[http://www.actu.asn.au/work\\_rights/background\\_info/ad\\_background.html](http://www.actu.asn.au/work_rights/background_info/ad_background.html)>

<sup>111</sup> See House of Representatives, 2005, *Hansard*, Questions without Notice, 9 November, p. 77.

<sup>112</sup> Greg Combet, 2006, Media release: ‘Government Increasingly Desperate on IR’, 21 August. <<http://www.actu.asn.au/Campaigns/YourRightsatWork/YourRightsatWorknews/GovernmentIncreasinglyDesperateonIRACTUSecretaryGregCombet.aspx>>

<sup>113</sup> Michael Bachelard and Misha Schubert, 2007, ‘*WorkChoices* actor “ripped off” son too’, *Age*, 8 August, p. 1. On 13 March 2008, Mr Richardson was found in the Victorian Magistrates’ Court to have breached a number of industrial instruments. <<http://www.wo.gov.au/data/portal/00007407/content/20030001206490830261.pdf>>

Thus by the time the government responded to the ACTU's 'real people' ads with a real public servant, the line between explaining a policy and selling a line had disappeared, and the presenter had become part of the message. The market research that prompted this involvement foreshadowed this. Dated April 20, 2007, and reported by the *Australian* on 3 August, it was said to have reported "key emotions" in the community of fear, panic, insecurity, cynicism, distrust and disempowerment over *Work Choices*'.<sup>114</sup> It is hard to argue against these kinds of emotions. The government decided to amend the legislation to introduce a 'Fairness Test', stop calling it *WorkChoices*, and change the name and leadership of the organisation administering it. 'Identifying an appropriate figurehead for this organisation will be critical,' the market research found. 'This is very much a public role, requiring an individual with a strong reputation for 'independence' (sic), commonsense and an empathy/understanding of the average Australian circumstances'.<sup>115</sup> In the event, the government did not beat the usual bushes to find a widely-known individual with a strong public reputation for independence (the former head of the Australian Competition and Consumer Commission and the former head of the Reserve Bank had been suggested), but rather chose one whose profession was meant to be itself a guarantee of independence: a public servant. The Deputy Leader of the Opposition later commented that 'I think the Government is now using public servants because it knows it lacks credibility on industrial relations'.<sup>116</sup>

The 2007 'Know where you stand' *WorkChoices* campaign in which Ms Barbara Bennett appeared was created by the advertising agency Whybin TBWA, which had been responsible for the government's 'Chains' advertising campaign introducing the GST. In televised segments, Ms Bennett was seen advising concerned citizens that there were many myths about individual contracts around, and that 'the biggest myth is that employees are alone and unprotected and that's just not true'<sup>117</sup> because, as the footage demonstrated, she and her agency were there to help them. As the Minister said:

Barbara Bennett and her staff are there to help employees and employers by providing advice and support when making workplace agreements ...

<sup>114</sup> Lara Sinclair, 2007, 'Australian Voters fearful of IR laws', *Australian*, 3 August.

<sup>115</sup> Loc. cit.

<sup>116</sup> Gillard, Radio interview with Leon Delaney 2SM.

<sup>117</sup> Mark Davis, 2007, 'Workplace ad may breach public service code, says Gillard', *Brisbane Times*, 17 July.



Ms Bennett is the authority on this subject and that's why she is such an important component of the advertising. For as long as the union bosses ... deceive working Australians on how the law works, the Government is obliged to continue to explain the law ... and how the system works.<sup>118</sup>

It was a 'seeing is believing' campaign aimed at addressing a public that, according to market research, no longer trusted the words of government advertisements. What they saw was a public servant who was the 'real life' head of the agency that was meant to protect them, and she was telling them about her role in the same mythbusting language that all the other actors pretending to be 'real life' people were using in the other government advertisements. Explaining had become selling, and apolitical professionalism was part of the product being sold. No wonder many public servants were surprised, firstly by the advertisements themselves, and later by the defence that the new head of the new Workplace Authority 'was merely fulfilling part of her role as a public servant: explaining policy, and giving important factual information about the workplace relations system':<sup>119</sup>

PAGE 37

Ms Bennett, 45, a former chief executive of the Commonwealth workers' compensation scheme Comcare, told the *Australian* she took impartiality seriously and that the advertisements promoted the services offered by the Workplace Authority. 'I was asked to do the advertisements by the minister,' she said. 'I did it bearing in mind that I am a statutory office holder and what I do is set out in the legislation'.

This included that she inform and educate the community about the authority.

'I am not commenting on government policy,' she said. 'I am talking about the fairness test and the Workplace Authority.'<sup>120</sup>

Informing and educating the community is a very common part of a job description at all levels of the public service. In the past it has been interpreted as calling for support work: providing the facts, managing the contract, and explaining without advocating government policy. The closest this has come to a call for public servants actually to appear before the media has occurred when technical or other specific knowledge has been required on a subject—such as

<sup>118</sup> Loc. cit.

<sup>119</sup> Australian Broadcasting Corporation (David Lawrence), 2007, 'Calls for Govt to drop latest workplace ads', *Lateline*, 1 August.

<sup>120</sup> Matthew Franklin, 2007, 'Workplace boss in clear over ads', *Australian*, 1 August.

medical briefings during the SARS outbreak, and explanations of decisions made administratively under program legislation in agencies such as the Therapeutic Goods Administration, the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission.<sup>121</sup> But the 'Know where you stand' advertisements were neither crisis briefings nor explanations of administrative or regulatory decisions; they were part of a marketing campaign and no protocols appeared to apply. The advertisements are believed to represent the first time<sup>122</sup> a public servant has interpreted a job description that includes a public education function as requiring them personally to become, in the Minister's words, 'such an important component of the advertising'.<sup>123</sup>

The question of how the 'Know where you stand' advertisements intersect with APS governance arrangements will be considered in Chapter 5. For the purposes of the present argument, it is important to bear in mind that one reason why the advertisements appeared as and when they did is that people were seen to have stopped trusting government reassurances and to need individual reassurances. The new Workplace Authority position was designed in response to market research; the need to reassure the public was identified in market research; and though the Minister 'would not say if the [public relations] agencies had a hand in selecting Ms Bennett,' he did observe that 'I think Barbara has the capacity to be a very public face of the Workplace Authority'.<sup>124</sup> It was a case of strategic marketing, and there was no line left between explaining and selling.

## The distinction between objective data and politically loaded data: *Agreement making in Australia under the Workplace Relations Act 2004 to 2006*

The 'real life' Barbara Bennett was scripted by the government in response to the 'real life' 'working families' appearing for the ACTU. The debate was operating at the level of individual experience because the citation of professional research and analysis was caught up in the 'insecurity, cynicism, distrust and disempowerment over *Work Choices*' later identified in the government's own market research. The Abetz *WorkChoices* booklet had summed up the key themes of the government's campaign as follows: 'These changes need to provide more

<sup>121</sup> See Andrew Podger, 2004, 'Managing the interface with ministers and the Parliament', SES Breakfast. < <http://www.apsc.gov.au/media/podger230404.htm>> See also Management Advisory Committee, 2004, *Connecting Government: Whole of Government Responses to Australia's Priority Challenges*, Canberra, p. 122.

<sup>122</sup> See Damien Murphy, 2007, 'Face of *WorkChoices* takes flak for ad blitz', *Sydney Morning Herald*, July 30: 'But Andrew Podger, a former public service commissioner ... said Ms Bennett's actions were unprecedented. "I can't recall any public servant at this level appearing in a government campaign," he said.'

<sup>123</sup> Davis, 'Workplace ad may breach public service code, says Gillard'.

<sup>124</sup> Murphy, 'Face of *WorkChoices* takes flak for ad blitz'.

choice and flexibility for both employees and employers in their workplaces, so we can find better ways to reward effort, increase wages, and balance work and family life'. Choice, flexibility and increased rewards had always been part of the rhetoric associated with the government's industrial relations reform packages. They were integral to Textor's 'key positive pathways to personal emotions and values that determine the perceptions Australian workers have of the workplace, the role of government in the workplace, the role of unions in the workplace, and workplace agreements'.<sup>125</sup> The problem was that academic analysis did not suggest that choice, flexibility and increased rewards would actually be the outcome of *WorkChoices*. The research-based Submission to the Senate Inquiry into the *WorkChoices* Bill signed by 151 academics in 2005 argued, conversely, that choice was likely to be reduced by the Bill. The academics considered that it would increase employers' ability to exercise managerial prerogative and impose their choices on employees, and employers' choices were not likely to include better ways to reward effort, increase wages, and balance work and family life. The academics then researched the impact of the legislation and found, broadly, that they had been right.<sup>126</sup>

Perhaps the most damaging among a number of research projects was *Lowering the Standards: From Awards to Work Choices in Retail and Hospitality Collective Agreements*, one of two high profile reports released by Sydney University's Workplace Research Centre in September 2007, in the run-up to the November federal election. *Lowering the Standards* examined every new collective agreement in the retail and hospitality industries in the first months of the *WorkChoices* regime. The report indicated that in the cases of the retail and hospitality industries the Abetz promises had been either naïve or disingenuous. Instead of increased choice and flexibility in agreement-making, the study found 'a new industry of consultants and lawyers producing minimalist template agreements'.<sup>127</sup> Instead of an increased reward, it found that annual leave loadings had been removed in 80 per cent of agreements, laundry allowances in 79 per cent, Saturday penalty rates in 76 per cent, Sunday penalties in 71 per cent, overtime rates in 68 per cent, public holiday rates in 60 per cent, and paid breaks in 55 per cent. 'All these conditions,' the same article noted, 'were stamped "protected by law" in government advertising in 2005'. A second report

<sup>125</sup> Australasian Research Strategies, 1999, *Employee Attitudes to Workplace Reform: A report prepared on behalf of contributing members of the Labour Ministers Council*, Canberra, p. 1. <<http://www.workplace.gov.au/NR/rdonlyres/71FB2FBE-B164-4DE9-85C5-E108A06118C9/0/employee.pdf>>

<sup>126</sup> See David Peetz, 2007, 'Collateral Damage: Women and the *WorkChoices* Battlefield', paper to 24th conference of the Association of Industrial Relations Academics of Australia and New Zealand, Auckland; Evesson et al, *Lowering the Standards*; van Wanrooy et al., *Australia@Work*; Sutherland, 'Agreement-making under *Work Choices*'; Sara Charlesworth and Fiona Macdonald, 2007, 'Hard Labour? Pregnancy, Discrimination and Workplace Rights: A Report to the Office of the Workplace Rights Advocate', Centre for Applied Social Research, RMIT University. <<http://www.ecruting.com.au/express/200710/08HardLabour.pdf>>

<sup>127</sup> Michael Bachelard, 2007, 'Workers badly done by as managers strip rights', *Age*, 13 September.

from the Workplace Research Centre entitled *Australia@Work* and also released in September 2007, relied on employee interviews to make observations about individual *WorkChoices* agreements that were analogous to those already made about collective agreements in the retail and hospitality industries ('it appears that AWAs [Australian Workplace Agreements] are being used as a tool for reducing employees' conditions').<sup>128</sup>

The government's response to this and other academic research data was twofold. On one hand, it attacked some of the individuals concerned, and some of the institutions that had funded or aired their research, including the Australian Research Council's funding for the Workplace Research Centre ('I'm not sure that this institution is known for academic rigour but even occasionally the Government gets it wrong on where it spends its money'<sup>129</sup>) and the ABC ('The ABC does itself and the Australian public no service by presenting someone like David Peetz as a 'respected academic'<sup>130</sup>). On the other hand, it used the public service to produce alternative data. The ministerial attacks on academics, while neither edifying nor unique to the *WorkChoices* debate,<sup>131</sup> were conducted by politicians and so are not at issue here. Their relevance to this discussion is only that they were part of a broader campaign for marketing *WorkChoices* that involved setting public service research against negative academic findings.

Governments have every right to commission, draw on and publish data produced by public service agencies. They also have the right to do so selectively in order to bolster their own policy positions. Government agencies become used to the numbers the government wants to use in its parliamentary and public statements, and which policies the data is intended to support. When ministers cite such data as 'research undertaken by my department' or even 'research commissioned by my department', they are trying to get the best of both worlds: the impression of arm's length independence and the reality of government control. There is nothing agencies can do about this. But the standards applying to the material the agency makes public under its own name include the requirement for apolitical professionalism set out in s10 of the Public Service Act. This means that if agencies do the same thing—use their own reputation for apolitical professionalism to underwrite data that has been tailored to serve the political ends of the government—then, depending on how egregiously they have done so, they have exposed their organisations to charges of politicisation.

<sup>128</sup> van Wanrooy et al., *Australia@Work*, p. vii.

<sup>129</sup> Andrew West, Matthew Moore and Mark Davis, 2007, 'Hockey faces lawsuit after blast at academics', *Sydney Morning Herald*, 3 October.

<sup>130</sup> Senate, 2005, *Hansard*, 8 November, p. 28.

<sup>131</sup> See, for example, Ross Gittens, 2007, 'Hockey goes over the top in Work Choices dogfight', *Sydney Morning Herald*, 8 October and Michael Bachelard, 2007, 'Attack is no substitute for argument', *Age*, 4 October; Stuart Macintyre, 'Universities', in Clive Hamilton and Sarah Maddison (eds), 2007, *Silencing Dissent*, Crows Nest, Allen & Unwin, pp. 41–59.

*Agreement making in Australia under the Workplace Relations Act 2004 to 2006* was the fifth report since 1997 to address formal bargaining under the federal system. It was requested by Workplace Relations Minister Joe Hockey under s844 of the Act, which required him as Minister to call upon a 'person' to review and report on developments in bargaining, adding at subsection (2) that 'the person who reviews and reports as mentioned in subsection (1) must be someone who, in the Minister's opinion, is suitably qualified and appropriate to do so'. Like other Workplace Relations Ministers before him, the Minister asked his department to provide the legislated third person report, relying on its qualifications and the statutory requirement that its employees conduct themselves with apolitical professionalism. The report was released in September 2007, that is, at about the same time as the two damaging reports from the Workplace Research Centre, and covers the period from 1 January 2004 to 31 December 2006. Tabling requirements in subsections (3) and (4) would have prevented its being held over until after the 2007 election. The report took into account only nine months of *WorkChoices* agreement-making (between March and December, 2006), all preceding the introduction of the 'fairness test'.

The Minister liked his department's report, which, in his view, 'clearly demonstrates once and for all the benefits of a modern and flexible workplace relations system underpinned by a strong safety net' and 'dispels misleading claims by the multi-million dollar Labor and union scare campaign'.<sup>132</sup> It was not otherwise well received. Early readings from Brigid van Wanrooy of the Workplace Research Centre and *Workplace Express* indicated that 'the department had appeared to be "selective" in its use of AWA data' and that 'some of its assertions give it a partisan flavour'.<sup>133</sup> Ex-public servant and journalist Patrick Gourley went on to describe it as 'a mishmash of unwarranted assertions, statistical distortion and dishonesty', adding that 'it told the minister things he would have been delighted to hear, and it fell a long way short of providing honest, comprehensive and accurate advice'.<sup>134</sup> The Opposition complained, briefly.<sup>135</sup> Ross Gittens, the Economics Editor of the *Sydney Morning Herald*, provided a more lengthy analysis, which could be summed up in his words as follows: 'if the report is tricky in what it says about collective agreements—not to mention woefully confusing in the differing figures it quotes without adequately explaining the reasons for those differences—it's downright dishonest in what it says about AWAs'.<sup>136</sup>

<sup>132</sup> *Workplace Express*, 2007, 'DEWR looks at two years of agreement making, ALP says report deceptive', 20 September.

<sup>133</sup> *Workplace Express*, 'DEWR looks at two years of agreement making'.

<sup>134</sup> Gourley, 'Taking the politics out of the public service'.

<sup>135</sup> *Workplace Express*, 'DEWR looks at two years of agreement making'.

<sup>136</sup> Gittens, 'Hard work uncovering truth about pay rises'.

Much of the confusion in the data around collective agreements ultimately goes to the question of the role of the union movement in industrial relations. The selective account of prohibited content in *WorkChoices* agreements<sup>137</sup> excludes the raft of anti-union provisions set out in Division 7.1 of the Workplace Relations Regulations. The data suggests that non-union agreement coverage has grown significantly, displacing union agreements, although the text refers to certifications in selected years rather than overall coverage, and so does not appear to be consistent with the report's charts.<sup>138</sup> The report celebrates the growth in comprehensive agreements ('another indication of growing maturity and confidence among employees in respect of agreement making and ... consistent with the declining relevance of awards [to which unions are party]') but later notes that the great majority of collective comprehensive agreements are in government administration and defence and education, where the government itself holds a number of the larger purse strings.

The report also argues that the difference between wage increases in union and non-union agreements is very small, 'less than 0.5 per cent'. However, '[w]hat it doesn't say is that the gap is just a fraction less than 0.5 per cent, that the gap is explained by wage rises under union agreements being the higher, that 0.5 per cent a year adds up to a significant difference over time and that, in consequence, workers are better off getting a union to do their bargaining for them'.<sup>139</sup> The report deploys the same strategic drafting to smooth the ongoing wage differentials between women and men.<sup>140</sup> It is also, as Gittens points out, used to muddy the fall in the numbers of collective agreements containing clauses relating to performance-related pay.<sup>141</sup> Such clauses create age differentials between individuals in a given workplace and to that extent mimic individual contracts.

Turning to individual contracts themselves (AWAs), the report identified increased coverage and pay rates for individual contracts (which undermine the role of unions). Gittens, citing labour market economists, disputed its data on AWA coverage; Gourley did the same on methodological grounds.<sup>142</sup> Gourley and

<sup>137</sup> Department of Employment and Workplace Relations, 2007, *Agreement making in Australia under the Workplace Relations Act 2004 to 2006*, p. 7.

<sup>138</sup> See Department of Employment and Workplace Relations, *Agreement making in Australia 2004 to 2006*, p. 24 and Chart 2.1.3, p. 26.

<sup>139</sup> Gittens, 'Hard work uncovering truth about pay rises'.

<sup>140</sup> See Table 2.3.1, p. 41, where consistently differential outcomes for men and women are described as 'similar', and Table 2.3.2, p. 42, where differential wages between full time and part time employees between 2004–2006 are also described as 'similar'.

<sup>141</sup> Gittens, 'Hard work uncovering truth about pay rises': 'The text of the report says the incidence of performance-related wage clauses in collective agreements was relatively stable between the 2002–03 and 2004–06 reporting periods. Look at the report's table, however, and you see the proportion of collective-agreement employees subject to performance-related pay declined from 19 to 14 per cent.'

<sup>142</sup> Paddy Gourley, 2007, 'An inconvenient truth for the department', *Public Sector Informant*, December, pp. 4–5.

Gittens both queried its use of Australian Bureau of Statistics data to inflate the average hourly total earnings of non-managerial employees on AWAs:

That comparison [between the earnings of non-managerial employees on AWAs and those on collective agreements] merits inclusion in the next edition of *How to Lie with Statistics*. The first deception was to include the hourly rates for State individual contracts in with those for AWAs. This lifted the figure for May 2006 from \$25.30 an hour to \$26.40 an hour.

The second deception was to include the value of salary-sacrificed amounts in the figure for 2006 but not the figure for 2004. Combined with the first deception, this lowered the starting-point amount from \$23.90 an hour to \$23.40 an hour.

In consequence, the claimed 12.8 per cent increase turns out be a more honestly measured 5.9 per cent (from \$23.90 to \$25.30).

So, far from doing better than workers on collective agreements, people who had the misfortune to be on AWAs did about 1 percentage point a year worse in terms of pay rises.<sup>143</sup>

PAGE 43

DEWR's *Agreement making in Australia under the Workplace Relations Act 2004 to 2006* was not a widely-read document and the issue of its data management was not energetically pursued in the media or by the Opposition. The public by that time had been reported to have lost faith in official pronouncements in any case, as shown in the 'cynicism' and 'distrust' thrown up by the government's own market research.<sup>144</sup> By September 2007, the debate was not about the numbers in the DEWR report but about who could be trusted. That is what the journalists were really pursuing:

- 'The secretary of the Workplace Relations Department and his senior staff should hang their heads in shame for seeking to mislead the public and the Parliament in this way.'<sup>145</sup>
- 'It's this report that should tell us most about how wage setting is evolving. Unfortunately, you can't always be sure whether you're getting the plain truth or government spin. Public servants aren't the pillars of rectitude they once were.'<sup>146</sup>

<sup>143</sup> Gittens, 'Hard work uncovering truth about pay rises'.

<sup>144</sup> Sinclair, 'Australian Voters fearful of IR laws'.

<sup>145</sup> Loc. cit.

<sup>146</sup> Loc. cit.

- 'It's getting hard to discover the truth about what's happening to wages and wage setting in our decentralised labour market. Public servants who should be giving us unvarnished facts are now bending the truth to suit their political masters.'<sup>147</sup>
- 'If this was what the department was prepared to tell its minister in public, goodness only knows what it might have been prepared to say to him in private.'<sup>148</sup>
- 'In his transmittal letter to Hockey, a DEWR officer said, "I am pleased to present you the report on Agreement-Making in Australia under the Workplace Relations Act: 2004–2006." He shouldn't have been in the least bit pleased.'<sup>149</sup>

What *Agreement making in Australia under the Workplace Relations Act 2004 to 2006* really showed was that the public servants who had shaped and cleared the department's independent report had gone about their work as if it were a part of their risk management strategy for the government's marketing campaign for *WorkChoices*. No doubt much of the data and analysis had indeed been shaped over time as part of the mass of possible parliamentary questions, media releases, briefing notes and talking points built up in the course of marketing *WorkChoices*. But the distinction between departmental publications and ministerial publications has applied across agencies across time, and it is part of a department's professionalism to know which is which. It is a matter of concern that the same department that found the estimated coverage of AWAs to be 7.7 per cent in December 2006,<sup>150</sup> found it to be somewhere between 5 and 7 per cent in February 2008 under a different government in a different departmental document. It is also a matter of concern that this discrepancy was blamed on overstatements by one of the department's own portfolio agencies, as if the assumptions underpinning the then Office of the Employment Advocate's (OEA) data were a matter of surprise to DEWR, which had been citing both the data and the assumptions underpinning it throughout its previous report.<sup>151</sup> It is a matter of interest that DEWR cited one of the academics whose research had been subject to criticism by the previous government (Peetz) as part of the evidence supporting its reduced estimates under the new government.<sup>152</sup>

<sup>147</sup> Loc. cit.

<sup>148</sup> Gourley, 'Taking the politics out of public service'.

<sup>149</sup> Gourley, 'An inconvenient truth for the department', p. 5.

<sup>150</sup> Department of Employment and Workplace Relations, *Agreement making in Australia 2004 to 2006*, p. 77.

