



Political advertising in Australia

Advertising is a major component of election campaigns, with political parties spending millions of dollars at each election on advertisements selling their own policies and attacking those of their opponents. Australia has few laws governing such advertising, leaving parties effectively free to ‘say what they like’ in their advertisements. This brief explores some important aspects of political advertising, including the current legislation, the debates over ‘truth’ in content and the claims that Australia’s political parties are opting for ‘Americanised’, negative election advertisements.

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Executive summary

Within a day of Prime Minister John Howard calling the 2004 federal election, the media had started to predict the amount that the major political parties would spend on political advertising during the six-week election campaign. One story claimed that voters would be 'socked with a \$40m advertising blitz' in which the major parties would spend up to \$15 million each on mass media advertising and up to \$5 million each on direct-mail marketing.¹ Television advertising was to account for more than sixty per cent of the advertising budget. These figures remained consistent in media coverage throughout the election and in the post-election analysis, with rare exceptions arguing for a much lower amount of spending.²

The predicted combined \$30 million mass media advertising expenditure is significantly more than the combined \$17 million that the two major parties were said to have spent on advertising for the 2001 campaign.³ The total \$40 million package is also an increase on the total expenditure in the 2001, 1998 and 1996 campaigns, when the two major parties were said to have spent a combined \$30 million (2001 and 1998) and \$27.2 million (1996) on election marketing.⁴ In some respects, these expenditures pale into insignificance when compared with the enormous amounts spent on the presidential and general election campaigns in the United States. As at 27 August 2004, incumbent president George W. Bush and presidential hopeful John Kerry had spent a combined \$A299 million on campaign advertising for the November election.⁵ Nonetheless, the Australian expenditure represents a large portion of the reported incomes of Australia's major political parties, even allowing for the public funding that has offset the cost of their campaigns since 1984.

Cost is only one factor that must be considered when examining political advertising in Australia. Another important issue that has exercised the minds of parliamentarians, commentators and lawyers for some time is that of the actual *content* of political advertising, specifically whether it is possible to legislate for 'truth' in campaign advertisements. Twenty years ago, in 1984, an attempt was made to regulate for truth, but the law was repealed a mere eight months after it came into force. A week before Howard called the 2004 election, the issue of 'truth' in political advertising was again in the media, with articles claiming that political parties would be 'free to say what they like' during the coming campaign because 'new election advertising rules' meant there would be 'reduced scrutiny' of political advertisements.⁶ These articles reported that commercial television industry group Free TV Australia (formerly the Federation of Commercial Television Stations) had introduced 'new rules' and would 'no longer vet political advertising for accuracy or seek any substantiation of claims made in the advertisements'.⁷

In fact, the term 'new rules' is something of a misnomer, given that Free TV Australia had made the decision not to vet political advertisements two years earlier, in 2002, and had applied its rules in three state elections since then.⁸ Free TV Australia argued at the time of its decision that it had no legal grounds on which to force truth in political advertisements because such advertisements were not covered by the *Trade Practices Act 1974* and a

parliamentary committee had recommended against introducing laws prohibiting misleading or inaccurate political advertising. Currently, the only legislation governing the *content* of advertisements, whether broadcast or published, relates to defamation and information regarding the casting of a vote. Calls in the wake of the Free TV Australia decision in 2002 for either laws or an independent watchdog to govern political advertising did not result in action on either option.

Another major factor to be considered in a discussion of political advertising in Australia is the alleged move to an ‘Americanised’ style of campaigning, which is understood as shrill and uncivil campaigning primarily based on negative or ‘attack’ advertising. In the fourth week of the six-week 2004 election campaign, Labor leader Mark Latham dismissed a Liberal Party advertisement targeting his alleged failings as Liverpool mayor on the grounds that such a ‘dishonest’ and ‘personal’ advertisement reflected ‘American-style negative advertising’.⁹ However, academic analysis of Australian election campaigns since 1949 has found that, historically, Australia has had high levels of general negative advertising targeting policies, parties and the like in its election campaigns and that these levels have been higher than those of the United States. As a result, political scientist Sally Young concludes that, rather than reflecting a shift to ‘Americanised’ techniques, negativity in campaigning was ‘already a quite distinctly Australian feature’, with Australia anticipating or leading the trend towards general negative advertising.¹⁰ That said, Young acknowledges that a more recent move towards personalised, rather than general, negative advertising in Australia can be seen to reflect American campaign-advertising styles.