<sup>151</sup> Department of Education, Employment and Workplace Relations, 2008, *Submission to the Senate Standing Committee on Education, Employment and Workplace Relations Inquiry into the Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008*, pp. 7–8. <[http://www.aph.gov.au/Senate/committee/eeet\\_ctte/wr\\_tff08/submissions/sub27.pdf](http://www.aph.gov.au/Senate/committee/eeet_ctte/wr_tff08/submissions/sub27.pdf)>

<sup>152</sup> *Ibid.*, p. 7.



## The distinction between legal advice and political direction: *The Community and Public Sector Union v Commonwealth of Australia*<sup>153</sup>

In late 2005, the ACTU and its affiliated organisations organised a national Day of Protest to demonstrate opposition to *WorkChoices*. The Community and Public Sector Union (CPSU) encouraged its members, repeatedly, to seek authorised leave to attend the protest. The demonstration was clearly part of the broader anti-*WorkChoices* marketing campaign being mounted by the union movement. And DEWR's response was emphatic (and, as subsequently became clear, problematic). Evidently it did not want its employees or other public service employees to supply the numbers of protesters required to contribute to a media success for the union campaign. On November 9, the department issued a written advice to all agencies staffed under the *Public Service Act 1999* and to most Commonwealth authorities. The advice concerned the approach to be taken by agencies in response to requests for leave on 15 November 2005, the Day of Protest. The advice was as follows:

PAGE 45

### APS Advice 06 of 2005—Proposed Industrial Action—National Community Day of Protest— 15 November

1. This Advice is to remind agencies of their obligations under the Workplace Relations Act 1996 (WR Act) in respect of any industrial action taken in support of the National Community Day of Protest against the Australian Government's industrial relations reforms on 15 November 2005.
2. Section 4(1) of the WR Act defines industrial action to include failure or refusal to attend work by persons who are employed by the Commonwealth or a constitutional corporation. This covers Commonwealth employees participating in the National Community Day of Protest on 15 November 2005.
3. Agencies are further reminded that section 187AA of the WR Act prohibits the payment of wages to employees for any period they are engaged in industrial action. Agencies must therefore take appropriate action to ensure they meet the 'no-strike pay' provisions for any industrial action taken by its employees.

<sup>153</sup> [2007] FCA 1397 (6 September 2007).

4. Agencies are reminded that they should not promote industrial action. To this end:
  - (a) agencies should also consider their operational requirements and the agreed leave provisions contained in agency agreements when considering any requests for leave on 15 November 2005; and
  - (b) leave (including access to flextime credits) should not be made available to cover participation in industrial action and agencies may wish to consider making clear that any retrospective leave applications (e.g. for sick leave) for this day must be accompanied by a medical certificate or other appropriate form of documentary evidence.
5. For further information agencies should contact their DEWR client contact officer.<sup>154</sup>

PAGE 46

On 10 November, the CPSU wrote to the department advising that ‘many agencies seem to have interpreted the DEWR advice to mean that attendance at the rally in and of itself constitutes industrial action, and have linked this with the statutory prohibition on payment of wages whilst engaged in industrial action’.<sup>155</sup> Given the repeated references to industrial action in the advice, it would not be surprising if agencies did interpret it in that way. Indeed, in her reasons for judgment in *The Community and Public Sector Union v Commonwealth of Australia [2007] FCA 1397 (6 September 2007)*, given two years later, Justice Branson agreed with the union, finding that ‘the DEWR advice was open to be understood as counselling that leave, including flextime leave, should not be made available to a Commonwealth employee who proposed to use the leave to attend the Day of Protest’.<sup>156</sup> The heading itself (‘Proposed Industrial Action—National Community Day of Protest—15 November’) suggested that participation in the protest was industrial action. Agencies were ‘reminded that they should not promote industrial action’, as if that was what was intended in taking the leave. Words referring to agency discretion in giving leave had been deleted from a draft of the advice.<sup>157</sup> The Court further observed in its summary of the reasons for the judgment that ‘the responsible officers of DEWR either intended, or were willing to allow, the advice to be so understood’.<sup>158</sup>

<sup>154</sup> *The Community and Public Sector Union v Commonwealth of Australia [2007] FCA 1397 (6 September 2007)*, para 36.

<sup>155</sup> *Ibid.*, para 51.

<sup>156</sup> *Ibid.*, para 85.

<sup>157</sup> *Ibid.*, para 31.

<sup>158</sup> *Ibid.*, Summary of Effect of Reasons for Judgement given on 6 September.

Justice Branson found that employees had every right to seek leave on 15 November 2005 and to use that leave as they wished, including to attend the Day of Protest, without their attendance constituting industrial action. The judgment also found that DEWR had received confirmation from the Australian Government Solicitor (AGS) that such leave could only be denied for operational reasons and consistent with the relevant certified agreement, and not on the ground that it was to take part in the Day of Protest. Indeed, commenting on that advice, a DEWR legal adviser said:

Richard Harding called me from the airport—he has spoken to Henry Burmester—who believes that operational considerations (and the relevant CA) should be the determining factor in decisions on leave requests. I said it didn't really matter because we recognised there was a risk (the magnitude of which is not entirely clear—and on which reasonable minds can differ), and having regard also to more important political considerations—went with the operational considerations as the determining factor.

You will note that the note I sent out was even more circumspect than the draft I provided for discussion—as the MO [i.e. Minister's Office] requested certain deletions.<sup>159</sup>

Was there a view in the agency that the inclusion in the advice of section (a) on operational requirements (quoted above) might offset the 'political dangers inherent in DEWR being seen to be acting in a way calculated to advance the party political interests of the Government rather than in a manner that was consistent with the legal advice of the AGS'?<sup>160</sup> Certainly Justice Branson found that to be a 'likely' interpretation of the email. It was also the case that the Minister's office had been shown the draft advice and had 'requested certain deletions'. When questioned on these matters, however:

Mr Maynard [then the Principal Advisor for the Workplace Relations Implementation Group at DEWR] gave evidence that he could not recall what was the 'risk' to which Mr O'Sullivan referred in the above email. He did not agree that the risk was the risk of continuing to refuse leave if the purpose of the leave was to attend the Day of Protest. Mr Maynard was unable to identify the 'more important political considerations' to which Mr O'Sullivan referred.<sup>161</sup>

<sup>159</sup> Ibid., para 55.

<sup>160</sup> Ibid., para 70.

<sup>161</sup> Ibid., para 57.

Justice Branson found that:

significant aspects of Mr Maynard's evidence should not be accepted. In particular, I do not accept that he failed to appreciate that the amendments initiated by him to the draft advice ...meant that the DEWR Advice was likely to be understood as advising that leave should not be granted to a Commonwealth employee if the leave was sought for the purpose of attending the Day of Protest. Nor do I accept that he was unaware that, in the days leading up to 15 November 2005, at least some Agencies were interpreting the DEWR Advice in that way. It is unnecessary for me to reach a concluded view on whether Mr Maynard sought deliberately to mislead the Court.<sup>162</sup>

PAGE 48

She was also critical of a second DEWR employee who implemented Maynard's decision to circulate the advice, 'record[ing] that, generally speaking, I do not accept her evidence where it is in conflict with other evidence before the Court'.<sup>163</sup> Significantly, however, Justice Branson found that both had acted consistently with, and not in isolation from, the views of senior agency management. The 'conduct in question was not that of a single DEWR officer who acted alone but rather the outcome of [a] significant process of consultation involving senior officers of DEWR, apparently including the Secretary'.<sup>164</sup>

The legal and policy advice coming out of DEWR appears, on this occasion at least, to have been no more exempt from the strategic public relations approach than its research was in the case of *Agreement making in Australia under the Workplace Relations Act 2004 to 2006*. These agency products were made available in 2005 and 2007 respectively. Both were consistent with the broader *WorkChoices* marketing campaign: the report on agreement-making pursued a line of analysis that would make unions appear irrelevant in the workplace, and the advice to agencies was 'likely to be understood' in such a way as to make public servants appear quiescent about union concerns regarding the legislative package. Both were misleading in their drafting, and both were subsequently criticised as less than professional in their intent and result.<sup>165</sup> While neither formed part of the formal advertising campaign for *WorkChoices*, both could be understood as part of an increasingly comprehensive strategic vision of the role of agencies in marketing government policies, which included communication protocols and response mechanisms as part of 'the system which will be put in

<sup>162</sup> Ibid., para 66.

<sup>163</sup> Ibid., para 65.

<sup>164</sup> CPSU, *The Community and Public Sector Union v Commonwealth of Australia* [2007] FCA 1634 (30 October 2007), para 16.

<sup>165</sup> Michael Bachelard, 2007, 'Public servants win protest rally case', *Age*, 7 September.

place' to deal with 'unexpected issues [which] can surface [and] which need to be dealt with quickly and effectively'.<sup>166</sup>

## The distinction between privacy and the denial of access to politically inconvenient information: The Workplace Authority's refusal to give researchers access to AWAs

On 29 May, 2006, during questioning at Senate Estimates, the then Head of the OEA, Peter McIlwain, trickled out a number of statistics relating to AWAs made following the introduction of *WorkChoices*. The statistics were collected from a sample of 250 agreements lodged in April 2006 following the introduction of *WorkChoices* at the end of March. Stripped of the dialogue that accompanied them, they showed that:

- All AWAs lodged during April 2005 expressly excluded at least one protected award condition.
- Sixteen per cent expressly excluded all protected conditions.
- Annual leave loading had been excluded from 64 per cent.
- Penalty rates were excluded from 63 per cent.
- Shift allowances were excluded from more than half (52 per cent).
- Gazetted public holidays were excluded from 40 per cent.
- More than one in five (22 per cent) contained no pay increases over the life of the agreement.<sup>167</sup>

PAGE 49

At the following session of Senate Estimates—Budget Supplementary Estimates, conducted in November of the same year—Mr McIlwain, an independent statutory officer, announced that he could no longer provide data on what had happened to protected conditions under *WorkChoices* AWAs because he was 'concerned that focusing on certain characteristics in isolation, without considering what else the parties may have agreed, had the potential to produce misleading and distorted results'.<sup>168</sup> In April 2007, spreadsheets containing tens of thousands of data items collected by the OEA from a sample of 5250 AWAs (later confirmed

<sup>166</sup> Government Communications Unit, 2001, *How to Write a Communication Strategy*, p.14.

<sup>167</sup> Employment, Workplace Relations and Education Legislation Committee, 2006, *Hansard* (Budget Estimates), 29 May, Canberra, p.130ff.

<sup>168</sup> Senate Employment, Workplace Relations and Education Legislation Committee, 2006, *Hansard* (Budget Supplementary Estimates), 29 May, Canberra, p. 7.

to be in fact 1700 AWAs<sup>169</sup>) were leaked to the *Sydney Morning Herald*.<sup>170</sup> The data proved to be damaging to the marketing of *WorkChoices* and supportive of independent academic research. In September 2007, the new Director of the revamped OEA, now the Workplace Authority, Ms Barbara Bennett, indicated through a letter prepared on her behalf by her Acting Deputy Director that the organisation would no longer provide independent researchers with access to AWAs. The letter was to a University of Newcastle research fellow, Kristin Van Barneveld, who was the last of five researchers to have their access to AWA data refused in 2007. At least one of these had also had access refused in 2006.

The letter giving notice of the fifth refusal was made available to *Workplace Express*. It argued that while the decision to refuse access was not required by law, it was consistent with the 'intent of the legislation':

While the Workplace Authority Director can authorise access to AWAs in the circumstances prescribed in the Workplace Relations Regulations, it is the Director's intention to exercise this discretion in a manner which upholds the intent of the legislation.

More specifically, in keeping with the spirit of the legislation, it is our view that the Workplace Authority would need to seek the agreement of both parties to an AWA before the Director could release the agreement to a third party. This would clearly be a resource intensive exercise.<sup>171</sup>

The reference to the 'spirit of the legislation' is in keeping neither with the black letter of the legislation nor with the history of its application,<sup>172</sup> nor indeed with the outcome of previous applications by the same researcher for access to AWAs.<sup>173</sup> The letter goes on to provide the assurance that, consistent with its commitment to 'operating in an open and transparent manner', the Authority was prepared to make public a 'comprehensive range of statistical information', but in the event none of the data released prior to the 2007 election was sufficiently comprehensive to address what had happened to protected conditions.<sup>174</sup> Following the election and the change of government, data on the fate of protected conditions again began to be made available.<sup>175</sup>

<sup>169</sup> See Julia Gillard, 2008, Media Release: AWA Data the Liberals Claimed Never Existed. <<http://mediacentre.dewr.gov.au/mediacentre/AllReleases/2008/February/AWADatatheLiberalsClaimedNeverExisted.htm>>

<sup>170</sup> Mark Davis, 2007, 'Revealed: How AWAs strip work rights', *Sydney Morning Herald*, 17 April: 'The Herald has been sent spreadsheets containing tens of thousands of items of statistical detail collected by the office's staff from a sample of 5250 Australian workplace agreements lodged with the agency between April and September last year.'

<sup>171</sup> *Workplace Express*, 2007, 'Workplace Authority maintains veil of secrecy over AWAs', 26 September.

<sup>172</sup> *Workplace Express*, 2007, 'No legal barrier to releasing AWAs to researchers, as long as identities not disclosed: Stewart', 26 September: 'Flinders University Professor of Law, Andrew Stewart, says that s166 of the Workplace Relations Act "explicitly allows" the Workplace Authority Director to release the information requested by the researchers, "subject to appropriate undertakings being given as to non-disclosure of the identity of parties to an AWA".'

<sup>173</sup> Loc.cit.

<sup>174</sup> See Workplace Authority, 2007, 'Fact Sheet, September quarter 2007', Quarterly national statistics. <[http://www.workplaceauthority.gov.au/docs/workplacelrelations/FactSheets/factsheet\\_sept07.pdf](http://www.workplaceauthority.gov.au/docs/workplacelrelations/FactSheets/factsheet_sept07.pdf)>

<sup>175</sup> See Employment, Education and Workplace Relations Committee, 2008, *Hansard*, p. 96 (Additional Budget Estimates), 21 February.

Referring to the Authority's decision to refuse researchers access to AWAs, Professor Andrew Stuart of Flinders University (who advised on the legal issues) was reported by *Workplace Express* to have commented that:

The OEA, operating under exactly the same framework, was previously prepared to provide access to researchers (including Kristin herself) on a confidential basis.

What has changed?

The only conclusion that can fairly be drawn is that the government is not happy with the findings that she and others have published as to the content of AWAs.

If AWAs were indeed delivering the higher wages and 'family friendly' outcomes of which the government has boasted, can anyone doubt they would be happy to have that confirmed by independent research?<sup>176</sup>

PAGE 51

This was not a perverse conclusion to draw, in the light of speculation<sup>177</sup> that McIlwain had been demoted and replaced by Bennett at least partly because of what he had revealed to Senate Estimates. The problem is that by the time the conclusion was being drawn with respect to the actions of the Workplace Authority, it was also being drawn with respect to other denials of information across the public service, considered below. The difference in this case was that the Workplace Authority had touted its statutory independence as part of the 'Know where you stand' campaign, and that providing access to individual agreements for the purpose of public research was not for it a one-off Freedom of Information (FOI) issue but part of ongoing practice since 1997.<sup>178</sup>

## The distinction between confidentiality and concealment: FOI and electorate briefing

When the Workplace Authority refused to release AWAs to researchers on the ground of the resource-intensive nature of the work involved, it was being disingenuous. In fact in the past the practice of at least one group of researchers had been to 'purchase the agreements from them completely not coded—just a piece of paper—and then we have our own casuals who then go through

<sup>176</sup> *Workplace Express*, 'No legal barrier to releasing AWAs'.

<sup>177</sup> See Joe Hockey, 2007, Press Conference: Appointment of director and deputy director, Workplace Authority, and Workplace Ombudsman, 21 June. <<http://www.joehockey.com/mediahub/transcriptDetail.aspx?prID=383>> See also Mark Bahnisch, 2007, 'Was the government's Employment advocate demoted?', *Crikey*, 5 July; and Mark Bahnisch, 2007, 'Barbara Bennett and the PR-isation of Politics', *New Matilda*, 8 August.

<sup>178</sup> See Senate Finance and Public Affairs References Committee, 2000, *Hansard* (Reference: Australian Public Service employment matters), 23 June, p. 190ff.

them and code them completely independently of the OEA'.<sup>179</sup> Nevertheless, the assertion that resource-intensive scrutiny would be required before material could be released, and that this would result in delays and high costs, had by that time become a frontline defence across the public service against formal applications under the *Freedom of Information Act 1982*. 'The claiming of extortionate fees, based on fanciful arguments about the care needed to scrutinise materials, is intended to deter and discourage' journalists, complained the *Canberra Times*.<sup>180</sup> And that was just the frontline defence. Agencies have also been able to refuse public access to working documents under s36 of the FOI Act on two grounds: that the document contained opinion or the like forming part of the deliberative processes of government; and that disclosure of the document would be contrary to the public interest. If a seeker after information decided to contest such a refusal, a minister or principal officer of the agency could, under s36(3) of the Act, issue a certificate that 'establishes conclusively that the disclosure of [a] document would be contrary to the public interest'. Notionally, then, ministerial involvement in the legislated decision-making process would occur at the final stage of a denial of access, if at all. Such a design allows for a separation of departmental discretion from ministerial discretion up to and including the issuing of a conclusive certificate. Nevertheless, journalists have come to the view over time that the public servants have been withholding documents on behalf of their ministers, and have been sufficiently aggressive in their commentary on the public service to draw a response from the former Secretary of the Department of the Prime Minister and Cabinet (PM&C) criticising 'journalists eager to expose its machinations'.<sup>181</sup>

According to Snell, exchanges of this type are only to be expected. The FOI legislation is not a lever, but rather a 'complicated matrix of design principles, legislative architecture, administrative culture, types of requestors, request types and returns on investment produced (in terms of democratic improvement and accountability)'.<sup>182</sup> It is not so much about a right as about the exercise of a discretion, and that discretion must be exercised, initially at least, by public servants. They are bound to consider not only the need to keep advice to government confidential but also the requirement under the Public Service Act to be responsive to government in providing advice and in implementing its policies and programs. Snell argues that the approach they adopt to exercising their

<sup>179</sup> Ibid, p. 192.

<sup>180</sup> Editorial, 2007, 'Improper benefits of incumbency', *Canberra Times*, 12 November.

<sup>181</sup> Peter Shergold, 2004, 'Once was Camelot in Canberra? Reflections of Public Service Leadership', Sir Roland Wilson Lecture, Canberra, 23 June 2004. <<http://pandora.nla.gov.au/pan/53903/20060509-0000/www.pmc.gov.au/speeches/index.htm>>

<sup>182</sup> Rick Snell, 2002, 'FOI and the Delivery of Diminishing Returns, or How Spin-Doctors and Journalists have Mistreated a Volatile Reform', *The Drawing Board: An Australian Review of Public Affairs*, 2 (3): p. 189.



discretion may take a number of forms along a continuum ranging from proactive compliance to administrative compliance, administrative non-compliance, adversarialism and malicious non-compliance (e.g. shredding documents, poor record-keeping and removal of evidence from files).<sup>183</sup> How they position themselves in relation to releasing information has, a former Public Service Commissioner argues, been 'subject to much closer control' over time:

Let me highlight one area that has been causing me increasing concern in recent years. It relates to communications and to freedom of information (FOI). Communications are at the heart of politics, and the enormous increase in the power of the media has required a sophisticated response by politicians and particularly by those in government. This includes careful control to ensure consistency and to influence the agenda, as well as to present the government and the key politicians in the best possible light. The media in turn has become more cynical and more determined to find the information that might challenge the official position, and to sensationalise it. We have a spiral, and the Public Service has had its links with the media and the public subject to much closer control.<sup>184</sup>

We are back at strategic public relations again, as if it offered a decision-making framework in which apolitical professionalism is legitimately and appropriately suspended so that, when 'applying the FOI public interest test—ostensibly an independent process—[senior executives] seem repeatedly to fail to separate their loyalty to the government of the day (and perhaps fear of career damage) from their legal duty'.<sup>185</sup> A Canberra Times editorial accused the then Minister for Employment and Workplace Relations Joe Hockey of disingenuousness 'when he claimed that ministerial offices were quite removed from the consideration of FOI requests, or the proper determination of access and payment considerations', adding that

Perhaps his experience with his department is that it shows such great alacrity in anticipating the Government's wishes that there is no need to pass on his office's "hints". But in many agencies, Freedom of Information requests are these days regarded as falling within the minister's public relations strategy, and are treated as discretions rather than obligations.<sup>186</sup>

The issue that called forth the preceding observations had to do with the refusal

<sup>183</sup> Snell, 'FOI and the Delivery of Diminishing Returns, p. 189ff.

<sup>184</sup> Andrew Podger, 2005, 'Parting remarks on the Australian Public Service,' Centre for Policy Development, p. 16. <<http://cpd.org.au/article/parting-remarks-australian-public-service>>

<sup>185</sup> Markus Mannheim, 2007, 'Here is the news: It's not in the public interest', *Public Sector Informant*, December, p. 8.

<sup>186</sup> Editorial, 'Improper benefits of incumbency'.

of a number of departments, on public interest grounds, to release briefs that they had prepared in the run up to the 2007 election showing government expenditure by electorate. These refusals were read by journalists against the background of Treasury's longstanding refusal to issue documents relating to bracket creep and first homebuyer's grants. In that case, the public's interest in not seeing relevant documents was asserted through a conclusive certificate signed by the then Treasurer,<sup>187</sup> tested in the High Court, and found to be 'hard to overturn'.<sup>188</sup> In case of departmental electorate briefs, as the then Minister Hockey was keen to point out, the public interest tests had been applied by the departments administering the relevant programs, including the:

- \$15.8 billion AusLink fund for roads and rail.
- \$1.2 billion Investing in Our Schools grants.
- \$1.1 billion Connect Australia teleco package.
- \$361 million Regional Partnerships Program.
- \$200 million Community Water Grants scheme.
- \$130 million Environfund.

According to the *Canberra Times*, most of the departments concerned with administering these programs 'said they would not issue the briefings because the information in them was already public'. When asked where the information could be found, departments 'said electorate breakdowns were not published'.<sup>189</sup>

Electorate-based briefings are those prepared by agencies with administered funds and are designed to identify, on an electorate by electorate basis, how these funds have been spent. In some agencies, they are more or less automatic; in some, they are very resource intensive. In some cases, the data is produced on a regular basis; in others it is called for on an ad hoc basis. They are often called for in major 'spending' portfolios prior to an election. No commentators have expressed doubt concerning the propriety of collecting such data, resources permitting, as the pattern of government expenditure is a matter of public interest. The concerns expressed in the media during the 2007 election had to do with the data making its way to 'sophisticated computer systems'—presumably those of

<sup>187</sup> Richard Mulgan, 2006, 'What can we ask of our ministers?', Centre for International and Public Law, Australian National University, Annual Public Law Weekend. <<http://law.anu.edu.au/cipl/Conferences&SawerLecture/2006/2006%20PLW/Richard%20Mulgan.pdf>>

<sup>188</sup> John McMillan, 2006, 'The FOI landscape after McKinnon', Address by the Commonwealth Ombudsman to the Australian Institute of Administrative Law, Canberra, October. <[http://www.ombudsman.gov.au/commonwealth/publish.nsf/Content/speeches\\_2006\\_06](http://www.ombudsman.gov.au/commonwealth/publish.nsf/Content/speeches_2006_06)>

<sup>189</sup> Markus Mannheim, 2007, 'PS used in 'cheat sheets' for Govt', *Canberra Times*, 10 November.

the Government Members' Secretariat<sup>190</sup>—where it was being 'cross-matched with other data gathered about individual voters, and used in mail-outs and in the devising of advertising strategies'.<sup>191</sup>

Not only were commentators concerned about the use to which electorate briefs were being put, they were also concerned about the use to which they were not being put: 'If made public, the briefings would allow voters to scrutinise the amount of taxpayers' money spent in marginal government seats against allocations in other electorates'.<sup>192</sup> So long as electorate briefs remain in the hands of incumbent governments, the information they contain can be applied to political purposes: the good news will reach those to whom it is good news, and the bad news can be quietly laid to rest. Electorate briefs have been around for a long time; by the 2007 election several agency heads were reported to have 'felt the practice had gone too far and the traditional public service concept of being non-partisanship was being contravened'.<sup>193</sup> Nevertheless, the *Canberra Times* was able to parade a series of public servants trying to find the words to express the public's interest in not being given information on electorate by electorate spending administered by their agency. This is not always, as the extracts show, an easy task:

PAGE 55

Communications, Information Technology and the Arts executive Cheryl Watson opted to charge \$20 973 to see the full analysis of her department's spending. She ruled access was not in the public interest, arguing they would not "add to the sum of knowledge in the public".

Education Department senior lawyer Mark Murphy, who charged \$21 168 for the full education briefings, agreed there was "general public interest in information about government spending priorities and that this information may be more topical during an election period".

However, he was "not satisfied ... releasing the documents would contribute valuable material to a public debate".

The Environment Department "regretted" not publishing the briefings, a spokeswoman saying it was constrained by "the need to ensure that material is not used or could be perceived to have been provided for political purposes during a campaign".<sup>194</sup>

<sup>190</sup> See Wayne Errington and Peter van Onselen, 2005, 'Public servants or partisan dirt-diggers?' *Australian Journal of Communication*, 32 (2): pp. 25–38.

<sup>191</sup> Editorial, 'Improper benefits of incumbency'. See also Peter van Onselen, 2004, 'Political Databases and Democracy: Incumbency Advantage and Privacy Concerns', Democratic Audit of Australia Discussion Paper. <[http://arts.anu.edu.au/democraticaudit/papers/200410\\_van\\_ons\\_dbases.pdf](http://arts.anu.edu.au/democraticaudit/papers/200410_van_ons_dbases.pdf)>

<sup>192</sup> Mannheim, 'PS used in 'cheat sheets' for Govt'.

<sup>193</sup> Paul Malone, 2007, 'Call to release PS electorate briefs', *Canberra Times*, 15 November, citing comments from the national president of the Institute of Public Administration Australia.

<sup>194</sup> Mannheim, 'PS used in 'cheat sheets' for Govt'.

These are of course only extracts from the relevant correspondence, but they are consistent with the findings of the contemporaneous Independent Audit into the State of Free Speech in Australia, that 'barriers to information, especially information seen as potentially sensitive, are now more difficult to navigate', and 'more staff is devoted to filtering or putting a "spin" on such information'.<sup>195</sup> Of course there is variability by agency, but it is difficult to avoid the conclusion that in some agencies public servants view requests for potentially sensitive information as falling within ministers' broader public relations strategies, with the result that these strategies inform the public interest considerations to be applied to the release of information by those public servants.

## Conclusion

We are able to review the cases presented in this chapter because they became the subject of public debate rather than shaping the debate from behind the scenes. The incidents that reached the public view were: the use of a public servant in the 'Know where you stand' campaign; the controversial statistics of the departmental report *Agreement making in Australia under the Workplace Relations Act 2004 to 2006*; the departmental advice revealed by the Federal Court case *The Community and Public Sector Union v Commonwealth of Australia*; the refusal by the Workplace Authority to permit researchers to have access to AWAs; and the delays and costs that met FOI requests for briefs on government expenditure by electorate. All of these incidents were, it appears, intended 'to ensure consistency and to influence the agenda, as well as to present the government and the key politicians in the best possible light'.<sup>196</sup> In fact, they made the agenda appear ideological and presented the government as manipulative.<sup>197</sup> They involved public servants operating at the interface of the apolitical and the political as risk managers for the public image of government policies and programs. Chapter 1 has already argued that, for a large number of them, marketing had become part of the fabric of their work, their response to the 'increased political professionalism and resources devoted to attuning government administration to government agendas and to drawing on the wider resource of government agencies to support the elected government's communications with the public'.<sup>198</sup> Can that process have left them without a sense of the distinction between explaining and marketing government policy,

<sup>195</sup> Irene Moss, 2007, *Report of the Independent Audit into the State of Free Speech in Australia*, p. 10. <[http://www.abc.net.au/news/opinion/documents/files/20071105\\_righttoknow.pdf](http://www.abc.net.au/news/opinion/documents/files/20071105_righttoknow.pdf)>

<sup>196</sup> Podger, 'Parting remarks on the Australian Public Service'.

<sup>197</sup> For good analysis of how this process operated with respect to *WorkChoices*, see Judith Brett, 2007, 'Exit Right: The Unravelling of John Howard', *Quarterly Essay*, 28: pp. 74–5.

<sup>198</sup> Andrew Podger, 2006, 'Looking Upwards And Downwards: Key Issues And Suggestions For Managing Board / Minister / Departmental Relations', Paper for University of Canberra Conference on Governance.

between genuine data and politically tailored data, between legal advice and political direction, between privacy and the suppression of politically inconvenient information, between confidentiality and concealment?

In any event, the behaviour considered in this chapter appeared at the time to raise no governance issues inside the public service itself. Arguably it was largely undertaken by public servants acting within established machinery of government and under established governance arrangements that provided at best mixed messages about appropriate conduct. How this machinery of government and these governance arrangements have positioned public servants is the subject of the next two chapters.

## Chapter 4: Government machinery

PAGE 58

The framework for managing marketing activities in the Australian public service has been reconfigured a number of times by successive governments over the past 50 years. This chapter mainly addresses its recent history and configuration just prior to the 2007 election; the most recent changes are addressed in Chapter 6.

In 2007, the machinery in place at the federal level for government advertising operated at a number of levels. Agency public affairs units coordinated agency activities and were in turn coordinated—where advertising campaigns were concerned—through the Government Communications Unit in the Prime Minister’s department. The Unit in its turn implemented the decisions of the Ministerial Committee on Government Communications that also fed information to the Government Members’ Secretariat. The first two of these—agency public affairs units and the Government Communications Unit—are of particular interest here because these were actually staffed by people employed under the Public Service Act, although their links to the political level are clearly critical to the discussion. The issue is the extent to which these structures had the capacity to school the decision-making of public servants delivering a range of policy advising, research, program and legal advising services in the middle of a permanent election campaign.

### Agency public affairs units

The growth of agency-based public affairs units has been addressed elsewhere, principally by Greg Terrill,<sup>199</sup> who pieces together some of the logic underpinning

<sup>199</sup> Greg Terrill, 2000, *Secrecy and Openness: The Federal Government from Menzies to Whitlam and Beyond*, Melbourne, Melbourne University Press.

the emergence of departmental information units under the Menzies and Whitlam governments to handle publicity and product management as basic concerns of governments. Ward<sup>200</sup> addresses later developments, focusing on the machinery of the PR state as it developed under the Howard Government following the defeat of the Keating Labor Government. While both studies have been widely used, the data available to them has been far from comprehensive because, as Terrill points out, much of it is not publicly available. It is known, for example, that the 1976 report of the Royal Commission on Australian Government Administration found more than 800 public servants engaged in 'specifically designated public information sections' and that together they were spending around \$50 million annually on marketing activities. It is also known that specialist public affairs units have been areas of significant growth in the public sector over the past decade, and that 'as at 2002, approximately 4000 journalists work for State or Commonwealth governments in a public relations capacity'.<sup>201</sup> More disaggregated data has to be pieced together from annual reports and other sources. For example, Ward notes that in 2001 Environment Australia had a public affairs section of 12 professional staff and a budget of \$1.828 million; the public affairs section in the Attorney-General's department had a staff of five; and the public affairs division of the Department of Defence had 105 staff and a budget of \$11.6 million.<sup>202</sup> While some portfolios have public affairs units in separate portfolio agencies, in the departments themselves public affairs units are almost invariably located in central corporate areas of agencies, where, consistent with the goals of strategic public relations, they can ensure communications activities are integrated into the corporate and operational activities of the organisation to increase their effectiveness.

The rationale for recent growth in agency public affairs units has been variously attributed to the increasing emphasis on service delivery by government,<sup>203</sup> the need to have community support for actions undertaken by the armed forces,<sup>204</sup> the need for more sophisticated strategies to respond to whole-of-government problems,<sup>205</sup> the increasing involvement of ministerial staff in the work of public servants,<sup>206</sup> and the displacement of grassroots political campaigners by paid

<sup>200</sup> Ward 'An Australian PR state?.'

<sup>201</sup> *Ibid.*, p. 38.

<sup>202</sup> *Ibid.*, p. 33.

<sup>203</sup> Brian Head, 2007, 'The Public Service and government communication: Pressures and dilemmas', 2007, in Sally Young (ed.) *Government Communication in Australia*, Melbourne, Cambridge University Press, pp. 41–2.

<sup>204</sup> John Harrison, 2002, 'Appointed Public Officials and Public Relations Practice: Issues of Accountability, Ethics and Professionalism in the 'Children Overboard' Affair', International Institute for Public Ethics Biennial Conference, Brisbane, Queensland, p. 1.

<sup>205</sup> Australian Public Service Commission, 2007, *Changing Behaviour: A Public Policy Perspective*, Canberra, pp. 1–4.

<sup>206</sup> Geoff Anderson, 2005, 'Managerialism, the Media and Ministerial staff: Creating new players in the policy game', Paper presented to the Australasian Political Studies Association Conference, Dunedin, p. 11ff.

professional operatives.<sup>207</sup> It could be added that the outsourcing of government services and the consequent emphasis on building client and customer relationships and brand identities has been associated with an emphasis in agencies on the kind of work characteristically conducted by public affairs specialists (see Chapter 1). There is much chicken and egg in all of this, but there is also broad agreement that government marketing is ‘no longer only the preserve of ministers’<sup>208</sup> and that, as a result, it has been professionalised within agencies.

With professionalisation comes authority, and with authority, control. Agency public affairs units tend to be regarded by agency public affairs officers as conduits to and from the minister’s office on matters affecting government marketing in the handling of both public relations and advertising. Setting aside paid advertising for the moment, and taking the case of public relations, public affairs units characteristically instruct public servants that:

*The Minister’s office has issued strict procedures for dealing with the media.*

The first rule is, DON’T—unless you have first been through the formal clearance process.<sup>209</sup>

Instead, then, of dealing with the media directly, public servants are characteristically advised that ‘the first step if you are contacted directly by a journalist by phone, email or in person is always: **Immediately refer the query to the relevant director in Public Affairs**’.<sup>210</sup> In practice, this is not a blanket rule—some higher level public servants may choose to contact the minister’s office directly—but it covers most public servants. Once a referral to a public affairs unit has been made, the unit’s protocols will apply and any material prepared by the public servant will be subject to pre-determined editorial and clearance processes. These will have been agreed between the agency’s public affairs area and the minister’s media adviser, and will probably involve both, as well as the public servant’s own senior manager.

<sup>207</sup> Ward, ‘The PR state’.

<sup>208</sup> Australian Government, 2005, Public Sector Management: Unit 2, *Managing out: The public sector in the community*, Topic Eight: ‘Managing the media and public relations’, p. 316.

<sup>209</sup> Australian Public Service Commission, 2006, *Supporting Ministers, Upholding the Values*, Canberra, appendix 3, section 3.8. Emphasis retained.

<sup>210</sup> Australian Public Service Commission, *Supporting Ministers*, Appendix 3, s3.8. Emphasis retained.



The protocols—considered in more detail below under governance arrangements—may apply not only to what is said (or what is not said) to the public, but also to the way in which it is said. It is known, for example, that the Operation Relex public affairs plan, which made the ministerial media adviser a single source for all information coming out of Defence in relation to the *Tampa*, enabled him to give ‘particular instruction as to the types of images that should be captured, the types of comments that should be made to local media and the arrangements for local media’.<sup>211</sup> These instructions appear to have included, for example, whether or not there should be any ‘humanising’ images of asylum seekers on board the *Tampa*.<sup>212</sup> The Operation Relex public affairs plan may have been exceptionally prescriptive (it was later ‘relaxed’), but in outline it was not inconsistent with the sample good practice protocol later published by the Australian Public Service Commission and considered in the next chapter. In the face of such instructions, public servants are increasingly unwilling to speak directly to the press. Geoff Kitney, when head of the *Sydney Morning Herald* Canberra bureau, observed that off the record background briefings had become a thing of the past — ‘there’s a sort of reporting back process,’ he explained, ‘which allows the government to monitor media inquiries’.<sup>213</sup> While this arrangement has created some journalistic angst,<sup>214</sup> it has generally been effective in ensuring that the message coming from the administrative side of government is consistent with the message coming from its political side, as are their respective silences.

Working through public affairs units is second nature for those carrying on public affairs or marketing-related activity. While there is a difference from a governance point of view between providing background information to a journalist, providing comment to a journalist and disclosing confidential government information, public servants do not want their case to be used to determine what it is. They saw what occurred in the case of Peter Bennett. In 1998 Mr Bennett was a public servant with the Australian Customs Service. As President of the Customs Officers Association he made a number of media comments, including observations about a proposal to create a single Border Protection Agency. The head of Customs drew Mr Bennett’s attention to Regulation 7(13) (later Regulation 2.1) of the Public Service Regulations, which stated that an ‘APS employee must not, except in the course of his or her duties as an APS employee or with the Agency Head’s express authority, give or disclose, directly or indirectly, to any person any information about public business or anything of which the employee has

<sup>211</sup> Senate Select Committee on a Certain Maritime Incident, 2002, *Hansard*, 17 April, p. 1151.

<sup>212</sup> *Loc cit*.

<sup>213</sup> Quoted in Helen Ester, 2007, ‘The media’, in Clive Hamilton and Sarah Maddison (eds), *Silencing Dissent*, Crows Nest, Allen & Unwin, pp. 103–113.

<sup>214</sup> See, for example, Michelle Grattan, ‘The politics of spin’, pp. 32–45; Harrison, ‘Appointed Public Officials and Public Relations Practice’, p. 4; and Ester, ‘The media’.

official knowledge'. Based on Reg 7(13), Customs directed Mr Bennett to cease talking to the media. When Mr Bennett continued talking, he was charged, his salary was reduced, and he was refused permission to speak to the media about either his penalty or the charges. He was also reassigned to new duties against his wishes.<sup>215</sup>

Mr Bennett complained to the Human Rights and Equal Opportunity Commission (HREOC), alleging Customs interference with legitimate trade union activities and denial of his right to express opinions on political matters. HREOC declined to investigate the matter. It stated that Mr Bennett had an obligation not to impede the operations of Customs and to obey relevant legislation such as the regulation in question. Mr Bennett then sought review of HREOC's decision in the Federal Court. The Federal Court sent the matter back to HREOC so it could properly consider the issue,<sup>216</sup> and in the course of its decision cast doubt on the validity of the relevant regulation. Ad hoc advice was circulated ('Disclosure of Information by APS employees—implications of the Bennett case'); the regulation was redrafted in 2004, disallowed in 2005 and then amended; and employees were reminded throughout the confusion that whatever the status of the regulation, unauthorised disclosure of official information could still be a breach the Code of Conduct and s70 of the Crimes Act.<sup>217</sup> While the relevant governance was unclear, the undesirability of testing it remained very clear indeed, as many Canberra journalists reported.<sup>218</sup> Many public servants were as a consequence relieved to have public affairs units inserted between themselves and the media on one hand, and themselves and ministerial media advisers on the other.

Because of their position in the machinery of government, public affairs units speak to agency staff on behalf of the minister's office and with the authority of the departmental executive that put them there. They create controlling formats and processes, clear drafts, confer with ministerial advisers and require new drafts, and all in the interests of providing government with a **'consistent and coordinated response'**.<sup>219</sup> They are also meant to be proactive about managing day-to-day public relations activities, liaising with ministers' offices about responses to poor media and encouraging positive media. Given that much of the work of an agency that is not already either a good or a bad news story has

<sup>215</sup> Ian Holland and Peter Prince, 2004, 'Public Servants Speaking Publicly: The Bennett Case', Parliamentary Library Research Note 31. <<http://www.aph.gov.au/library/Pubs/RN/2003-04/04rn31.pdf>>

<sup>216</sup> Bennett v President, Human Rights and Equal Opportunity Commission [2003] FCA 1433 (10 December 2003).

<sup>217</sup> See Australian Public Service Commissioner, 2004, *State of the Service Report 2003–04*, Canberra, p. 126; and the series of advices and circulars: 'Disclosure of Information by APS employees—implications of the Bennett case' <<http://www.apsc.gov.au/circulars/advice191203.htm>>; Circular No 2004/8: 'Amendment to the Public Service Regulations 1999' <<http://www.apsc.gov.au/circulars/circular048a.htm>>; Circular No 2005/3: 'Disallowance of Amendments to the Public Service Regulations 1999 - Regulation 2.1' (Disclosure of information)' <<http://www.apsc.gov.au/circulars/circular053.htm>>.

<sup>218</sup> Ester, 'The media', p. 111ff.

<sup>219</sup> Australian Public Service Commission, *Supporting Ministers*, Appendix 3, section 3.8. Emphasis retained.

the potential to become the one or the other, public affairs units can choose to involve themselves—staffing permitting—in much of the mainstream work of an agency. A specimen public affairs protocol advises that:

Most briefs relating to policies and programmes will involve issues with media implications of some sort. Sometimes the issue may provide an opportunity for a Ministerial announcement and/or media event. At other times, it may require the development of an issues management strategy.

Public Affairs should be consulted at the draft stage of most briefs, so that these issues can be identified early in the process and work can start on associated communications.

Even if there are no immediate media implications, Public Affairs will note the possibility of future interest and will be able to assist you with media and public relations management when the issue progresses.<sup>220</sup>

PAGE 63

In addition public affairs units have a role in agency involvement in government advertising—but in the case of advertising, until 2008 the whip was put not into their hands, but into the hands of the centralised Government Communications Unit.

## Government Communications Unit

The Government Communications Unit (GCU) was a successor to the Commonwealth Advertising Division of the Department of Administrative Services, established in 1941 to coordinate government advertising. In 1984 the Division took in the Information Coordination Branch, established to improve the delivery of government information, and in 1989 became the Office of Government Information and Advertising (OGIA). In 1997 OGIA was transferred from the Department of Administrative Services to the Department of Finance and Administration and, in 1998, as the GCU, it was moved into an even more central position, becoming part of the Department of the Prime Minister and Cabinet.<sup>221</sup> There, until 2008, the GCU provided the same discipline to government advertising that agency public affairs units provided with respect to portfolio public relations,<sup>222</sup> only instead of being the conduit to the minister's media adviser, it operated as the conduit to the Ministerial Committee on Government Communications (MCGC).

<sup>220</sup> *Ibid.*, p. 117.

<sup>221</sup> Government Communications Unit, n.d, 'About the GCU'. This document was removed from the website of PM&C following the 2007 election.

<sup>222</sup> Australian Government, 'Managing out: The public sector in the community', p. 332: 'The Government Communications Unit website provides a good illustration of the management and control of public sector employees' dealings with the media. The various guidelines accessed through the site make it abundantly clear that any media activity will be overseen centrally (in this case by the Unit and the Ministerial Committee on Government Communications).'

Just as the GCU remade OGIA, the MCGC remade the previous government's Ministerial Committee on Government Information and Advertising. As a number of people have observed, the MCGC was not, as its name suggests, a ministerial committee. In 2005, when the Senate Finance and Public Administration References Committee considered its membership, the then Special Minister of State, Senator Abetz, who chaired the MCGC, was the only minister who was also a permanent member of the committee. The other five permanent members included a parliamentary secretary, backbench MPs and senior ministerial staff.<sup>223</sup> They have been described as:

former campaign and party functionaries. Andrew Robb is a former federal director of the Liberal Party, Petro Georgiou is a former Victorian Liberal Party director and Tony Smith is a former ministerial staffer to Peter Costello. The prime minister's representative on the committee is Tony Nutt, a former New South Wales and South Australian Liberal Party Director.<sup>224</sup>

PAGE 64

The GCU's role was to provide advice on communications issues to the Prime Minister, the MCGC and APS departments and agencies. This advice covered 'any communication strategy outlining the development and implementation of a public information campaign' and 'key decisions relating to major and/or sensitive information activities undertaken by Commonwealth departments and agencies subject to the FMA Act'.<sup>225</sup> 'Major' information activities were defined as those involving the expenditure of \$100 000 or more on the actual advertising campaign or any market research. 'Sensitive' information activities were defined as those covering issues that 'might offend sections of the community or produce negative reactions from target groups'.<sup>226</sup> In its 2005 report on government advertising, the Senate Finance and Public Administration References Committee reproduced a figure mapping agency/portfolio minister/GCU/MCGC interactions, as shown in Figure 4.1.