Whether negative campaigning, specifically negative advertising, is a successful campaign strategy is the matter of some debate in both the media and academic literature. Some argue that negative political advertising promotes political involvement in that it engages otherwise disinterested citizens, stimulating voter turnout and confirming a commitment to free speech. Others claim negative advertising is damaging to political participation, deterring the non-aligned from voting and entrenching existing partisan preferences. While the effect on turnout is not applicable to Australia, where voting is compulsory, other considerations remain relevant. For example, even critics of negative advertising concede that such advertisements are more potent than positive ones and that they may be useful in persuading swinging voters. Falling between the polar positions on negative advertising is a recent study that concludes that negative advertisements are no more effective in attracting voters than positive advertisements.¹¹ This study notes the assumption, often perpetuated in the media, that negative advertising works because voters exhibit greater recall of negative advertisements, but concludes that there is ‘no good evidence’ that they are more effective than positive advertisements.

Introduction

The media focus on the cost and content of political advertising in the 2004 election campaign provides an opportunity to explore some of the major underlying issues in the area of campaign advertising in Australia. This Research Paper is divided into four major sections:

- the first section offers a brief discussion of the concept of political advertising, outlining what is included under this term and noting that television has become an increasingly important outlet for advertising in today's election campaigns
- the second section covers the current rules and regulations governing election advertising in Australia and how these have developed. This section canvasses the debate over the regulation of the content of advertisements and compares the Australian situation with that of the United Kingdom, the United States, Canada and New Zealand. It also details the current requirements for identification ('written and authorised by') tags to accompany all advertisements and the imposition of an electronic media 'blackout' in the last three days before polling day
- the third section explores the cost of campaign advertising and the relationship between campaign costs and the election funding scheme that has been in place since 1984, and
- the fourth and final section examines the style of campaign advertising in Australia, including the alleged 'Americanisation' of election advertisements. This section reviews some of the major themes of Australian elections over the last 30 years, and discusses the impact of negative advertising on voters.

Defining 'political advertising'

Academic Sally Young has noted that there are three main contexts within which advertising can be considered to be 'political':

- government advertising, or the advertisements that governments use to promote or explain government policies and programs
- lobby group and private interest advertising, or the advertisements that unions, business leaders, 'issue' groups and so on use to sway public opinion and politicians, and
- election advertising, or the advertisements that candidates and parties utilise during an election campaign to persuade voters to vote for them.¹²

The focus of this paper is the latter form of political advertising, specifically election-related newspaper and broadcast advertisements. The issue of *government* advertising has been discussed in a separate Parliamentary Library publication, although it is worth noting here that, under caretaker conventions, non-essential government advertising stops once an election is called.¹³ The paper does not canvass lobby group and private interest advertising, nor does it discuss political campaigning more generally, which means it does not examine direct-mail or election posters and billboards. A separate, forthcoming brief will explore the campaign techniques of the 2004 federal election.

Undoubtedly, political advertising has become an essential part of the modern election campaign. Young goes so far as to argue that: 'Political advertising is now central to the

conduct, if not the results, of modern election campaigns'.¹⁴ It is a means by which candidates and parties can communicate directly with the electorate without any mediation.