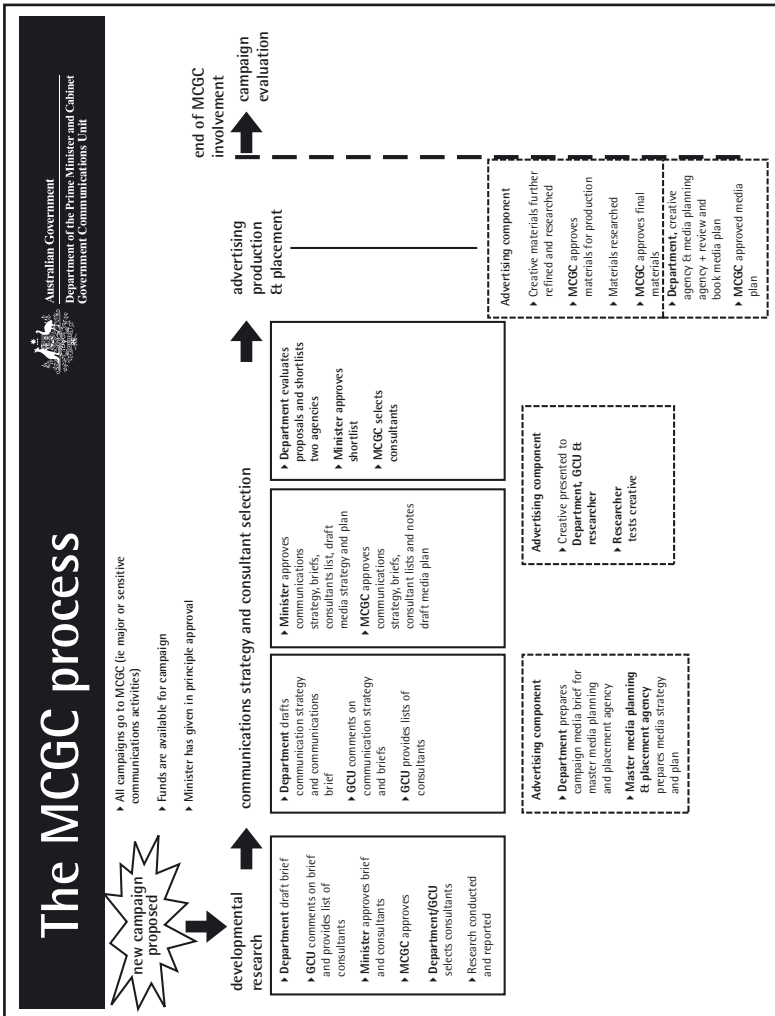
<sup>223</sup> Finance and Public Administration Legislation Committee, 2005, *Hansard*, 31 October, p. 89 (Supplementary Budget Estimates). See also Stephen Bartos in Richard Aedy, 'Ad Campaign', ABC, *The Media Report*. <<http://www.abc.net.au/rn/talks/8.30/mediarpt/stories/s1407808.media>>

<sup>224</sup> van Onselen and Errington, 'Managing expectations', p. 7.

<sup>225</sup> Senate Finance and Public Administration References Committee, 2005, *Report of the Inquiry into Government advertising and accountability*, p. 56.

<sup>226</sup> Government Communications Unit, n.d., 'Information for Departments: Working on Australian Government Campaigns'. This document was removed from the PM&C website following the 2007 election.

Figure 4.1: The MCGC process



Source: Senate Finance and Public Administration References Committee, 2005, *Report of the Inquiry into Government Advertising and Accountability*, Appendix 4, drawing on submission 5 from PM&C.

Departments and agencies were required to seek the 'advice and support' of the GCU in order to get MCGC approval to proceed with communications strategies and major or sensitive information activities, and if they did not take its advice very seriously, the MCGC would be advised of the fact and could be expected to conduct itself accordingly. Take the case of an agency's initial communication strategy. According to a checklist prepared for departments by the GCU:

The MCGC approves any communication strategy outlining the development and implementation of a public information campaign. To ascertain whether this applies to your communications, contact the GCU.

- ✓ The department or agency develops a communication strategy, thoroughly based on research, outlining the role of all campaign elements, for consideration and comment by the GCU.
- ✓ If the communication strategy is to be approved by the MCGC, your Minister first approves the strategy.
- ✓ The communication strategy then goes to the MCGC for approval, usually in-session. When you are called on to attend a meeting, your Minister or his/her representative becomes a member of the MCGC for decision-making purposes.<sup>227</sup>

PAGE 66

Two questions arise from this checklist. The first is whether an agency that did not respond positively to the 'consideration and comment' offered by the GCU would have been able to get its minister through the door to the MCGC. The second is whether, if the door had been opened, the agency would have found that it had exposed its minister to serious embarrassment.

A similar GCU checklist applied to all the processes associated with a proposed public information campaign, including the market research, the advertising brief, and the public relations consultant brief, except that in these cases the GCU also expected to: assist in developing a list of suitable consultants; take part in assessing the proposals and short listing the consultants; make available its standard contract for the successful consultant; and manage the Commonwealth Advertising System, through which every Commonwealth department and agency subject to the *Financial Management and Accountability Act 1997* (FMA Act) was required to place all its advertising, both campaign and non-campaign. The checklists were not just formalities; in practice, the:

<sup>227</sup> Government Communications Unit, n.d., 'Information for Departments: A Summary of GCU/MCGC Requirements'. This document was removed from the PM&C website following the 2007 election.

Government Communications Unit. . . keeps a rulebook as to what's allowed to be in and out; it keeps lists of the approved consultants, so it acts as a central control point. Which is one of the major reasons why it's in the Prime Minister's Department, it's part of making sure that there is centralised control over the messages that are going out.<sup>228</sup>

Apart from finding the resources to pay for government campaigns, little appears to have been left to agencies, who would just have to get used to being second-guessed by the GCU at every stage of every larger scale media activity once the process had been set in train.

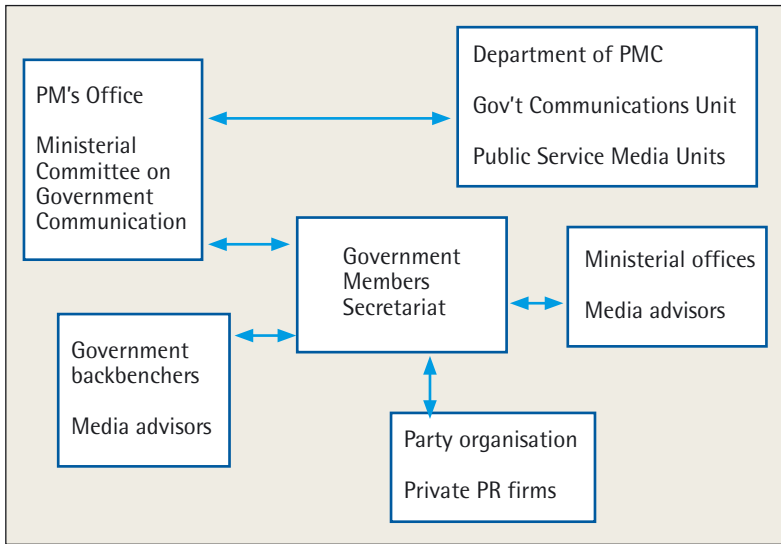
Just as public affairs units have been inserted between most public servants and ministerial media advisers, so the GCU was inserted between agency staff responsible for advertising campaigns and the MCGC. If an agency program area wanted to develop a campaign, it might work through its public affairs unit but effectively it worked to the requirements laid out for it by the GCU. If the campaign also involved public relations elements, then these were also the business of the MCGC and so of the GCU. The GCU served the MCGC and through its service was linked with the Coalition considered both as a government and as a political party, as Figure 4.2 below illustrates. In particular, both the GCU and agency public affairs and media units working to government also worked, again at a remove, with the Government Members Secretariat (GMS). The work of the GMS has been considered at some length by Wayne Errington and Peter van Onselen.<sup>229</sup> As an institution it inherited the mantle of Whitlam's Government Liaison Service, Fraser's Government Information Unit, and Hawke and Keating's National Media Liaison Service (the so-called 'aNiMaLS'). Officially located in the Office of the Government Whip until being transferred to the Office of the then Attorney-General in 2007, funded by the public, but not staffed by people employed under the Public Service Act, the GMS was in the business of 'coordinating the government communications strategies developed within the executive (public service public affairs sections and ministerial offices) with the electoral strategies of Coalition Members of Parliament and candidates'.<sup>230</sup> According to Errington and van Onselen, it was advised of those government communications strategies by the Prime Minister's Office and the MCGC, as follows:

<sup>228</sup> Bartos, 'Ad Campaign'.

<sup>229</sup> Wayne Errington and Peter van Onselen, 2005, 'Public servants or partisan dirt-diggers?', *Australian Journal of Communication*, 32 (2): pp. 25–38.

<sup>230</sup> *Ibid.*, p. 27.

Figure 4.2: Role and relationship of the GMS within government and party



Source: Errington and van Onselen, 'Public servants or partisan dirt-diggers?'

In 2005–06 the MCGC considered 39 'information activities'.<sup>231</sup> Evidence given at a Supplementary Budget Estimates hearing of the Finance and Public Administration Legislation Committee indicated that the MCGC met at least once a week during that time in the run up to the introduction of the *WorkChoices* legislation, namely on 12, 16, 18, 22 and 30 August; 2, 6, 9, 13, 23, and 27 September; and 3 and 6 October 2005. The Committee was advised that at these meetings the MCGC 'basically considered the iterative process of developing an advertising campaign that resonates with the target audience, based on research'.<sup>232</sup> If it followed the processes outlined to agencies by the GCU, it considered and approved all communications strategies, major or sensitive research briefs, public relations briefs, public relations consultant briefs, advertising briefs, media strategies, lists of suitable advertising consultants, and the research consultant's evaluation of the concepts developed by the short listed advertising consultants. It also considered and approved the detailed media plan and all final creative materials for campaign advertising.<sup>233</sup>

<sup>231</sup> Department of the Prime Minister and Cabinet, 2007, *Annual Report 2006–07*, p. 75. <[http://www.pmc.gov.au/annual\\_reports/2006-07/pdf/performance\\_reporting\\_group4.pdf](http://www.pmc.gov.au/annual_reports/2006-07/pdf/performance_reporting_group4.pdf)>

<sup>232</sup> Finance and Public Administration Legislation Committee, 2005, *Hansard*, 31 October, p. 137 (Supplementary Budget Estimates).

<sup>233</sup> Government Communications Unit, 'Information for Departments: Working on Australian Government Campaigns'.



It is known that, by 3 November 2005, focus group and tracking research for the *WorkChoices* campaign had been undertaken and the results provided to DEWR and thence to the GCU and the MCGC probably once or twice per week, and at other times at longer intervals.<sup>234</sup> The MCGC appears, that is, to have given more attention to market research and departmental advertising than would have been required simply to ensure that the campaign was not inconsistent with campaigns being conducted in other agencies.

The MCGC was highly political. The Prime Minister's department is by definition apolitical but is also the most politically exposed of all government agencies. The GCU was housed in the Prime Minister's department and acted as the public service gateway to the MCGC, making it as politically exposed as it is possible for a public service unit to be. Its location and its role also meant that public servants in program areas of departments had little choice but to follow the directions and procedures it laid down and to accept its 'support', 'advice' and 'comments'. Despite these singular advantages, the positioning of the GCU went against the ideological grain of a government that had vigorously asserted the virtues of devolution. This point was not lost on the Finance and Public Administration References Committee, which noted that 'this centralist approach is in contrast to the government's overall preference for the devolution observed in many other areas of public administration'. In the Committee's view, 'this discrepancy, together with the close editorial control exercised by the MCGC, enhances the perception that at least some government advertising campaigns may be used for political ends'.<sup>235</sup> One of those political ends was the consolidation of its image.

## From agency logos to Australian government branding: A case study in the management of government marketing

The GCU was put into the Department of the Prime Minister and Cabinet in 1998, two years after the Howard Government was first elected and while it was still an earnest supporter of the devolution that had begun under the previous government. The rationale for that support was its relative preference for the private sector model of doing business. Some of the features of that model had been imported into the public sector by the previous Labor Government and, following the accession of the Howard Government, all the ideological pieces came together. The process is well summarised by John Halligan:

<sup>234</sup> Senate Finance and Public Administration References Committee, Report of the Inquiry into Government advertising, pp. 64–5 para 5.55.

<sup>235</sup> *Ibid.*, p. 63 para 5.49.

A strong commitment to market principles came later to Australia than the United Kingdom and New Zealand and was associated with the neo-liberal policies of the Howard coalition government in the late 1990s. Within a philosophy that emphasised private sector primacy, choice for consumers and purchasers, and the use of market mechanisms, a new stage of reform emerged ... There was a concept of the public service as a business that was to operate in a competitive environment and be judged in terms of performance... The result was disestablishment of monolithic multifunctional departments, heavy reliance on third parties for the provision of services, and an increasingly fragmented system. Under this highly devolved public management model, the individual agency was the focus...<sup>236</sup>

PAGE 70

Private sector models were expected to bring government closer to people. They would improve performance and enhance client/customer relationships and even generate 'brand loyalty' to service providers. Many agencies pursued client surveys and collected customer feedback. There was an increased emphasis on 'relationship management', that is, the selling of the service provider (such as Centrelink or Customs) as integral to the service itself. Even before the Howard Government came into power, 'image [was] considered important by large agencies, especially those striving for national identification and/or consumer loyalty, such as the Commonwealth Employment Service or financial institutions'.<sup>237</sup> Agency-specific logos bloomed like a hundred flowers.

In June 2003, the blooms underwent a radical pruning. The then Secretary of the Department of the Prime Minister and Cabinet was charged by the government with 'removal of individual agency logos and establishment of a single distinctive 'brand', the Australian government, represented by the Australian coat of arms'.<sup>238</sup> When asked, Dr Shergold defended devolution on management grounds, and regretted that it had muddied the government's brand identity:

The devolution of responsibility in the public service to agencies has been a very good thing... But what has happened, both in the nomenclature of agencies and in the logos they use, is that citizens don't understand what is being provided by the Australian government anymore. My guess is if you did a call, at least outside Canberra, about Environment Australia many people would think it was a non-government organisation rather than a

<sup>236</sup> John Halligan, 2005, 'The Integrated Performance Model in the Australian Public Sector and its Consequences for Public Sector Organizations', paper for 9th International Research Symposium on Public Management, SDA Bocconi, Milan, p. 5.

<sup>237</sup> Bruce Swanton and Daryl Webber, 1990, 'Protecting counter and interviewing staff from client aggression', Canberra, Australian Institute of Criminology, pp. 11–38.

<sup>238</sup> Peter Shergold, 2004, 'Regeneration: New Structures, New Leaders, New Traditions', Speech to the Institute of Public Administration Australia National Conference, Canberra. <<http://pandora.nla.gov.au/pan/53903/20060509-0000/www.pmc.gov.au/speeches/index.htm>>

department of state ... I think the key here is to have a single identifiable brand in which is the Australian coat of arms, and for people to be able to understand what it is that the Australian government is providing. And to be able to distinguish that, for example, from State and local governments.<sup>239</sup>

By 2003, when this observation was made, all States and Territories were in the hands of Labor governments. At least annually, State and Commonwealth governments convened and wrangled over how much Commonwealth money should flow to the States for services. What, from a purely electoral perspective, was the point of this exercise if no one knew which government should be credited with expenditures or blamed for poor services? And why, indeed, should federal government spending be used to shed any reflected glory at State level on a political party that was not in power at the federal level and whose federal representatives may even have voted against the relevant budget measure? The new logo was not to refer to them, either: according to advice from the GCU 'All references to "Commonwealth" or "Federal" Government should now be to "Australian Government" in all cases and on all products'.<sup>240</sup> As Orr points out, 'Australian Government is understood by ordinary people as referring to the executive of the day—the Cabinet or governing party—rather than the apolitical and enduring entity we used to call the Crown'.<sup>241</sup> Accordingly, the Cabinet or governing party would get the credit for the former's decisions and the latter's incumbency.

PAGE 71

The GCU's advice on badging—and presumably the government decision informing it—clearly had the distinction between the legal and the political entities in mind, because it instructed agencies that the new branding regime could not be applied where it might be legally incorrect. 'In implementing the new branding requirements,' the GCU Design Guidelines advised, 'care will need to be taken not to replace references to the "Commonwealth of Australia" or "the Commonwealth", where that term is used to describe the entity established by the Constitution or in a geographic sense, with references to the Australian Government'.<sup>242</sup> Elsewhere, unless individually and specifically excused, it was mandatory.

By 2003, when the great logo debate was initiated, some of the shine had worn off devolution from the perspective of those at the centre. Agencies were 'fail[ing] to see themselves as part of a greater whole – either the Australian Public Service or Commonwealth public administration'. There was even

<sup>239</sup> Margo Kingston, 2003, 'Nelson's purge escalates as the education department burns', incorporating an interview with Peter Shergold on Canberra ABC Radio, 30 July. <<http://www.smh.com.au/articles/2003/08/14/1060588517300.html>>

<sup>240</sup> Government Communications Unit, 'Design Guidelines, Other Issues', downloaded from former GCU website. This document was removed from the PM&C website following the 2007 election.

<sup>241</sup> Graeme Orr, 2006, 'Government advertising: Informational or self-promotional?', p. 18.

<sup>242</sup> Government Communications Unit, 'Design Guidelines'.

‘unexpected and sustained resistance ... to the removal of individual agency logos and establishment of a single distinctive ‘brand’.<sup>243</sup> Reports were prepared addressing these deficiencies in public sector institutional conduct. These reports were circulated and their implementation was called for—most notably the Management Advisory Committee’s *Connecting Government and Uhrig’s Report on the Corporate Governance of (Commonwealth) Statutory Authorities and Office Holders*. The government was re-centralising its control over Commonwealth public administration as well as its image as ‘the Australian Government’. At the same time, it was evidently not opposed to leaving in place those decentralised arrangements that indirectly benefited the centralised government. All significant or sensitive public information campaigns would continue to be placed through the GCU, but the GCU’s central system would continue to record only the actual costs of placing paid advertising in the media. All other costs—the costs of creating and producing the advertisements themselves, producing and distributing other advertising material such as booklets, posters, and mail-outs, testing the material, and evaluating the effectiveness of the campaign—were left to the annual reports of individual agencies, and within annual reports to the formatting and accounting conventions adopted by those agencies.<sup>244</sup> Lines of accountability for decision-making with respect to campaigns remained similarly decentralised. The MCGC had to approve the campaigns but itself had no reporting mechanism. The Senate Finance and Public Administration References Committee (dominated, it should be noted, by non-government members) had considerable difficulty establishing ‘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’.<sup>245</sup>

## Impact of government machinery

Agency public affairs units and the GCU have provided the only access to the media for the very great majority of public servants who are not either senior and approved media performers,<sup>246</sup> or nominated technical specialists. This generalisation would exclude some public servants appearing at conferences and other forums, providing information or spreading the good news as recommended by the Public Sector Management training material. But given

<sup>243</sup> Shergold, ‘Regeneration’.

<sup>244</sup> See Senate Finance and Public Administration References Committee, *Report of the Inquiry into Government advertising*, p. 16 para 2.12ff., and Sally Young, 2007, ‘Following the money trail: Government advertising, the missing millions and the unknown effects’, *Public Policy*, 2 (2): pp. 104–106.

<sup>245</sup> Senate Finance and Public Administration References Committee, *Report of the Inquiry into Government advertising*, p. 3, para 1.14.

<sup>246</sup> See Australian Public Service Commission, *Supporting Ministers*, Appendix 3, section 3.8, p. 114.

the very considerable range of marketing undertaken by public servants, it is fair to say that, with these exceptions, agencies' public affairs units have been principal gatekeepers for one-off media activities, and the GCU for campaigns. Both the public affairs units and the GCU claimed that one of their key functions was to protect public servants against errors<sup>247</sup> and there is no doubt that they did. They also provided consistency, which is arguably critical to any coherent government output. The problem is that they also displaced individual and agency accountability by imposing from the centre a very disciplined and comprehensive process for determining what could and what could not be said. The GCU, working iteratively with the MCGC and the sponsoring agency, settled the actual 'key messages' to be delivered by the campaign. Strategic public relations activities helped to ensure that those key messages appeared and continued to reappear in related work undertaken outside the campaign itself. Not only did public affairs units manage 'risks' by controlling interactions with the media, they also fed the relevant marketing products back into the agency as background or source material for further products—possible parliamentary questions, speeches, media releases and so on. In both of these ways, they extended the reach of the GCU into the far corners of the agency.

Take, for example, the set-piece rhetoric in the DEWR report on agreement-making, or the legal advice provided to agencies prior to an anti-*WorkChoices* rally, or the Workplace Authority's sudden unwillingness to provide research access to AWAs. Or take the application of regulatory discretion by staff at the Department of Immigration and Indigenous Affairs following the Prime Ministerial and Ministerial press statements of 2001–02 ('and we alone will decide who comes to this country and the circumstances in which they come'<sup>248</sup>). The slippage between factual information, or legal advice, or even administrative decision-making, and a government advertising campaign, can be no more than an editorial process imposed on public servants by the machinery of the government in which they work and then, to save time and because they have learned the editorial rules, imposed on themselves by themselves. Is the last step the only one that is problematic? And does it only become problematic when the campaign is not a government but an election campaign?

It is arguable that government campaigns like the National Security Campaign and the *WorkChoices* campaigns would have emerged from the GCU process exactly as they did emerge regardless of the wishes of individual public servants to provide only factual information and apolitical advice. So long as the relevant

<sup>247</sup> See loc. cit; and Government Communications Unit, 'Information for Departments: Working on Australian Government Campaigns'.

<sup>248</sup> Transcript of John Howard, 2001, Interview by Kerri-Anne Kennerley, Radio 2GB, 1 November. See also David Marr and Marian Wilkinson, 2003, *Dark Victory*, Sydney, Allen & Unwin, pp. 245–46.

lines of accountability remain obscure, this will remain a moot point. It is much less arguable that public servants should allow their ministerial public relations outputs—possible parliamentary questions, speeches, media releases and so on—to underpin the department's own research reports and legal advice. Nevertheless, in recent years the machinery of government has strongly supported such integration, particularly in high profile agencies. The impact of machinery of government can, however, be tempered by service-wide and agency governance arrangements if these are appropriately designed and enforced. Such arrangements are the subject of the next chapter.

## Chapter 5: Governance

The governance framework for managing marketing activities in the public service between 1983—when the *Guidelines for Australian Government Information Activities* were first put in place—and 2008 has operated at a number of levels and includes legal requirements, parliamentary guidelines, service-wide APS Values and related guidance, and individual agency protocols. The broad governance framework has been common to all agencies and agency employees down to the level of agency protocols, which have varied by agency but were meant to adapt higher-level governance arrangements to the particular work undertaken by an agency. Other reasons for agency-by-agency differences were the views of the agency head and the political exposure of the agency's activity.

Changes to this framework following the 2007 election are considered in the next chapter. The analysis here addresses the arrangements in place prior to that election, beginning with high-level governance and working down to agency protocols. Its aim is to clarify the extent to which, in practice, governance arrangements can be used to support public servants caught up in the machinery of government marketing.

## High-level governance: *Combet v Commonwealth of Australia*<sup>249</sup>

The Howard Government began a print and radio advertising campaign in support of a foreshadowed workplace relations reform package in July 2005.<sup>250</sup> On 27 July the Secretary of the ACTU and the Shadow Attorney-General instituted proceedings against the Commonwealth, the Minister for Employment and Workplace Relations and the Minister for Finance and Administration in the High Court. The plaintiffs sought to establish that DEWR's governmental appropriation would not support that department's expenditure on the advertising campaign. They also sought to prevent the issuing of money from the Treasury of the Commonwealth to pay for the campaign. The Departments of the Prime Minister and Cabinet, Finance, and Employment and Workplace Relations, and the Attorney-General's Department collaborated to provide instructions to the Commonwealth's legal representatives.

PAGE 76

The Commonwealth maintained that the funds being applied to the campaign were validly appropriated under the Appropriation Act (No 1) 2005–2006. Appropriation Acts are laws for appropriating moneys for the 'ordinary annual services of government' and are passed annually under s53 of the Constitution. They are special laws in the sense that the Senate may not amend them. The plaintiffs argued that the 2005–2006 Act made no provision for spending on the advertising campaign—that is, they questioned whether it was sufficiently connected to the outcome for which the expenditure had been appropriated by the Parliament. That outcome had been determined consistent with the requirements of accrual accounting introduced in 1999–2000, under which Portfolio Budget Statements specify generalised, high level aspirational outcomes towards which their actual activities (outputs) are directed. The Schedule to the Act appropriating funds for expenditure by DEWR for the 2005–06 financial year is shown in Table 5.1.

<sup>249</sup> [2005] HCA 61 (21 October 2005)

<sup>250</sup> This section relies substantially on a number of sources interpreting the High Court judgment in *Combet*, principally the Senate Finance and Public Administration References Committee, 2005, *Report of the Inquiry into Government advertising and accountability*; Harry Evans, 2006, 'Government advertising—funding and the financial system', *Parliament Matters*, 15; Rosemary Laing, 2007, 'Parliamentary Control of the Executive: the People and the Money', *Australasian Parliamentary Review*, 22 (1): pp. 19–27; Geoffrey Lindell, 2007, 'The *Combet* Case and the Appropriation of Taxpayers' Funds for Political Advertising—an Erosion of Fundamental Principles?', *Australian Journal of Public Administration*, 66 (3): pp. 307–328; John Uhr, 2006, 'Appropriations and the legislative process', *Public Law Review*, 17 (3): pp. 173–177; and Lotta Ziegert, 2006, 'Does the Public Purse have Strings Attached?: *Combet and Anor v Commonwealth of Australia and Ors*', *Sydney Law Review* 28: pp. 387–400.



**Table 5.1: Extract from Schedule 1 of *Appropriation Act (No. 1) 2005–2006***

	Departmental Outputs	Administered Expenses	Total
<b>Outcome 1 –</b> Efficient and effective labour market assistance	\$1 235 216 000	\$1 970 400 000	\$3 205 616 000
<b>Outcome 2 –</b> Higher Productivity, higher pay workplaces	\$140 131 000	\$90 559 000	\$230 690 000
<b>Outcome 3 –</b> Increased workforce participation	\$72 205 000	\$560 642 000	\$632 847 000
<b>Total</b>	<b>\$1 447 552 000</b>	<b>\$2 621 601 000</b>	<b>\$4 069 153 000</b>

The parties agreed that the money for the advertisements came out of the \$1.4 billion total in the second column of Table 5.1. It was not, that is, drawn from departmental administered expenses, which are normally applied to government programs, grants, subsidies, and benefit payments in accordance with established eligibility criteria. It was drawn from the allocation for the department’s own outputs. These are expenses over which an agency has discretion and represent the cost to the department of doing its work of policy advising, program implementation and administration, such as salaries and ongoing operational expenses—‘the ordinary annual services of government’.

The plaintiffs argued that although the money was drawn from resources allocated for departmental outputs, the advertising campaign itself did not fall within any of the three outcomes that were specified in column one for the department’s outputs expenditure, and that the department was limited to spending on these three outcomes under the Act. They argued that, under section 15AB of the *Acts Interpretation Act 1901*, the Portfolio Budget Statements (PBS) were necessary to make sense of specified departmental outcomes, and that in DEWR’s case these statements made it clear that there was no allocation of funds for an advertising campaign such as that being conducted by the government. If the PBS could not be used to interpret the Act, the plaintiffs argued that there was in any case no rational connection between the government’s advertising campaign and any of the outcomes stated in the schedule. In response, the Commonwealth argued that the funding of the advertisements fell within at least one of the three specified outcomes, namely outcome 2—‘higher productivity, higher pay workplaces’.

On 29 September 2005, the High Court found in favour of the Commonwealth. The joint judgment of Gummow, Hayne, Callinan and Heydon JJ did not, however, accept the arguments of either party; instead they held that the department was not limited to any specified outcomes in their spending of appropriated monies. Relying on an explanatory note to s7 of the *Appropriation Act (No 1) 2005–2006*, they found that for expenditure on department outputs, the outcomes themselves were notional as well as the amounts to be spent under each. Under this interpretation, it did not matter whether or not spending on the advertising campaign fell within one of the specified outcomes. It was open to the department to add a new outcome, which would clearly account for the advertising campaign. In a separate judgement, Justice Gleeson also found in favour of the Commonwealth, on the ground that ‘the relevant outcome is stated with such breadth’ as to cover the campaign (even if ‘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’<sup>251</sup>).

On 9 October the government resumed its *WorkChoices* campaign on television, print media, radio and the internet until 30 October 2005. The *Workplace Relations Amendment (Work Choices) Bill 2005* was introduced two days later.

The High Court’s judgment was handed down in time to be considered by the Senate Finance and Public Administration References Committee as part of its Inquiry into Government Advertising and Accountability. The Committee understood the High Court’s decision as meaning 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.’<sup>252</sup> It would appear to follow that, since advertising activities are part of the ordinary annual services delivered by agencies to government, they must also be part of the ordinary services provided by public servants. If an agency engages in expenditure on the order of \$10 million or even half that for a public information campaign, and if that expenditure is lawful, can public servants decline to work on it because they personally judge it to be party political?

<sup>251</sup> *Combet v Commonwealth* [2005] HCA 61; 224 CLR 494; 80 ALJR 247; 221 ALR 621 (21 October 2005), Gleeson CJ, para 29, <[http://www.austlii.edu.au/au/cases/cth/high\\_ct/2005.61.html](http://www.austlii.edu.au/au/cases/cth/high_ct/2005.61.html)>.

<sup>252</sup> Senate Finance and Public Administration References Committee, *Report of the Inquiry into Government advertising and accountability*, p. 45 para 4.39.

Having reviewed the judgment in *Combet v the Commonwealth*, the Senate Finance and Public Administration References Committee acknowledged that it had aired the ‘very serious’ issue of the impact of outcome budgeting for appropriations on government accountability for, and Parliamentary control over, government spending. The generality with which outcomes could be stated, their aspirational nature, and, following the Court’s decision, their minimal discipline on actual departmental expenditure, all raised concerns for the accountability and transparency of government expenditure. The Committee accordingly proposed reviewing ways in which Parliamentary scrutiny of government expenditure could be enhanced before and after such expenditure had occurred.<sup>253</sup> With respect to expenditure on advertising in particular, it found that the decision left ‘few laws or regulations governing government advertising’.<sup>254</sup> According to the Committee, the exception to that generalisation was the *Commonwealth Electoral Act 1918*, which provides for limited annual reporting requirements for government advertising (s311(A)) and for the use of authorisation tags for government advertisements (s328). It also suggested that the lack of regulation made it even more important that a rigorous set of processes and guidelines be put in place to govern departmental and government decision-making on proposed advertising campaigns. These are considered next.

## Parliamentary guidance

The High Court’s decision in *Combet v the Commonwealth* is relatively recent, but as far as public service governance is concerned, it confirmed ongoing practice built on the 1995 *Guidelines for Australian Government Information Activities: Principles and Procedures*. According to the Parliamentary Library’s research note on federal government advertising, in ‘the absence of other legal requirements, the Government Communications Unit (GCU) uses the Guidelines ... as a checking framework for issues concerning government information activities’.<sup>255</sup> The GCU’s views on how the guidelines applied to a given government advertising campaign would, to say the least, have been very influential with departmental staff involved in designing and supporting such a campaign. The guidelines-based component of the GCU’s advice would, however, be unlikely to cast much light on the question of the appropriateness of any advertising content or of departmental involvement in a given campaign. They have been reviewed a

<sup>253</sup> Ibid., pp. 98ff. paras 7.57ff. See also Geoffrey Lindell, 2007, Submission to the Senate Committee on Finance and Public Administration Reference on Transparency and Accountability of Commonwealth Public Funding and Expenditure. <[http://www.aph.gov.au/Senate/Committee/fapa\\_ctte/completed\\_inquiries/2004-07/funding\\_expenditure\\_06/submissions/sub10.pdf](http://www.aph.gov.au/Senate/Committee/fapa_ctte/completed_inquiries/2004-07/funding_expenditure_06/submissions/sub10.pdf)>

<sup>254</sup> Fiona Childs, 2007, ‘Federal government advertising 2004–05’, Parliamentary Library Research Note 2, 2006–07. <<http://www.aph.gov.au/library/pubs/m/2006-07/07rn02.htm>>

<sup>255</sup> Loc. cit.

number of times since their original creation in 1983 by both the Auditor-General and the Senate,<sup>256</sup> and found to contain no material actually providing guidance on what kinds of activities may or may not be appropriate for the government to pursue as a government or for the public service to support as legitimate government activity.<sup>257</sup>

The 1995 guidelines covered such matters as public access to information about government programs, the expectation that information about individuals' benefits, rights and obligations would be made public, and the need for resources to be used effectively and efficiently. There was, however, no advice on how to determine whether campaigns were being directed at fostering a positive image of a particular political party or promoting its political interests.<sup>258</sup> According to the 1998 report from the Auditor-General on community education and information programs associated with taxation reform (i.e., the introduction of the GST), there were at that time 'no Commonwealth guidelines or protocols on information and advertising campaigns which would inform members of Parliament and the Government [or members of the APS] on the framework to be applied, covering matters such as distinguishing between government and party-political advertisements, the distribution of unsolicited material and conduct of campaigns in the lead up to an election'.<sup>259</sup> Neither have there been effective lateral governance controls on government advertising, either through Parliament, or through consistent reporting mechanisms that support parliamentary accountability by agencies. The High Court decision in *Combet v the Commonwealth* saw to the former, and the devolved and inconsistent and incomplete reporting arrangements that applied saw to the latter. The Executive had control of both principles and practice at the parliamentary level. As the Auditor-General said, 'it [the issue of guidelines] is not a matter that officials can duly decide for themselves'.<sup>260</sup> As a consequence, governance arrangements at this level provided little or no specific support or guidance for public servants involved in the development of government marketing campaigns or in the contingency systems established to protect their effective operation.

<sup>256</sup> See Senate Finance and Public Administration References Committee, *Report of the Inquiry into Government advertising and accountability*, Chapter 6. They were also updated in 1992 and amended again in 1995, 1998, 2000, 2002 and 2004–05.

<sup>257</sup> The history of attempts to reform government advertising including the proposed use of guidelines is canvassed in Sally Young, 2007, 'The regulation of government advertising in Australia: The politicisation of a public policy issue', *Australian Journal of Public Administration* 66 (4): pp. 438–52.

<sup>258</sup> The nature of such guidance can be inferred from the guidelines put in place in 2008 and considered in Chapter 5.

<sup>259</sup> Auditor-General, 1998, *Taxation Reform: Community Education and Information Programme, Audit Report No. 12*, p. 12 para 25. <[http://www.anao.gov.au/uploads/documents/1998-99\\_Audit\\_Report\\_12.pdf](http://www.anao.gov.au/uploads/documents/1998-99_Audit_Report_12.pdf)>

<sup>260</sup> Loc. cit.

## The APS Values and Code of Conduct

For all practical purposes, there would appear to be no governance external to the APS itself bearing on the involvement of public servants in campaigns of the *WorkChoices* variety, including the spill-over of such campaigns into policy and legal advising, program administration and research. Neither the law relating to appropriations nor the Parliamentary guidelines offered any ground for resisting a direction to deliver or support such a campaign on behalf of government. The next level of governance is provided by the APS Values, considered very briefly in Chapter 2.

Sections 10(1) and 13 of the *Public Service Act 1999* provide Australian public servants with a set of principles and a code of conduct to guide their behaviour. Those Values most likely to be relevant to involvement in government marketing are as follows:

PAGE 81

- (a) the APS is apolitical, performing its functions in an impartial and professional manner;
- (e) the APS is openly accountable for its actions, within the framework of Ministerial responsibility to the Government, the Parliament and the Australian public;
- (f) the APS is responsive to the Government in providing frank, honest, comprehensive, accurate and timely advice and in implementing the Government's policies and programs;
- (g) the APS delivers services fairly, effectively, impartially and courteously to the Australian public and is sensitive to the diversity of the Australian public;
- (k) the APS focuses on achieving results and managing performance.

The APS Values are principles-based and intended to apply flexibly. Their application in particular circumstances is broadly up to the public servant applying them, although some public servants responding to *State of the Service* employee surveys appear to have made a distinction between ethical behaviour and behaviour consistent with the Values. Seventy-five per cent of them agreed that the most senior managers in their agencies acted in accordance with the APS Values, but only 59 per cent agreed that senior managers in their organisation led by example in ethical behaviour.<sup>261</sup> While there are a number of

<sup>261</sup> Australian Public Service Commission, 2007, *State of the Service Employee Survey Results 2006–07*, Canberra, p. 30 question 32 and p. 57 question 79. This discrepancy has persisted since the introduction of the question on ethical behaviour in 2005.

different interpretations of this discrepancy—which is significant—one of them is that perceived technicalities and ambiguities in the practical application of the APS Values may be considered to create a lower standard than would apply to personal ethical decision-making. There are, however, sanctions for failing to conform to the Values. The APS Code of Conduct, at s13 of the Act, includes a general provision that employees must ‘at all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS’. Breaches of the Code of Conduct may result in a range of outcomes including counselling, a reprimand, a deduction from salary by way of a fine, a reduction in salary, a reduction in classification, and termination of employment.

Throughout the period in question the high level APS Values were only sporadically linked to governance arrangements applying specifically to government marketing. The Value at s10(1)(g)—which has direct implications for access of non-English speakers to information—was addressed through the 1995 amendments to the *Guidelines for Australian Government Information Activities*. These emphasise the rights of all members of the community to be informed about government programs, activities and policies that affect them. They call for information to be conveyed in such a way as to communicate effectively with the target audience and set percentage quotas for the expenditure of campaign money on advertising in non-English speaking media. While there is a clear connection between these amendments to the guidelines and the APS Values, it does not appear to have affected actual practice: the report of the 2005 Senate Inquiry found that the quota for expenditure on non-English media had not been met at all since 1996–97 in the case of newspaper advertising, and had been met only twice in the case of radio advertising.<sup>262</sup>

The APS Value at s10(1)(e) calls for accountable conduct, but the accountability framework following *Combet v the Commonwealth* has in practice been confined to the operations of Senate committees, whose inquiries into the topic have been hampered by obscure lines of accountability for decision-making and an inability ‘to establish the basic facts concerning what money is spent on what activities’ because ‘the reporting systems in place in relation to expenditure on government information campaigns are manifestly unable to provide that information.’<sup>263</sup> Two other APS Values have been identified by Public Service Commissioners as having a particular bearing on the involvement of public servants in government marketing. These are the calls for apolitical professionalism in s10(1)(a) and for

<sup>262</sup> Senate Finance and Public Administration References Committee, *Report of the Inquiry into Government advertising and accountability*, pp. 71–72.

<sup>263</sup> *Ibid.*, p. 3 para 1.14 and p. 23 para 2.49.

responsiveness to government in s10(1)(f).<sup>264</sup> These two Values between them have been the source of considerable advice and analysis from Commissioners and others with an interest in the need to strike a balance between the different disciplines applying to public servants,<sup>265</sup> particularly since their application is also governed by the Value at s10(1)(k) on achieving results and managing performance. When government calls for responsiveness to explicit or implicit requests to behave politically, then there is a need to find a balance between what should be done and what should not be done consistent with public service Values. Out of the focus on balance, comes the metaphor of drawing a line that is particularly associated with the involvement of public servants in government marketing. This is the line between information and advocacy, or between explaining and selling considered at more length in Chapter 1. Sometimes this line is straightforward—‘it is legitimate to refer to statements made by the Government [for example, “the Government has stated...”] but any other comment on the quality of or motives behind the decision would clearly be partisan’;<sup>266</sup> sometimes, as in the more complex cases considered in the case studies in Chapter 2, the line is indistinct and uncertain.

Take, for example, the case of the involvement of the Director of the Workplace Authority in the ‘Know where you stand’ advertisements already considered. Here is the published guidance that was available at the time, drawn from the authoritative publication, *The APS Values and Code of Conduct in Practice*:

APS employees have an important role to explain policies and analyse the reasons behind them, to assist the elected government to achieve its policy aims and help meet program objectives. This can involve speaking at public forums and engaging external stakeholders. APS employees need to do this professionally, and avoid partisan comment. Their approach to speaking publicly about policies needs to support public confidence in the ongoing capacity of the APS to be impartial.<sup>267</sup>

In the view of the former Public Service Commissioner who had been responsible for publishing this guidance, the Director of the Workplace Authority showed ‘poor judgment’ in appearing in the campaign advertisements for a number of reasons, including the controversial nature of the policy area, the imminence of the 2007

<sup>264</sup> See the Australian Public Service Commission, (2003, revised 2005), *APS Values and Code of Conduct in Practice: Guide to official conduct for APS employees and Agency Heads*, p. 21; and Australian Public Service Commission, Circular No. 2007/5: ‘Involvement of public servants in public information and awareness initiatives’. <<http://www.apsc.gov.au/circulars/circular075.htm>>

<sup>265</sup> See, for example, ‘Balancing the Values’ in Public Service Commission, *APS Values and Code of Conduct in Practice*, Chapter 1.

<sup>266</sup> Australian Public Service Commission, ‘Involvement of public servants in public information and awareness initiatives’.

<sup>267</sup> Public Service Commission, *APS Values and Code of Conduct in Practice*, p. 21.

election, the ‘myth-busting’ language used and the fact that she appeared ‘more as an advocate than an explainer’.<sup>268</sup> Against this, the subsequent Public Service Commissioner took a more black letter approach to the television appearances, making a statement to the *Australian* that ‘public communication by public servants explaining to stakeholders how new policy arrangements will work is not inconsistent with APS Values’.<sup>269</sup> This does not exactly endorse the Workplace Authority Director’s conduct, any more than the previous Commissioner’s finding of ‘poor judgment’ calls it a breach of the APS Values. Nevertheless, the Prime Minister was able to cite the black letter view in Parliament as if it were an endorsement, noting that ‘firstly, the ‘Barbara Bennett advertisements’, as [Mr Rudd] calls them, are legitimate information campaigns; and, secondly—not only that—they are completely in accordance with the values of the Public Service Act, as certified by none other than the Public Service Commissioner, Lynelle Briggs’.<sup>270</sup>

Take also the case of Justice Branson’s judgement in *The Community and Public Sector Union v Commonwealth of Australia*<sup>271</sup> considered in Chapter 2. In the course of determining whether certain APS agencies were authorised by their certified agreements to refuse leave to agency employees because of how such leave was going to be used (i.e. to join in a Day of Protest against *WorkChoices*), Justice Branson noted that:

... no certified agreement should be construed as intending to authorise the Commonwealth to act inconsistently with the APS Values listed in s10 of the PS Act. The first of the APS Values so listed is: ‘the APS is apolitical, performing its functions in an impartial and professional manner’ (s10(1)(a)).

In November 2005 the foreshadowed amendments to the WR Act were a matter of party political controversy. The use by a supervisor or manager of his or her discretion to approve leave for the purpose of limiting the attendance of APS employees in their private time and in their private capacities at an event intended to demonstrate either community support or community opposition to an initiative having party political significance would involve the exercise of the discretion for an improper purpose.<sup>272</sup>

<sup>268</sup> Andrew Podger, 2007, ‘Pride and Prejudice: Ms Bennett as the New Face of a Very Public Service’, *Public Sector Informant*, 7 August, p. 6.

<sup>269</sup> Matthew Franklin, 2007, ‘Workplace Authority boss in clear over ads’, *Australian*, 1 August.

<sup>270</sup> House of Representatives, 2007, *Hansard* No. 11, August 7, p. 31.

<sup>271</sup> [2007] FCA 1397 (6 September 2007).

<sup>272</sup> *The Community and Public Sector Union v Commonwealth of Australia* [2007] FCA 1397 (6 September 2007), paras 123–24.



Accordingly, she found that the agencies concerned had acted as they did not in defiance of the APS Values but because they felt they were bound to do so by the DEWR advice. No one appears to have publicly raised possibility of a breach of the APS Values by any of the DEWR officers concerned with giving such advice, perhaps because, as Justice Branson indicated, the 'conduct in question was not that of a single DEWR officer who acted alone but rather the outcome of significant process of consultation involving senior officers of DEWR, apparently including the Secretary'.<sup>273</sup>

This form of words is significant in terms of its implications for standard public service practices. Under the arrangements applying to the period being considered, an alleged breach of s13(11) of the APS Code of Conduct ('An APS employee must behave at all times in a way that upholds the APS Values and the integrity and good reputation of the APS') would be likely to be considered within the agency in which it was alleged to have occurred. If the matter were part of the formal work of the agency—which would have been the case if the question of apolitical professionalism was at issue—either the initial complaint, or a review, would probably be considered by senior managers of the agency and/or the agency head. Despite formal protection for public servants who are sufficiently well informed to make their complaint under the provision of the Public Service Act (s16) that triggers whistleblower protection,<sup>274</sup> this is unlikely to enhance the career prospects of the complainant. The available data suggests that significant numbers of public servants had low levels of confidence or were uncertain whether they would not be victimised or discriminated against by people in their agency if they were to report a suspected serious breach of the code of conduct committed by a supervisor or manager—25 per cent in 2004, and 29 per cent in 2005 (the last year in which the question was asked).<sup>275</sup> Some have commented that:

...managers do not view reporting a breach as 'career enhancing'.

Did not report for fear of reprisal.

If you report this, you then get people offside, especially if it is someone higher than yourself in the 'food chain'.<sup>276</sup>

<sup>273</sup> CPSU, *The Community and Public Sector Union v Commonwealth of Australia* [2007] FCA 1634 (30 October 2007), para 16.

<sup>274</sup> *Ibid.*, p. 120: 'Seventy-eight per cent of those employees [79 per cent of respondents] who were made aware of how to report suspected breaches of the Code had also been made aware that if they report a suspected breach of the Code to an authorised person they are provided with protection from victimisation and discrimination.'

<sup>275</sup> Australian Public Service Commission, 2005, *State of the Service Employee Survey Results 2004–05*, Canberra, p. 28 question 40.

<sup>276</sup> Public Service Commissioner, 2006–07 *State of the Service Report*, p. 121.

In circumstances where it would not be appropriate for the home agency to deal with a whistleblower report by an APS employee, or where the whistleblower is not satisfied with the outcome of the investigation by the agency, the whistleblower could refer the report to the Australian Public Service Commissioner or the Merit Protection Commissioner. Table 5.2 shows what happened in the year for which most recent *State of the Service* data is available.

**Table 5.2: Whistleblower reports received during 2006–07**

	Carried over from 2005–06	Received	Not accepted	Under consideration	Finalised
Merrit Protection Commissioner	2	10	10	1	1
Australian Public Service Commissioner	2	21	15	5	3
Source: Merit Protection Commissioner					

There were few complaints and most were not accepted. This was a consequence of jurisdictional issues and/or the view that the relevant matters could more appropriately be considered within the relevant agency, at least in the first instance. The nature of these complaints, as described in the *State of the Service Report*, suggests that they were mainly from disgruntled employees and did not bear on the question of apolitical professionalism. In fact, apart from unauthorised disclosure of information (e.g., leaking), none of the types of misconduct in investigations finalised during 2006–07 concerned that question.<sup>277</sup>

All of this suggests that the application of the high level APS Values to practical questions of propriety in the conduct of government marketing is problematic in a number of different contexts and for a number of different reasons. The case of Children Overboard and the Department of Defence Public Affairs and Corporate Communications Division, considered below under agency protocols, reinforces this impression.

<sup>277</sup> Issues raised included conflict of interest, concerns about management of recruitment processes and non-approval of leave, and allegations of victimisation, bullying and harassment. See Table 6.7, Public Service Commissioner, 2006–07 *State of the Service Report*, p. 126.

## *Supporting Ministers, Upholding the Values*

Like the APS Values themselves, the guidance in *The APS Values and Code of Conduct in Practice* requires the exercise of judgment by individual public servants. If it did not, public servants would have much less flexibility to act, but they would also have a greatly enhanced capacity to resist inappropriate directives that call for politicised behaviour. It is important to bear in mind that the content of any guidance must serve both of these ends at once. This means that gaps or silences in guidance material can be as influential as actual advice. It also means that the absence of explicit guidance is likely to prove critical in situations where public servants are most exposed to pressures to compromise on the Values. Drawing on focus groups conducted during an evaluation, the Australian Public Service Commission has identified a number of these situations, including two that were raised in the case studies in Chapter 2: the handling of electorate-based briefings, and what it calls ‘assistance with media issues’. The Commission has issued guidance relevant to both in its *Supporting Ministers, Upholding the Values*. In both cases the guidance is important; in both cases it is riddled with silences.

As discussed in Chapter 2, electorate-based briefings are those prepared by agencies with significant administered funds and are designed to identify, on an electorate by electorate basis, how these funds have been spent. The Commission guidance is supportive of the gathering of such data, so long as it is ‘consistent with the prudent management of agency resources’. It refers positively to the ‘public interest in governments having robust and authoritative information on the performance of taxpayer-funded policies and programmes’.<sup>278</sup> There is, however, scope for electorate-based briefs to be fed into government communication machinery (such as those said to have been provided to sitting members and candidates through the Howard Government’s Government Members Secretariat) and used to give a significant electoral advantage to incumbent governments.

There is also scope for electorate-based data to be used selectively, so that the public’s interest in having robust and authoritative information on the performance of taxpayer-funded policies can be undermined by the government’s interest in only letting them have information that is to its political advantage. On both of these grounds there is reason to argue that where robust electorate-specific information is collected it should be made public. But *Supporting Ministers* is silent on this subject, even though it was a matter of considerable concern to the Public Service Commissioner at the time when the initial draft of the guidance was in train:

<sup>278</sup> Australian Public Service Commission, 2006, *Supporting Ministers, Upholding the Values*, Canberra, p. 55.

Former public service commissioner Andrew Podger says publishing the [electorate-based] briefs should have been an essential condition on which they were compiled. “I’ve always had the view that when you did them, they should be made available to the other side of politics,” he says.

“In the old days, we would say [to departments] you should give to them to the Parliamentary Library, too, and put them on your website.”

... Before he retired in 2004, Podger and departmental heads reached what he describes as “close to a consensus” on handling the briefs. “There was certainly a sense of unease about the sensitivity of the briefs and the way in which they were being done. And a desire for a firm sense of what was right within the service.” But the reform he drafted was somehow lost after he moved on.<sup>279</sup>

PAGE 88

If the relevant guidance had not been ‘somehow lost’, agencies would have had more difficulty resisting the calls from the Opposition and the media for the release of electorate briefs during the 2007 election.

Also conspicuous by its absence is any advice under ‘Assistance with media issues’ on the public release of the market research overseen by the Ministerial Committee on Government Communications. Clearly such research was of considerable interest to government in setting its policy tone if not always its policy directions. As has been seen, the GCU took market research very seriously, and prepared extensive advice to public servants about the types of market research and their application and timing in government advertising campaigns. But clearly the market research could also offer the government that had access to it a considerable advantage in developing and implementing an electoral campaign. Indeed, it is clearly not coincidental that governments of both persuasions have used the same agencies to undertake market research and then to develop election campaign strategies around the same topics. John Singleton, who devised the 1986 ‘True Blue’ campaign for the Hawke Labor Government, produced the ALP’s election advertisements in 1987 and continued as Labor’s advertising agent until 1996.<sup>280</sup> In the same way, Mark Textor, who was the principal investigator for the 1999 market research considered in Chapter 2, and was still conducting market research on industrial relations for *WorkChoices*

<sup>279</sup> Mannheim, ‘Here is the news: it’s not in the public interest’. See also Paul Malone, 2007, ‘Call to release PS electorate briefs’, *Canberra Times*, 15 November, and Andrew Podger, 2006, ‘Looking Upwards and Downwards: Key Issues and Suggestions for Managing Board/Minister/Departmental Relations’, paper for University of Canberra Conference on Governance: ‘I simply note that over 18 months has passed since the evaluation on which this guide is based so evidently its finalisation has proven to be a substantial task within the upper echelons of the Service; I will also look closely at how it advises agencies to deal with all the controversial issues I recall were under debate during that evaluation such as how to handle requests for electorate-based briefings.’

<sup>280</sup> Sally Young, 2006, ‘The Convergence of Political and Government Advertising: Theory Versus Practice’, *Media International Australia*, 119: p. 104.

in 2007, was also an ongoing part of the Howard Coalition Government electoral campaign.

Together with former Liberal Party Federal Director Lynton Crosby, Mark Textor had been 'a key part of John Howard's election success'<sup>281</sup> for two years when in 1998 he undertook the research on employee attitudes to workplace considered in Chapter 2. According to the account of its trademarked research strategy in that document, the aim of the approach was 'to help our clients understand, communicate with and motivate their public more effectively'.<sup>282</sup> Despite the fact that it was undertaken with public resources for the Labour Ministers' Council, it was 'not designed...to provide a policy or communications solution for any one strategic problem'.<sup>283</sup> What it was designed to do was to 'uncover the personal emotions and values that determine the perceptions Australian workers have of the workplace, the role of government in the workplace, the role of unions in the workplace, and workplace agreements'.<sup>284</sup> According to the authors of the 1998 analysis, it was always intended 'that this research will have a long "shelf life"'.<sup>285</sup>

In June 2007, while Textor continued his work for the Liberal Party, his organisation was also being employed by the Business Council of Australia and the Australian Chamber of Commerce and Industry to advise on their *pro-WorkChoices* campaign. What is known of their advice to the employers—that a focus should include 'the prospect of unions being back in the workplace (from "an individual/emotional perspective")'<sup>286</sup>—appears continuous with the more extensive 1998 Textor material that is publicly available. Interestingly, in 2007 the Opposition was mainly concerned about the use of the Textor material in the employer campaign, rather than its direct application to the Coalition's own campaign,<sup>287</sup> as if that were a given. However, Senator Faulkner did find it 'disturbing that all three campaigns—the campaigns of the government, of the Liberal Party and of the business coalition—look like they are actually just one campaign'.<sup>288</sup> That, according to Stephen Bartos, once responsible for the forerunner of the GCU, is the problem with government-sponsored advertising and the market research on which it is founded:

<sup>281</sup> Australian Broadcasting Corporation (Michael Brissenden), 2007, 'Politicians fight for moral high ground', *The 7:30 report*. <<http://www.abc.net.au/7.30/content/2007/s1957277.htm>>

<sup>282</sup> Australasian Research Strategies, 1999, *Employee Attitudes to Workplace Reform: A report prepared on behalf of contributing members of the Labour Ministers Council*, Canberra, p. 3.

<sup>283</sup> Loc. cit.

<sup>284</sup> *Ibid.*, p. 1.

<sup>285</sup> Loc. cit.

<sup>286</sup> Michelle Grattan, 2007, 'Lib pollster to lead IR ad blitz', *Age*, 19 June.

<sup>287</sup> Australian Broadcasting Corporation (Brissenden), 'Politicians fight for moral high ground'.

<sup>288</sup> Senate, 2007, *Hansard* No. 9, 15 August, p. 59. <<http://202.14.81.34/hansard/senate/dailys/ds150807.pdf>>

It's not a transparent process; there's no guarantees that it isn't politicised, and there's no guarantees that the materials that are developed as part of this, are not being used politically. I think one of the areas that does concern me is that there's a huge fund of politically useful material developed through market research. If that's available only to the government, and not to the rest of the Parliament, then you do have a real disadvantage for people who are not in government, and so it's taking the advantages of incumbency, I think, a step too far.<sup>289</sup>

As the Canadian experience indicates, there are measures that can be taken to increase both transparency and accountability of government expenditure on market research. These will be considered in the following chapter. *Supporting Ministers*, however, is silent on the subject of the availability of market research, even though that, too, was a matter on which the Public Service Commissioner overseeing the initial drafting of the guidance had strong views.<sup>290</sup>

PAGE 90

## Agency protocols

In addition to offering its own broad guidance, the Commission has also called upon agencies to develop their own protocols on conduct where there are 'particular issues that present challenges to their staff from time to time and that might call for more specific guidance than that available from the Public Service Commissioner or from the Department of the Prime Minister and Cabinet'.<sup>291</sup> This would include 'procedures, agreed with Ministers, to handle media enquiries and make public statements'.<sup>292</sup> There is some data on the availability of agency-specific protocols, although protocols directly associated with media management were not separately identified. The most recent data is from the *State of the Service Report* for 2004–05 (the 2005–06 and 2006–07 reports did not address the issue). In that year, all 59 agencies providing regular services or advice to Ministers reported having at least one 'quality control measure' in place—a term defined to include a 'central coordination function for the quality assurance and coordination of written material to and from the Minister's office'.<sup>293</sup> That, as has been seen in Chapter 2, is what public affairs as well as ministerial liaison units do for ministerial public relations activities of all kinds, and they are likely to have formal agency protocols to help them.

<sup>289</sup> Richard Aedy, 2005, 'Ad campaign', *The Media Report*, 7 July. <<http://www.abc.net.au/rn/talks/8.30/mediarpt/stories/s1407808.htm>>

<sup>290</sup> See Andrew Podger, 2005, 'Ethics and Public Administration', Paper presented to the Institute of Public Administration Australia and posted by the Democratic Audit of Australia, November, p. 7. <[http://democratic.audit.anu.edu.au/papers/200512\\_podger\\_ps\\_ethics.pdf](http://democratic.audit.anu.edu.au/papers/200512_podger_ps_ethics.pdf)>

<sup>291</sup> Australian Public Service Commission, *Supporting Ministers*, p. 47.

<sup>292</sup> Australian Public Service Commission, *APS Values and Code of Conduct in Practice*, Chapter 2.

<sup>293</sup> See Public Service Commissioner, 2005, *2004–05 State of the Service Report*, Canberra, p. 32, note 1.

According to *Supporting Ministers*, it can be good practice for agencies to provide staff with ‘guidelines for dealing with media inquiries that clearly outline how the agency will handle them, and the relationship between agency and minister’s office in these cases’.<sup>294</sup> Such protocols serve the interests of ministers as well as protecting public servants against ‘aggressive or inappropriate questioning designed to elicit a response that is critical of Government or other political stakeholders’.<sup>295</sup> They are therefore more likely to be in place than not, particularly in larger and higher profile agencies. They ‘guide’ individual conduct as well as the preparation of written material, and that guidance can be highly prescriptive and very influential. Take, briefly, the Department of Defence media management of Children Overboard in 2001. At that time the Public Affairs and Corporate Communications Division (PACCD) of the Department of Defence consisted of 148 permanent public service positions and an additional 68 contract positions, all of which were essentially civilian.<sup>296</sup> The PACCD administered two sets of instructions in relation to dealing with the media. The first set of instructions, Defence Instructions (General) were issued on 8 August 2001 and were described by the head of PACCD, Jennifer McKenry as ‘a lot more coordinated than had been previously the case’, with ‘a lot more guidance given to people’ and ‘more refined clearance processes ... than was the case before’.<sup>297</sup> These have been summarised by Harrison as follows:

- Service chiefs (of Army, Navy and Air Force), who curiously to the lay observer, were not part of the operational chain of command, were provided with a “strategic communications advisor”.
- All media releases were to be signed off by a Canberra based officer of one-star rank or above.
- Only those who had completed PACCD training programs in media relations were permitted to speak to the media, and were required to consult PACCD about “talking points”.<sup>298</sup>

<sup>294</sup> Australian Public Service Commission, *Supporting Ministers*, p. 67.

<sup>295</sup> Australian Public Service Commission, Circular No 2007/5: ‘Involvement of public servants in public information and awareness initiatives’.

<sup>296</sup> John Harrison, 2002, ‘Appointed Public Officials and Public Relations Practice: Issues of Accountability, Ethics and Professionalism in the ‘Children Overboard’ Affair’, International Institute for Public Ethics Biennial Conference, Brisbane, p. 2. Harrison provides a good account of the conduct of the PACCD during the period in question. See also Patrick Weller, 2002, *Don’t Tell the Prime Minister*, Melbourne, Scribe Publications.

<sup>297</sup> Senate Select Committee on a Certain Maritime Incident, 2002, *Hansard*, 17 April, p. 1116. Subsequently the Select Committee recommended that Defence develop, a statement of Preferred Public Affairs Protocols to designed to ‘optimise the autonomy of the ADF and the Department of Defence in deciding the level and nature of operational information communicated direct to the press and the public’ (Senate Select Committee on a Certain Maritime Incident, 2002, *Report of the Inquiry into a Certain Maritime Incident*, p. xxxix).

<sup>298</sup> See Harrison, ‘Appointed Public Officials and Public Relations Practice’, p. 3.

According to McKenry's subsequent testimony to the Senate Select Committee on a Certain Maritime Incident, the new Defence Instructions represented 'very much a change of culture, that they were quite different, and that people may have felt a bit of—I will use the word—disempowerment'.<sup>299</sup> Nevertheless, the instructions do not (as will be seen) appear to have been atypical. In addition to these general instructions, there was a set of specific instructions on dealing with the media in relation to the Department's responsibility for border protection. All information released to the media in relation to border protection was to come from the office of the Defence Minister.

On 7 October 2001, soon after the 2001 election had been called by the then government, the Australian Navy encountered a vessel containing 223 people in Australian territorial seas around Christmas Island seeking asylum in Australia. Border control had been identified as an election issue, and this encounter was important to the government from a public relations perspective. It was incorrectly reported in two respects; a good summary of these is as follows:

In essence, a mistake was made in the initial reporting through the Defence Department chain of command that children on the vessel were thrown overboard. Within hours, this information was made public by government ministers embarking on an election campaign, in which issues of border protection and national security were to dominate. The erroneous information was never publicly corrected and there is extensive evidence to suggest that prior to the election on November 10, public officials, ministerial staff and the outgoing Minister for Defence, acted in a way that shielded the Prime Minister from formal, written advice that the event never took place.

The second issue which arose out of the initial incorrect information was the release on November 10—in response to media demands for evidence—of photographs purporting to show children thrown overboard on October 7. The photographs released were uncaptioned, and were in fact of the rescue of the passengers on the vessel when it sank the following day, October 8.<sup>300</sup>

These errors were allowed to stand by the PACCD. According to the subsequent submission to the Senate Select Committee from the Press Gallery, 'the high level of deliberate deception—which came clearly to light in Senate Estimates Committee hearings—could not have been perpetrated without the involvement

<sup>299</sup> Senate Standing Committee on A Certain Maritime Incident, *Hansard*, 17 April, p. 1119.

<sup>300</sup> Harrison, 'Appointed Public Officials and Public Relations Practice', p. 2.



of senior and junior public servants'.<sup>301</sup> According to Ms McKenry, her actions were in clear conformity with the relevant agency protocol:

Senator FAULKNER --You know, Ms McKenry, that there is a misrepresentation on these photographs right through for a month in the period of a federal election campaign, don't you? You know that is the case and you know it is not corrected. You had expected it to be corrected early in October and that is why you took certain administrative action. You expected the minister to correct the public record but he did not?

Ms McKenry --That is correct. I took action to make sure that the minister's office was aware of the information.

--And what did you do when no correction was made?

Ms McKenry --I continued my work within the organisation as a public servant. I did not see it as appropriate, as I explained earlier in the estimates process, to enter the debate at all. I believed that what I had done and what some of my colleagues had done had been appropriate. We had informed the minister's office of the date on which the photographs were taken. We had informed them that the photographs as they were did not represent what they were purported to represent. I had informed certainly my head of department of that information and I did not believe, having done all of that, that it was appropriate for me to enter the debate in any other way.<sup>302</sup>

PAGE 93

Not only were the actions described here consistent with the agency protocol, they were also consistent with the guidance on 'assistance with media issues' set out in *Supporting Ministers*.<sup>303</sup> According to that higher level guidance:

where employees have any concerns that the information they have provided has been presented inaccurately, this should be conveyed to senior managers. Senior managers in their turn have a responsibility to keep employees in touch with any steps that have been taken to address their concerns.<sup>304</sup>

<sup>301</sup> Parliamentary Press Gallery Committee, n.d., *Submission to Senate inquiry into a certain maritime incident*, p.1. <[http://www.aph.gov.au/senate/committee/maritime\\_incident\\_ctte/submissions/sublist.htm](http://www.aph.gov.au/senate/committee/maritime_incident_ctte/submissions/sublist.htm)>

<sup>302</sup> Senate Standing Committee on A Certain Maritime Incident, *Hansard*, 17 April, p. 1106.

<sup>303</sup> 'She did not, however, meet the departmental secretary's directions to "inform the minister in writing that the photos did not refer to the day when the children were allegedly thrown overboard", but rather complied with the ministerial adviser's instructions to send "an email containing a set of captioned pictures, and, later an explanation from the Defence media liaison officer of how the photos were sent to Hampton without captions"', Weller, *Don't Tell the Prime Minister*, p. 31.

<sup>304</sup> Australian Public Service Commission, *Supporting Ministers*, p. 66.

As it happened, McKenry did not fully comply with the directions given to her by her senior manager, which were to advise the minister himself (rather than his advisers) in writing that the photos in question did not refer to the day when children were allegedly thrown overboard. It was also open to her to take the matter back to the departmental secretary when no action was taken at the political level to correct the record. Nevertheless, the point here is that there is nothing in *Supporting Ministers*, any more than in the agency protocols, about bypassing the minister's office and going directly to the media. In fact taking such action is much more likely to constitute a breach of the APS Values than not doing so.

The Defence protocols may have been prescriptive, but they were not substantially different from the specimen media protocol included in *Supporting Ministers* as a good practice example and recommended to agencies as recently as December 2007.<sup>305</sup>

Any political inquiry, policy announcement or sensitive issue should be handled in every case by the Minister's office.

For background on programmes or policies, the Minister's office may clear an SES [Senior Executive Service officer, equivalent to the officer of one-star rank or above in the Defence guidance] to give a media interview or provide a background briefing.

The Minister's office may also request that a Public Affairs officer handles a media query.

The first step if you are contacted directly by a journalist by phone, email or in person is always:

**Immediately refer the query to the relevant director in Public Affairs.**

Public Affairs will contact the journalist ... Public Affairs will then come back to the line area with a request for proposed responses to the journalist's questions, and an indication of the urgency of the request. They will include this information in a media inquiry form, to which the talking points may be attached.

<sup>305</sup> See Australian Public Service Commission, Circular No. 2007/5: 'Involvement of public servants in public information and awareness initiatives'.

Usually, the response you draft needs to be similar to that you would prepare for a Question Time or Hot Issues brief, that is, **clear, simple talking points that as far as possible directly answer the question** (you may attach more detailed background information, as you would for a QTB, but journalists are usually looking for a succinct concise answer).

You should then refer your response back to Public Affairs, where an officer will look at your proposed answers, and may suggest some changes, or request some further information.

After the response has been **cleared by an SES officer**, Public Affairs will:

- contact the Minister's policy adviser and/or the media advisers to inform them of the inquiry and the proposed response
- seek advice on whether the Minister's office will handle the query, or whether it should be handled by the Department
- inform the line area of the outcome, and oversee the delivery of the response.<sup>306</sup>

PAGE 95

By the end of the drafting and clearance process the query has been reduced to a fixed question or questions set by the public affairs unit, which has also done the initial vetting of the 'proposed response' and all liaison with the minister's office over its suitability and delivery. And that is just in cases where the minister's office has not chosen to handle the matter from the beginning. Certainly this level of control lends itself to ensuring that agencies remain consistently 'on message', or, as in the case of Children Overboard, simply quiet. One public relations employee from the PACCD subsequently admitted that, 'had Defence been responsible for making the comment through to the media, most definitely the misinformation would have been terminated immediately'.<sup>307</sup>

Agency protocols like the specimen good practice version in *Supporting Ministers* are the last line of written advice available to public servants on interacting directly with the media. Advice guiding their indirect interactions with the media through ministers has already been addressed in Chapter 1 and comes down to: provide material that explains but does not sell; and provide facts, but let the office add any political commentary. Finally, as noted above, where public servants have any concerns that the information they have provided has been presented inaccurately by the minister's office, this should be conveyed to senior managers.

<sup>306</sup> Australian Public Service Commission, *Supporting Ministers*, Appendix 3, 3.8, p. 114.

<sup>307</sup> Senate Select Committee on a Certain Maritime Incident, *Hansard*, 17 April, p. 1175.

There does exist the higher level APS governance relating to apolitical professionalism and responsiveness from which agency protocols are clearly derived. Even then, it does not appear that either the service-wide or the agency-specific governance arrangements considered here offered public servants solid guidance in distinguishing between appropriate marketing support and involvement in political advertising. More importantly, it does not appear that such arrangements offered them real leverage in resisting a direction to become involved in campaign work that was arguably political. This is particularly so when account is taken of the broad range of performance drivers hardwired into agency human resource practices. In fact, under governance applying between 1995 and 2007, public servants would be at least as vulnerable to a claim that they had breached the APS Values for refusing to act as they would be for acting. Changes to governance following the 2007 election are considered in the next chapter.

## Chapter 6: After 2007

Prior to its election in 1996, the Howard Coalition Government promised changes to both machinery of government, and governance arrangements applying to government advertising. Labor's National Media Liaison Service media unit for gathering and disseminating information was to be disbanded, and new guidelines were to be put in place prohibiting government advertising that was partisan in nature and requiring that advertising be approved by the Auditor-General.<sup>308</sup> In the event, the former was rearranged rather than disbanded,<sup>309</sup> and the latter was not pursued.<sup>310</sup> Later, the government defended not pursuing it.<sup>311</sup>

Prior to its election in 2007, the Rudd Labor Government made similar promises to change both machinery of government, and governance arrangements applying to government advertising. It, too, proposed to dismantle the previous government's public service media units for gathering and disseminating information, and indeed this has been done.<sup>312</sup> Like the incoming Coalition Government in 1996, the Labor Government also had a commitment to putting in place new guidelines for government advertising and requiring that such advertising be submitted to the Auditor-General.<sup>313</sup> These, too, have been issued.<sup>314</sup> For a full set of Labor commitments or actions relating to government advertising see Table 6.1. The table raises two questions: what are those changes that have been made likely to achieve, and what further changes are desirable and likely?

<sup>308</sup> See Young, 'A history of government advertising in Australia', p. 195.

<sup>309</sup> Ian Ward, 2003, 'An Australian PR state?', p. 31.

<sup>310</sup> Young, 'The regulation of government advertising in Australia'.

<sup>311</sup> Senate Finance and Public Administration References Committee, *Report of the Inquiry into Government advertising and accountability*, p. 69ff, para 6.4ff.

<sup>312</sup> Senate Standing Committee on Finance and Public Administration, 2008, *Hansard* (Additional Budget Estimates), p. 43, 19 February.

<sup>313</sup> See Australian Labor Party, n.d., 'Cleaning Up Government—Background Information'. <[http://www.alp.org.au/download/now/cleaning\\_up\\_government.pdf](http://www.alp.org.au/download/now/cleaning_up_government.pdf)>

<sup>314</sup> Department of Finance and Deregulation, 2008, *Guidelines on Campaign Advertising by Australian Government Departments and Agencies*. <[http://www.finance.gov.au/Advertising/docs/guidelines\\_on\\_campaign\\_advertising.pdf](http://www.finance.gov.au/Advertising/docs/guidelines_on_campaign_advertising.pdf)>

**Table 6.1: Rudd Government Changes**

<b>Commitment/Initiative</b>	<b>Source</b>	<b>Done</b>
<b>Machinery of government</b>		
abolish Government Communications Unit	Cleaning Up Government <sup>a</sup> New Advertising Guidelines <sup>b</sup>	Yes
GMS replaced by CCSTU	Senator Ray 25 February 2008 <sup>c</sup>	Yes
<b>Governance</b>		
Auditor-General to apply to all campaigns in excess of \$250k limiting public advertising to essential public requirements	Labour to Lift Standards <sup>d</sup> Guidelines on campaign Advertising <sup>e</sup>	Yes
guidelines prohibiting the misuse of government advertising for partisan purposes	Labour to Lift Standards <sup>d</sup> Guidelines on campaign Advertising <sup>e</sup>	Yes
full set of Auditor-General guidelines to be released prior to 2007 election	Labour to Lift Standards <sup>d</sup>	No
only policy with explicit legislative and regulatory approval to be advertised	Labour's Advertising Guidelines Plan <sup>f</sup> Guidelines on campaign Advertising <sup>e</sup>	Yes
COAG common national advertising principles	Labour to Lift Standards <sup>d</sup>	No
<b>Appropriations</b>		
\$100m annual cuts to \$194m government advertising expenditure	Lindsay Tanner 31 January 2008 <sup>g</sup>	No
\$15m annual cuts to \$30.1m annual market research budget	Cleaning Up Government <sup>a</sup>	No
<b>Public Servants</b>		
commitment not to use public servants in advertising	Labour Approach to APS <sup>i</sup> APSC Circular No 2007/5 <sup>h</sup>	Yes
ethics advice and reporting to government	Labour Approach to APS <sup>i</sup>	Yes

- <sup>a</sup> Australian Labor Party, n.d., 'Cleaning Up Government—Background Information'.
- <sup>b</sup> Special Minister of State (John Faulkner) and Minister for Finance and Deregulation (Lindsay Tanner), 2008, Media release: New Advertising Guidelines, 2 July.
- <sup>c</sup> Senator Ray, quoted by Mark Davis, 2008, 'Will the latest aNiMaLS be CUTSies or go CaCTUS?', *Sydney Morning Herald*, 25 February.
- <sup>d</sup> Media Statement by Kevin Rudd and Penny Wong, 2007, 'Federal Labor To Lift Standards on Taxpayer Funded Advertising—\$1.7 Billion Spent By Howard Government', 19 May.
- <sup>e</sup> Department of Finance and Deregulation, 2008, *Guidelines on Campaign Advertising by Australian Government Departments and Agencies*.
- <sup>f</sup> Penny Wong, 2007, 'Labor's Advertising Guidelines Plan', 31 May.
- <sup>g</sup> Lindsay Tanner, quoted by Mark Davis, 2008, 'Government looks for ways to cut ad bill', *Brisbane Times*, 31 January.
- <sup>h</sup> Australian Public Service Commission, 2007, Circular No 2007/5: Involvement of public servants in public information and awareness initiatives (last updated 12 December 2007).
- <sup>i</sup> Penny Wong, 2007, 'Labor's Approach to the Australian Public Service', Speech to the Institute of Public Administration Australia.

## Machinery of government

Labor's machinery of government commitments have been substantially met. Their implementation should largely decentralise government advertising, limiting its ability to apply 'careful control to ensure consistency and to influence the agenda, as well as to present the government and the key politicians in the best possible light'.<sup>315</sup> Look at Figure 4.2 again (p.64). The Government Members' Secretariat (GMS), which fed electorate media management and advertising, is gone. The Ministerial Committee on Government Communications (MCGC), which linked the Prime Minister's Office and the Government Members' Secretariat, and which controlled all significant government advertising campaigns, is also gone. The public service unit which serviced it, the GCU, is gone also—with the exception of a 'central contracting function' that has moved to the Department of Finance and Deregulation<sup>316</sup>—and with its passing, control over individual public service media units slips out of the box presided over by the Department of the Prime Minister and Cabinet and into the purview of individual agency heads, ministers and ministerial media advisers. The Department of Finance and Deregulation will also have the function of managing the policy and procedures for the development and implementation of government advertising campaigns consistent with its publication of the new advertising Guidelines.

If they are neither co-opted nor reversed, these machinery changes could underpin substantive cultural change. It should be mentioned that both cooption and reversal have been foreshadowed as possibilities. The GMS has been replaced by the Caucus Committee Support and Training Unit (CCSTU) with a staff of 10, whose functions include circulating Parliamentary Library background papers and legislative materials; training electorate office staff on handling constituent

<sup>315</sup> Andrew Podger, 2005, 'Parting remarks on the Australian Public Service'.

<sup>316</sup> Senate Standing Committee on Finance and Public Administration, 2008, *Hansard* (Additional Budget Estimates), p. 43, 19 February.

issues; organising training for Labor parliamentarians; and preparing material for electorate newsletters and press releases. There are reported to be three prohibitions on the CCSTU that would distinguish it from the GMS: there will be no media monitoring; no research on the Opposition; and no direct campaigning in elections. The Senate estimates process is also to be able to examine both its resourcing and the conduct of its staff.<sup>317</sup> It will be of interest to see whether the new accountability arrangements function effectively in practice and serve to keep the CCSTU from taking on more of the functions of the old GMS. There are also already reported pressures on the new government to re-centralise the campaign development process through the establishment of a new unit positioned, like the old GCU, in the Prime Minister's department.<sup>318</sup>

## High level governance: Government appropriations and ministerial accountability

Both before and after the election the Labor Government committed itself to substantial cuts to government campaign and market research expenditure. In each case, levels of expenditure were to be cut roughly in half. Capping advertising expenditure was never on the agenda. In 2005, there had been little enthusiasm among the members of the Senate Committee on either side of government for a fixed overall cap on advertising campaign spending, so the pre- and post-election commitments were always going to be reliant on ongoing budgetary discipline at the planning stage and the subsequent discipline of the government's guidelines. A number of campaigns were indeed cut in the May 2008 Budget. At the same time there was a significant \$20 million advertising commitment to the government's campaign against binge drinking as well as an estimated \$9 million commitment to a campaign on climate change.<sup>319</sup> The latter has been criticised by the new Opposition for being insufficiently detailed with respect to how an emissions trading scheme would work, but was also reported by the Auditor-General to comply with the new government advertising guidelines.

Under the Labor pre-election proposals for government advertising guidelines, all advertising and information campaigns in excess of a \$250 000 threshold would need to be vetted by the Auditor-General or a designate against 'criteria which limit public advertising to essential requirements for public information'.<sup>320</sup> The Labor-dominated Senate Finance and Public Administration References Committee reporting on government advertising and accountability in 2005

<sup>317</sup> Mark Davis, 2008, 'Will the latest aNiMaLS be CUTSies or go CaCTUS?', *Sydney Morning Herald*, 25 February.

<sup>318</sup> Lara Sinclair, 2008, 'Labor set to fall off the ad wagon', *Australian*, 31 March.

<sup>319</sup> Chee Chee Leung, 2008, 'Critics slam \$9m green ad campaign', *Age*, 23 July.

<sup>320</sup> Rudd and Wong, 'Federal Labor To Lift Standards'.



had favoured a flexible compliance mechanism rather than giving the Auditor-General the power to cancel a campaign that failed to meet the standard set by the government's guidelines. Any campaigns over the dollar cut-off would be submitted to the Auditor-General by the department proposing to incur the expenditure. The Auditor-General would then report back to the department and the portfolio minister about whether the proposed campaign complied with the government's guidelines on government advertising, and the extent of any non-compliance.

If changes were required to bring the campaign into compliance, they could be made, or else could be ignored. Every six months, the Auditor-General would be required to table a report in the Parliament setting out his or her assessment against the guidelines of the advertising campaigns that had been implemented during that six-month period. If a department persisted with a campaign that the Auditor-General had assessed as not complying with the guidelines, and had provided reasons for that course of action, those reasons would be included in the tabled report. If a department had amended a campaign in the light of the Auditor-General's initial assessment, the Auditor-General would not table the initial report but only the final assessment made of the campaign.

PAGE 101

The Rudd Government's new *Guidelines on Campaign Advertising by Australian Government Departments and Agencies* appeared at the beginning of the 2008–09 financial year. The new guidelines met the government's commitments to provide indicators of what should be taken into account in considering whether advertising material to be disseminated is party-political in its nature. These indicators are substantially based on the version of the Guidelines tabled by the Joint Committee of Public Accounts and Audit in 2000 and retained as a recommendation, with amendments, by the Senate Finance and Public Administration References Committee in its 2005 report. Consistent with those amendments, and in response to the High Court's decision in *Combet*, the new guidelines also specify that only policies or programs underpinned by legislative authority, or an appropriation of the Parliament, should be the subject of an advertising campaign. Interestingly, they make provision for campaigns arising from 'a Cabinet Decision which is intended to be implemented during the current Parliament', which does appear to open a back door around the general rule to permit a 2005 *WorkChoices*-style campaign.

The substantial difference between the 2005 and 2008 guidelines lies in the roles of the Auditor-General and the relevant minister. In the new guidelines the real

accountability for government advertising no longer falls between ministers and the Auditor-General. It has been pushed further down to agencies. Henceforward, government campaigns can be approved for launching by a minister only when the chief executive of the agency undertaking the campaign certifies that the campaign complies with the Guidelines and relevant government policies; and, for those campaigns with expenditure in excess of \$250 000, the Auditor-General also provides a report to the Minister responsible for the agency undertaking the campaign on the proposed campaign's compliance with the Guidelines. While the Auditor-General still reports to the relevant minister, ministerial decision-making would now appear to be dependent on certification by the agency head. The effect of this provision will be considered at length below under changes to arrangements in the APS, but despite Opposition protests<sup>321</sup> it appears to represent a very useful means of building accountability into the conduct of government marketing.

## APS governance: Agency and individual accountability

Until the release of the 2008 guidelines, public servants continued to depend on the APS Values and on the guidance associated with them, both of which could be, and have been, interpreted differently, for example, in the case of the 'Know where you stand' campaign. In December 2007, however, the Australian Public Service Commission circulated some new guidance for public servants in relation to decision-making with respect to their involvement in government marketing campaigns. Following the change of government, and consistent with the new government's pre-election commitment, the Public Service Commissioner amended *The APS Values and Code of Conduct in Practice* as it applied to 'Involvement of public servants in public information and awareness initiatives'. Underpinning the new guidance was the longstanding distinction between explaining government policies and advocacy. According to the guidance, public servants continue to have legitimate responsibilities to explain government policies and programs, so long as they are careful not to cross the line into advocacy. The new advice raises as areas of particular concern two issues that arose during the *WorkChoices* campaign: the sensitivity associated with explaining government policies or programs that are as yet only proposed; and the need, when explaining government policies and programs, to ensure that attempts to correct community misconceptions are not perceived as criticisms of the Opposition. There is no indication in the advice that any individual has crossed the line between information and advocacy in either of these areas,

<sup>321</sup> Michael Ronaldson, 2008, Media release by the Shadow Special Minister of State: 'Rudd Government's Advertising Guidelines Is Status Quo', 2 July. <[www.liberal.org.au/info/news/detail/20080702\\_Ruddgovernmentsadvertisingguidelinesisstatusquo.php](http://www.liberal.org.au/info/news/detail/20080702_Ruddgovernmentsadvertisingguidelinesisstatusquo.php)>

only that they constitute examples of cases in which particular care needs to be exercised when explaining government programs and policies.

According to the same guidance, there is also a new and notionally distinct category of government marketing that is called 'public information promotion'. This is made up of 'advertising campaigns designed to publicise and promote, as opposed simply to explain, a Government policy or programme', and is not confined to any particular advertising medium. According to the Commission:

Public servant involvement in these types of campaigns involves a significant risk of perceptions of political bias. In particular:

the distinction between information and advocacy is likely to become blurred significantly in a campaign to 'sell' a particular Government policy or to correct public perceptions of that policy

the nature and format of electronic advertising, tending to focus on sound bites and image rather than detailed interpretation, also risks perceptions that the public servant is selling the policy or programme rather than objectively explaining it.<sup>322</sup>

PAGE 103

In these circumstances, government marketing campaigns may well tend to straddle explanation and advocacy. For this reason, the Commission guidance requires agency heads who wish to use public servants in these types of campaigns on public interest or public safety grounds to first seek the agreement of the Public Service Commissioner. In fact these public information promotions are not substantially different from the social marketing campaigns involving television, radio or print media previously recommended by the Commission as means of tackling complex problems such as obesity and smoking. Those, too, certainly publicise and promote, as well as simply explain a government policy. They also use 'the nature and format of electronic advertising, tending to focus on sound bites and image rather than detailed interpretation'. It follows that social marketing also risks giving rise to perceptions that a government policy is being sold as well as explained—and indeed it could be argued that some selling is required to change ingrained public habits. Why is it consistent with the APS Values to develop campaigns in which the distinction between explanation and advocacy can become blurred, but not to appear in them?

So far, questions of this nature have not been aired. In practice public servants have provided services required to deliver government advertising campaigns, and have done so without public debate about whether any particular campaign

<sup>322</sup> Australian Public Service Commission, Circular No. 2007/5: 'Involvement of public servants in public information and awareness initiatives' (last updated 12 December 2007). <<http://www.apsc.gov.au/circulars/circular075.htm>>

should be classed as community information, promotion, social change, or even partisan in presentation or content. Partly this has occurred because public servants do not conduct public debates that could embarrass a government. Partly it has been a matter of public service culture. I have argued elsewhere that s10(1)(k) of the APS Values, which focuses on achieving results and managing performance, when taken together with all the administrative machinery that services and disciplines it, tends to focus public servants' minds on the end rather than the means.<sup>323</sup> Responsiveness and performance are hardwired into the Values and other service-wide legislation, service-wide policies, and agency arrangements that support them. In the absence of very clear alternative guidance, the default response is to give satisfaction.

What would happen if a public servant were to advise a senior officer or even the minister that, consistent with their understanding of their legal obligations deriving from the *Public Service Act 1999*, they were not able to provide services connected with a particular marketing campaign approved by their agency minister? In a range of circumstances, such a refusal could constitute professional conduct. It follows directly from the *Guide on Key Elements of Ministerial Responsibility* (last issued in 1998), which specifies that 'Ministers should be scrupulous in avoiding asking public servants to do anything that the APS principles did not permit, and in particular should not ask them to engage in activities which could call into question their political impartiality'.<sup>324</sup> According to the Public Service Commission's new *Guidelines on the involvement of public servants in public information and awareness initiatives*:

If such a request were ever made of a public servant by a Minister or his/her staff, the public servant must refuse. This is a legal obligation deriving from s10 and s13 of the *Public Service Act 1999*, which set out the APS Values and the APS Code of Conduct respectively.<sup>325</sup>

It will be very interesting to see if any such refusals occur and are made public, and in that event, how they are managed. There would be definitional issues. The previous government, which was responsible for the ministerial guidance that underpins the more recent Commission guidance, would presumably have denied ever asking public servants to do anything that the APS principles do not permit, and in particular asking them to engage in activities which could call into question their political impartiality. How would public servants be able to demonstrate that their action or inaction in response to a particular request or

<sup>323</sup> MacDermott, *Whatever happened to frank and fearless?*

<sup>324</sup> The Government's *Standards of Ministerial Ethics*, which replaces Chapter 5 of the *Guide on Key Elements of Ministerial Responsibility* last issued in 1998, emphasises that Ministers must accept accountability for the exercise of their powers and the functions of their office. <[http://www.dpmc.gov.au/guidelines/docs/ministerial\\_ethics.pdf](http://www.dpmc.gov.au/guidelines/docs/ministerial_ethics.pdf)>

<sup>325</sup> Australian Public Service Commission, Circular No. 2007/5: *Involvement of public servants in public information and awareness initiatives*.

direction is a matter of protecting the political impartiality of the public service? And yet if they do not demonstrate the grounds for their behaviour, they may be accused of having breached one set of Values in their efforts to protect another.

A public servant concerned about activities that could call into question their political impartiality would have to approach senior managers if any refusals to act were to be sanctioned and defended. Yet these senior managers could be the same senior managers whom they have seen sanction or undertake the kinds of 'risk management' strategies considered in the case studies. Remember also that in 2006–07, 26 per cent of public servants did not agree that the most senior managers in their agencies acted in accordance with the Values, and 41 per cent did not agree that senior managers in their organisations led by example in ethical behaviour.<sup>326</sup> In addition to dealing with their managers, concerned public servants would also have to deal with their colleagues: what would *their* position be if they continued to provide campaign support while the question of apolitical professionalism had been raised but remained unsettled?

PAGE 105

If public servants were to consider applying the Commission's guidance to their involvement in government marketing—if they were to contemplate approaching their senior managers about activities which could call into question their political impartiality—there would be a need for accountability arrangements linking broad Commission guidance on the application of the APS Values to individual conduct in government marketing. These arrangements can now be underpinned by the new guidelines on government advertising. As indicated above, under the new guidelines government campaigns can be approved for launching by a minister only when the head of the agency undertaking the campaign certifies that it complies with the guidelines and relevant government policies. There is no minimum value set on these campaigns, as there is for campaigns that are also to be brought to the attention of the Auditor-General. Accountability is decentralised, which means that a central coordinating body such as the former GCU would have a reduced capacity to shape campaign content and format. An entity such as the MCGC would have virtually no *raison d'être*, because 'ministers will be briefed on the progress of campaign development, but responsibility for that development will be wholly undertaken by the commissioning department'.<sup>327</sup> According to the responsible Minister, the Special Minister of State, these are deliberate design features of the new arrangements:

<sup>326</sup> Australian Public Service Commission, 2007, *State of the Service Employee Survey Results 2006–07*, Canberra, p. 32 question 39 and p. 57 question 79. Such a discrepancy has persisted since the introduction of the question on ethical behaviour in 2004–05.

<sup>327</sup> John Faulkner and Lindsay Tanner, 2008, 'New Advertising Guidelines', 2 July. <[http://www.smoss.gov.au/media/2008/mr\\_222008\\_joint.html](http://www.smoss.gov.au/media/2008/mr_222008_joint.html)>

Every advertising campaign will now be certified against the new guidelines by the chief executive of the commissioning department or agency, and major campaigns will be reviewed by the Auditor-General before they can go ahead. These new procedures will now give the public confidence that campaigns are legitimately authorised, properly targeted and non-political. Gone is the Ministerial Council on Government Communications, which put politics into government advertising. Our new process restores responsibility for advertising to the public service. It relies heavily on the judgement and integrity of agency heads who are required to sign off that the content of advertising meets strict new guidelines.<sup>328</sup>

The content for which individual agency heads will be responsible extends to commissioning, research and communications strategies, and creative decisions associated with campaigns, and their responsibility will call forth a chain of accountability down the line. A senior public servant—the relevant division head or the head of the public affairs area—will have to be accountable to the agency head for presenting a campaign that is able to be certified. If the senior public servant were prudent, that sign-off would be premised on a formal record or checklist confirming that the planned campaign had been considered by the relevant line area during its development and judged to meet the guidelines.

Maintenance of such a record in such circumstances has in fact been recommended by the UK Auditor-General, as helping to keep the lines of accountability clear;<sup>329</sup> and the section of the new Commonwealth Government guidelines setting out the factors that may cause a campaign to be perceived as party-political offers the basis for developing such a checklist. According to Guideline 3:

Material should not be directed at promoting party political interests. Material should be presented in a manner free from partisan promotion of government policy and political argument, and in objective language. The dissemination of information using public funds should not be directed at fostering a positive impression of a particular political party or promoting party political interests. Dissemination of information may be perceived as being party-political because of any one of a number of factors, including:

- a. the content of the material—what is communicated;
- b. the source of the campaign—who communicates it;
- c. the reason for the campaign—why it is communicated;

<sup>328</sup> John Faulkner, 2008, 'New Directions: Setting the Agenda on Accountability and Integrity', 16 July. <[http://www.smoss.gov.au/speeches/2008/sp\\_20080716.html](http://www.smoss.gov.au/speeches/2008/sp_20080716.html)>

<sup>329</sup> National Audit Office (UK), 2003, *Government Advertising*, p. 3 para 1.6. <[http://www.nao.org.uk/publications/gov\\_advertising.pdf](http://www.nao.org.uk/publications/gov_advertising.pdf)>

- d. the purpose of the campaign—what it is meant to do;
- e. the choice of media—how, when and where it is communicated;
- f. the timing, geographic and demographic targeting of the campaign;
- g. the environment in which it is communicated; or
- h. the effect it is designed to have.

The information and material presented in a campaign should not:

- a. mention the party in government by name;
- b. directly attack or scorn the views, policies or actions of others such as the policies and opinions of opposition parties or groups;
- c. include party-political slogans or images;
- d. be designed to influence public support for a political party, a candidate for election, a Minister or a Member of Parliament; or
- e. refer or link to the websites of politicians or political parties.

PAGE 107

Those required to apply a checklist derived from Guideline 3 would see the value in substantive training on the nature of the guidelines and the type of judgment involved in their application. Over time, the numbers of public servants with relevant training and experience in decision-making around campaign propriety would increase, particularly in agencies where campaigns are more likely to occur. In any event, making agency heads responsible makes their agencies responsible, and means that the intersection of the APS Values with government marketing will make more operational sense to public servants. If, as Orr has suggested,<sup>330</sup> advertisements were also tagged as the product of the relevant portfolio agency rather than of the Australian Government, the accountability framework would be further tightened and the incentive for ‘feel good’ campaigns further reduced.

The requirement that government marketing campaigns meet formal standards of non-partisanship means that reporting can be made more transparent at the administrative level without the risk of giving rise to embarrassment at the ministerial level. Accompanying the new guidelines is a commitment to table in parliament a biannual report, proposed for the periods ending 30 June and 31 December, which will make available the expenditure for all campaigns commissioned by any agency.<sup>331</sup> Campaign costs are defined at paragraph 10 of the new guidelines to include:

<sup>330</sup> Orr, ‘Government advertising: Informational or self-promotional?’.

<sup>331</sup> Department of Finance and Deregulation, 2008, *Guidelines on Campaign Advertising by Australian Government Departments and Agencies*, ‘Underlying Principles’. See Faulkner and Tanner, ‘New Advertising Guidelines’ for timing of reports.

those activities involved in the development, production and dissemination of information to the public about government programs, policies and matters which affect their benefits, rights and obligations. Examples of these activities include:

- a. the use of market research agencies, public relations consultants, advertising agencies and/or other specialist consultants in the development of such material; and
- b. the production of press, radio, on-line, other electronic media, cinema and television advertisements, audio-visual material and printed material (pamphlets explanatory booklets, etc).

The first biannual report should cover the period 1 July 2008–31 December 2008. There is no indication of how the reporting will be broken down. New reporting standards could, as Young has argued, draw on the Canadian model, which is comprehensive, functional, and readily adapted to the Australian framework. Agencies are likely to be required to adhere to a common reporting format in making their data available to the Department of Finance and Deregulation for the purposes of the biannual reports, and should use the same format for their own annual reporting. In the case of larger campaigns, data could be broken down to specify payments for market research, creating and producing the advertisements themselves, media placement, production and distribution of other advertising material.

PAGE 108

Thus far, there is no indication that the Rudd Government intends to implement the additional requirement for Canadian reporting of making available the costs of evaluating the effectiveness of a campaign or to publish effectiveness indicators.<sup>332</sup> Nor is there an indication of whether the government intends, consistent with Recommendation 12 of the 2005 Senate report, to require that either agency reports or the biannual reports separately identify not only the costs of market research undertaken for the campaign but also its key findings. The new guidelines specify at paragraph 11 that ‘campaigns should only be instigated where a need is demonstrated, target recipients are clearly identified and the campaign is based on appropriate research’. This at least provides a ground for including market research in accountability documentation. Consistent with Recommendation 13 of the 2005 Senate report, agency heads could task a senior agency officer with responsibility for lodging the full text of any market research with the Parliamentary Library, and the agency annual report or the central biannual report or both could report on what had been lodged.

<sup>332</sup> Sally Young, 2007, ‘Following the money trail: Government advertising, the missing millions and the unknown effects’, *Public Policy*, 2 (2): p. 104ff.



That mechanism could be reinforced at the parliamentary level by changes to the appropriations process to enhance accountability following the decision in *Combet*. A number of eligible changes have been outlined by Lindell.<sup>333</sup>

The suite of measures that could be usefully pursued by the government in addition to those to which it has committed itself is set out at Table 6.2.

**Table 6.2: Government advertising: Further proposals**

<b>Parliamentary appropriations and ministerial accountability</b>	
amend s72 in future appropriations bills	Lindell <sup>a</sup>
increase specificity of departmental expenditure in appropriation	Lindell <sup>a</sup>
review Compact of 1965	Lindell <sup>a</sup>
use riders in appropriations Acts to limit authority to spend	Lindell <sup>a</sup>
use Senate standing committee to scrutinise compliance	Lindell <sup>a</sup>
consider imposing 'public interest' license requirements on broadcasters to include community/public service government advertising	Young and Tham <sup>b</sup>
central reporting mechanism to include major campaign evaluations	Senate report, Recommendation 10 <sup>c</sup>
<b>Agency and individual accountability to minister and Parliament</b>	
advertisements especially social change tagged by agency not government	Orr <sup>e</sup>
documentation of reviews of propriety (eg checklist)	UK Auditor general <sup>d</sup>
training in rules of propriety	UK Auditor general <sup>d</sup>
agency annual reports on costs/type/key points market research	Senate report, Recommendation 12 <sup>c</sup>
agency to provide access to market research (eg Parliamentary Library)	Senate report, Recommendation 13 <sup>c</sup>

<sup>a</sup> Geoffrey Lindell, 2007, Submission to the Senate Committee on Finance and Public Administration Reference on Transparency and Accountability of Commonwealth Public Funding and Expenditure.

<sup>b</sup> Sally Young and Joo-Cheong Tham, 2006, *Political finance in Australia: A skewed and secret system*, Democratic Audit of Australia Report No. 7.

<sup>c</sup> Senate Finance and Public Administration References Committee, 2005, *Report of the Inquiry into Government advertising and accountability*.

<sup>d</sup> National Audit Office (UK), 2003, *Government Advertising*.

<sup>e</sup> Graeme Orr, 2006, 'Government advertising: Informational or self-promotional?', Democratic Audit of Australia.

<sup>333</sup> Geoffrey Lindell, 2007, Submission to the Senate Committee on Finance and Public Administration Reference on Transparency and Accountability of Commonwealth Public Funding and Expenditure.

The proposals in Table 6.2 remain eligible for consideration by government as means of extending and cementing its current reforms. But the new guidelines, and notably their positioning in terms of public service accountability arrangements, constitute a very considerable step forward. While adherence to standards of propriety in government advertising is not altogether dependent on maintaining decentralised machinery of government, it is important that centralised functions remain confined to media placement and overall accounting. The notion of a specialist central agency advising on campaign development as well as media placement has been pursued in the UK together with what appears to have been a generally disciplined application of standards of propriety in government advertising.<sup>334</sup> But the UK Auditor-General has found that the lines of accountability between the central and line agencies can become muddled; and experience with the GCU also suggests that the more marketing functions are centralised, the easier it is for responsiveness to displace accountability. Intuitively, this would not seem likely. Centralised machinery of government should simplify and clarify lines of accountability; but in practice the increased control it provides to particular ministers, coupled with the increased scope to lose responsibility between the cracks of inter-agency activity, means that accountability is reduced. In addition, the more accountability is pushed down to line agencies, the more it is likely to be pushed down within agencies to line staff. The more it is pushed down to line staff, the more likely it is to affect broader agency culture. Standards of propriety for campaign development would be applied to campaign-related activities such as the drafting of relevant public statements and publications, the analysis of pertinent data, and administrative decision-making around the disclosure of relevant information.

The new government has committed itself to other systemic changes that would affect the balance between responsiveness and accountability in the decision-making of the public service. The number of ministerial advisers has been reduced to 1996 levels. While at least one commentator has raised concerns that the high numbers of new advisers from State (Labor) jurisdictions will bring with them increased expectations of partisan conduct,<sup>335</sup> the government has met its commitment to introduce a Code of Conduct for Ministerial Advisers, which took effect on 1 July 2008. What is more, the Code specifically notes that advisers do not have the power to direct public servants in their own right, and commits ministerial staff not to 'knowingly or intentionally encourage or induce a public official by their decisions, directions or conduct to breach the law or parliamentary obligations or fail to comply with an applicable code of ethical

<sup>334</sup> National Audit Office (UK), *Government Advertising*, p. 11 para 3.5.

<sup>335</sup> Christian Kerr, 2008, 'Patron states of Canberra', *Weekend Australian*, 14–15 June, p. 24.

conduct'.<sup>336</sup> Senior ministerial advisers are now briefed by senior staff from the Australian Public Service Commission and Department of the Prime Minister and Cabinet as part of a compulsory induction program. Further changes are already in train—changes to appointment arrangements for contracted agency heads, to workplace industrial relations arrangements for agency employees, and to systems for managing integrity complaints from whistleblowers.<sup>337</sup>

The Rudd Government has also committed itself to complementary changes to systems that regulate public servants' capacity to apply strategic public relations to the flow of information.<sup>338</sup> These include the sometimes prohibitive costs that can be associated with Freedom of Information requests, journalist shield laws, and suppression orders. They also include a number of initiatives already put in train: the government has announced plans to release an exposure draft of FOI reform legislation for public comment and consultation late in 2008 containing proposals for implementing its broader FOI reforms. These are to include the establishment of an FOI Commissioner, and other measures to improve and streamline the FOI Act. Cabinet has agreed to the abolition of conclusive certificates as a 'step towards restoring trust and integrity in the handling of Government information'.<sup>339</sup> If, as foreshadowed, these initiatives are fully implemented and promote a 'pro-disclosure culture' across the bureaucracy, some of those disclosures might well include both standardised agency electorate briefs and market research. Alternatively, electorate briefs could be lodged with the Parliamentary Library together with market research, consistent with the proposal in Table 6.2 above.

Taking into account what has already been done, it is fair to say that many of the institutional concerns raised in this report in relation to government advertising and public access to information have been substantially addressed or bid fair to be so addressed. The combination of decentralised campaign development and independently tested standards of propriety will make judgements about the distinction between explaining and selling more commonplace and more meaningful. Depending on how the guidelines are implemented, they could be made to re-weight the APS Values where government marketing is concerned, so that accountability balances responsiveness. Accountability mechanisms act as a shield for professionalism as well as a sword against the unprofessional. Informal discussions suggest, for example, that the requirement for senior public servants

<sup>336</sup> <[http://www.smos.gov.au/media/code\\_of\\_conduct.html](http://www.smos.gov.au/media/code_of_conduct.html)>

<sup>337</sup> See Kevin Rudd and Joe Ludwig, 2007, *Government information: Restoring Trust and Integrity: Election 2007 Policy Document*, p. 9, and John Faulkner, 2008, Media Release: 'Inquiry into Whistleblower Protection', 11 July, <[http://www.alp.org.au/download/now/071026\\_government\\_information\\_policy.pdf](http://www.alp.org.au/download/now/071026_government_information_policy.pdf)> <[http://www.smos.gov.au/media/2008/mr\\_242008.html](http://www.smos.gov.au/media/2008/mr_242008.html)>

<sup>338</sup> See Rudd and Ludwig, *Government information*, p. 5ff.

<sup>339</sup> John Faulkner, 2008, Media release: 'Freedom of Information Reform', 22 July, <[http://www.smos.gov.au/media/2008/mr\\_252008.html](http://www.smos.gov.au/media/2008/mr_252008.html)>

to be directly accountable to parliament through the Senate Estimates process has provided those public servants with a ground for refusing inappropriate requests from ministers or their advisers. Whether these changes to machinery of government and governance around marketing will change the nature of the permanent campaign is more speculative and is the subject of the next chapter.

## Chapter 7: Conclusion

Changes to organisational structures and to governance can, if they are more than cosmetic, guide decision-making, and, in the event of pressure to behave badly, give individual public servants a process to appeal to. If they are well designed, they can help public servants to find the difficult balance between responsiveness and apolitical professionalism. There is, however, a higher level question, which is whether any systems change, however comprehensive, could effectively de-institutionalise what Ward calls ‘the PR state’ and what many public servants have experienced as the ‘permanent campaign’. Would standards of propriety coupled with clear lines of accountability be enough to deflate ‘the aspiration of public relations practitioners to exercise a higher level of influence in an organisation’?<sup>340</sup> Or are the preoccupations of strategic public relations now fully integrated into the public service’s approach to risk management, regardless of whether there are smaller advertising budgets or enforceable guidelines controlling marketing campaigns?

Poor systems enable poor conduct to flourish, but they do not cause it. The real driver of such conduct is not particular systems at all, but rather the underlying institutional change described by Ward and others—the substitution of political marketing strategies for a broad party membership base, and an associated reliance on building the public profile of party policies and leaders, including ministers. In the absence of structural/legal governance protections, many public servants have been drawn into this new kind of work, and have pursued it in compliance with the systems that drive broader public service responsiveness. So long as ministers have continued to rely heavily on marketing and market research, they have continued to involve public servants in that activity; if their

<sup>340</sup> Australian Government, 2005, Public Sector Management Unit 2, *Managing out: The public sector in the community*, Topic Eight: ‘Managing the media and public relations’, p. 328.

reliance changes, the involvement of public servants will change also, though it will never cease to exist. Even if the new government continues to meet its commitments to reduce political promotion through public marketing, the public service will not be excused from its direct public relations functions: speech-writing and preparing press kits, responses to possible parliamentary questions, letters to the editor, 'opinion editorial' pieces or articles, and ministerial talking points for all occasions. Increased public relations activity may even be expected by some ministers to fill some of the void left by paid advertising.

So long as a given government's requirements are consistent with the law, the public service will be obliged to take whatever role government wants it to take. Its work is increasingly contestable and in any event it must remain responsive to the democratically elected government. Its Values may be enduring but they are also set by the Public Service Act at a very high level so as to be very adaptable. The legislated APS Values will not have to be amended to implement the proposed reforms, and if the reforms were to be reversed by a subsequent government, the Act would not have to be amended again. The words of guidance around the involvement of public servants in public information and awareness initiatives have remained substantially the same. The injunction to refuse improper requests from ministers is forceful but not substantially new. The new prohibition on appearing in the 'format of electronic advertising'—although entirely worthy—illustrates the problem. Has this distinction always been implicit in the application of the APS Values to decision-making? If so, the Howard Government did not apply it to the case of the 'Know where you stand' campaign. Or has the distinction between electronic and other forms of advertising only emerged because the new government has a policy about using public servants in electronic advertising?

There is after all also a public relations purpose in disciplining the public service systems that support marketing, and that is to prevent a situation in which 'cynicism builds about the government's motivations, doubts grow about whose interests are being served, and we lose trust in each other'.<sup>341</sup> The spread of such cynicism is no more in a government's medium-term interests than it is in the longer-term interests of Australian democracy. Australia is not the only country that is exercised by this problem. The Phillis report—an independent review of government communications presented to the UK Minister for the Cabinet Office in 2004—contained a number of recommendations seeking to increase the transparency of government machinery and governance arrangements because 'increasing the transparency of government communications is an important

<sup>341</sup> Penny Wong, 2007, 'Labor's Approach to the Australian Public Service,' Speech to the Institute of Public Administration Australia, p. 3. <[www.alp.org.au/media/0907/spepaa200.php](http://www.alp.org.au/media/0907/spepaa200.php)>

strand in helping to improve public trust'.<sup>342</sup> During its first two months in power, the Rudd Government made the same point in relation to the publication of scientific research,<sup>343</sup> the reporting of terrorist cases,<sup>344</sup> and the advocacy activities of welfare groups receiving grants.<sup>345</sup> So long as the new government sees it as desirable to minimise cynicism about the motivations underlying its marketing activities, the new accountability arrangements will proceed and will be made to work.

The new arrangements should mean that public resources can be redirected from 'fostering a positive impression of a particular political party or promoting party political interests' to 'the provision of objective, factual and explanatory information'.<sup>346</sup> Some of the funds formerly earmarked for opinion polling might find their way into meaningful public consultation and substantive research. Policy-based evidence would lose ground to evidence-based policy. This may in turn reduce—not remove, but reduce—some of government's sensitivity to public debate in those areas of its operations that are administered by public servants. The evidence on which policy has been based and the evidence about how it is working would not have to be so comprehensively risk-managed. This would in turn further 'drive cultural change across the bureaucracy to promote a pro-disclosure attitude'.<sup>347</sup>

At a higher level, a clear line of accountability for public servants engaged in government marketing should indicate that government is not interested in obscuring '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'.<sup>348</sup> It should indicate that for this government at this time in this area of activity there is no inconsistency between the public service values associated with achieving results, and those associated with open accountability. It should assist the public service culture to settle into a new balance between responsiveness and apolitical professionalism. If they work long enough, the new arrangements could result in increased public trust and reduced cynicism

<sup>342</sup> Bob Phillis, 2004, *An Independent Review of Government Communications Presented to the Minister for the Cabinet Office*, p. 14. <<http://archive.cabinetoffice.gov.uk/gcreview/News/FinalReport.pdf>>

<sup>343</sup> Kim Carr, 2008, Media release: 'Charter to protect Scientific Debate', 16 January. <<http://minister.industry.gov.au/SenatortheHonKimCarr/Pages/CHARTERTOPROTECTSCIENTIFICDEBATE.aspx>>

<sup>344</sup> Statement from Robert McClelland reported in Samantha Maiden, 2008, 'McClelland rebukes Keely's media ban', *Australian*, 31 January.

<sup>345</sup> Julia Gillard quoted by Matthew Franklin and Stephen Lunn, 2008, 'Critics in "climate of fear": Gillard', *Australian*, 9 January.

<sup>346</sup> Department of Finance and Deregulation, 2008, *Guidelines on Campaign Advertising by Australian Government Departments and Agencies*, guideline 3, para 19; guideline 2, para 14. <[http://www.finance.gov.au/Advertising/docs/guidelines\\_on\\_campaign\\_advertising.pdf](http://www.finance.gov.au/Advertising/docs/guidelines_on_campaign_advertising.pdf)>

<sup>347</sup> See Rudd and Ludwig, *Government information*.

<sup>348</sup> Senate Finance and Public Administration References Committee, 2005, *Report of the Inquiry into Government advertising and accountability*, p. 3 para 1.14.

about the messages put out by government. They might even (as the Phillis report speculated in the UK) increase interest and involvement in politics at the grassroots and thereby reduce government's reliance on the PR state. For this to occur, however, the Government would have to hold its nerve over the medium term. It would also help considerably if it were to make use of forums such as the Council of Australian Governments to spread the reforms across other Australian jurisdictions.



## Further Reading

### On Australian theory and practice

PAGE 117

- Childs, Fiona, 2007, 'Federal government advertising 2004–05', Parliamentary Library Research Note 2, 2006–07. <<http://www.aph.gov.au/library/pubs/rn/2006-07/07rn02.htm>>
- Evans, Harry, 2006, 'Government advertising—funding and the financial system', *Parliament Matters*, 15.
- Grant, Richard, 2004, 'Federal Government Advertising', Parliamentary Library Research Note 62. <<http://www.aph.gov.au/library/pubs/rn/2003-04/04rn62.pdf>>
- Lindell, Geoffrey, 2007, 'The Combet Case and the Appropriation of Taxpayers' Funds for Political Advertising—an Erosion of Fundamental Principles?', *Australian Journal of Public Administration*, 66 (3): pp. 307–28.
- Marsh, Ian, 2007, 'Australia's Political Institutions and the Corruption of Public Opinion', *Australian Journal of Public Administration*, 66 (3): pp. 329–341.
- Orr, Graeme, 2006, 'Government advertising: Informational or self-promotional?' Democratic Audit of Australia Workshop Paper. <[http://democratic.audit.anu.edu.au/papers/20060320\\_fin\\_orr.pdf](http://democratic.audit.anu.edu.au/papers/20060320_fin_orr.pdf)>
- Ward, Ian, 2003, 'An Australian PR state?', *Australian Journal of Communication*, 30 (1): pp. 25–42.
- Young, Sally, 2005 'Theories for understanding government advertising in Australia', Democratic Audit of Australia Discussion Paper. <[http://democratic.audit.anu.edu.au/papers/200508\\_young.pdf](http://democratic.audit.anu.edu.au/papers/200508_young.pdf)>
- Young, Sally, 2007, 'Following the money trail: Government advertising, the missing millions and the unknown effects', *Public Policy*, 2 (2): pp. 104–118.
- Young, Sally 2007b, 'The regulation of government advertising in Australia: The politicisation of a public policy issue', *Australian Journal of Public Administration*, 66 (4): pp. 438–52.

Young, Sally and Tham, Joo-Cheong, 2006, Political finance in Australia: A skewed and secret system, Democratic Audit of Australia Report No.7.  
<[http://democratic.audit.anu.edu.au/papers/focussed\\_audits/20061121\\_youngthamfin.pdf](http://democratic.audit.anu.edu.au/papers/focussed_audits/20061121_youngthamfin.pdf)>

### **On campaigns**

Australian Council of Trade Unions, 2005, 'Ad Campaign Background Information 23 June 2005'. <[http://www.actu.asn.au/work\\_rights/background\\_info/ad\\_background.html](http://www.actu.asn.au/work_rights/background_info/ad_background.html)>

Australian Government, 2005, WorkChoices Radio advertisements broadcast 22 and 22 July 2005. The Media and Communications Program at the University of Melbourne has posted these and other government advertisements on The Soapbox. <<http://soapbox.unimelb.edu.au/>>

van Onselen, Peter and Errington, Wayne, 2007, 'Managing expectations: The Howard government's WorkChoices information campaign', *Media International Australia*, 123: pp. 5–17.

Sally Young, 2007, 'A history of government advertising in Australia', in Sally Young (ed.) *Government Communication in Australia*, Melbourne, Cambridge University Press, pp. 194–97.

### **On the role of the public service**

Australian Public Service Commission, 2007, Circular No 2007/5: Involvement of public servants in public information and awareness initiatives (last updated 12 December 2007). <<http://www.apsc.gov.au/circulars/circular075.htm>>

Errington, Wayne and van Onselen, Peter, 2005, 'Public servants or partisan dirt-diggers?', *Australian Journal of Communication*, 32 (2): pp. 25–38.

Harrison, John, 2002, 'Appointed Public Officials and Public Relations Practice: Issues of Accountability, Ethics and Professionalism in the "Children Overboard" Affair', International Institute for Public Ethics Biennial Conference, Brisbane.

MacDermott, Kathy, 2008, *Whatever happened to frank and fearless? The impact of new public management on the Australian Public Service*, Canberra, ANU E-Press. <[http://epress.anu.edu.au/frank\\_fearless\\_citation.html](http://epress.anu.edu.au/frank_fearless_citation.html)>

### **On advertising guidelines**

Auditor-General, 1998, *Taxation Reform: Community Education and Information Programme*, Audit Report No. 12. <[http://www.anao.gov.au/uploads/documents/1998-99\\_Audit\\_Report\\_12.pdf](http://www.anao.gov.au/uploads/documents/1998-99_Audit_Report_12.pdf)>

Department of Finance and Deregulation, 2008, *Guidelines on Campaign Advertising by Australian Government Departments and Agencies*. <[http://www.finance.gov.au/Advertising/docs/guidelines\\_on\\_campaign\\_advertising.pdf](http://www.finance.gov.au/Advertising/docs/guidelines_on_campaign_advertising.pdf)>

National Audit Office (UK), 2003, *Government Advertising*. <[http://www.nao.org.uk/publications/Government\\_advertising\\_note.htm](http://www.nao.org.uk/publications/Government_advertising_note.htm)>

Senate Finance and Public Administration References Committee, 2005, *Report of the Inquiry into Government Advertising and Accountability*. <[http://www.aph.gov.au/Senate/Committee/fapa\\_ctte/completed\\_inquiries/2004-07/govtadvertising/index.htm](http://www.aph.gov.au/Senate/Committee/fapa_ctte/completed_inquiries/2004-07/govtadvertising/index.htm)>





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