Reaching the electorate: the importance of television

Television advertising is the preferred medium for political advertisements in Australia. Political scientist Clem Lloyd observed after the 1990 federal election:

From election to election, it becomes all too apparent that press advertising is gradually subsiding to the local campaign level, where it often retains a crude vitality. The principal thrust of national advertising has moved to television.¹⁵

Some commentators argue that the continuing importance of local issues in election campaigns means that mail-outs and more traditional types of political advertising remain effective because television is considered to be poor at targeting its message.¹⁶ In this context, television advertisements are directed at the most cynical or 'those who would not read political mail or intentionally expose themselves to any other type of political advertising'.¹⁷

However, this view understates the usefulness of, and reliance on, television advertisements. In the 2001 campaign, they accounted for about seventy per cent of the estimated \$30 million that the major parties spent on political advertisements.¹⁸ Opinion polls also reflect the importance of television as a medium for political advertising. In a 1990 poll, sixty four per cent said they had either 'often' or 'sometimes' watched party election campaign advertisements on television, compared with thirty six per cent citing newspapers and thirty three per cent radio.¹⁹ Table 1 shows the percentage of respondents who said that they paid either 'a good deal' or 'some' attention to election campaign material on television, radio and in newspapers. The table also reveals that a consistently higher percentage of Australians receive campaign information from television than from radio or newspapers.

Table 1: Attention paid to campaign information

	1990	1993	1996	1998	2001
Television	79	80	70	76	69
Radio	49	54	46	50	43
Newspapers	57	68	59	63	53

Source: *Australian Election Studies 1990–2001*

Rules governing political advertising

Most of the debates on political advertising in Australia focus on the *content* of the advertisements and whether they tell the truth or whether they contain inaccuracies and/or information designed to mislead the electorate. Before exploring these debates in detail, it is worth noting that there are some general rules related to political advertising, with legislation requiring that identification ('written and authorised by') tags accompany political advertisements and that advertisements not contain defamatory material.

Requirements for format and presentation

The *Commonwealth Electoral Act 1918* and the *Broadcasting Services Act 1992* set out the rules for the format and presentation of political advertisements in Australia. The Electoral Act contains the following requirements for the presentation of political advertisements:

- s. 328(1): any advertisement, handbill, pamphlet, poster or notice must carry the name and address of the person who authorised it, and, where the advertisement is not in a newspaper, it must also include the name and place of business of the printer
- s. 328(1A): any video recording containing electoral matter must have the name and address of the person who authorised it at the end of the recording, and
- s. 331: where an advertisement contains electoral matter, the proprietor of the journal in which it appears ('journal' here meaning newspaper, magazine or other periodical, whether published for sale or free distribution) must print the word 'advertisement' as a headline to the advertisement.

In addition, s. 334 of the Electoral Act makes it an offence for any person to write, draw or depict any electoral matter directly on any roadway, footpath, building, vehicle, vessel, hoarding or place.

Until the 2001 election, the law required that authors of 'letters to the editor' of newspapers and journals be identified during an election period. However, this requirement (under s. 332 of the Electoral Act) was repealed in 1999 on the basis that s. 328 of the Act 'operates constantly and effectively deals with authorisation requirements'.²⁰ Callers to talk-back radio shows during an election period do not have to be identified.

The Australian Electoral Commission notes in its background on electoral advertising that the 'written and authorised by' tag 'ensures that anonymity does not become a protective shield for irresponsible or defamatory statements'.²¹ It also notes that electoral advertisements must be authorised at all times, and not just during an election period.

Schedule 2 to the *Broadcasting Services Act 1992* places three key requirements on the broadcasters of political advertisements. Clauses 3, 3A and 4 of Schedule 2 require broadcasters to:

- give reasonable opportunities for the broadcasting of election matter to all political parties contesting the election that held seats in either the House of Representatives or the Senate immediately before the current election campaign (these broadcasts do not have to be free of charge)
- follow the screening of political matter with a 'written and authorised by' tag containing the name of the party or person authorising the broadcast, the town, city or suburb in

which the party or person is based, and the name of every speaker heard in the broadcast, and

- cease political advertisements in the three days before polling day (from midnight on the Wednesday before polling day to the close of the poll on polling day).

The aim of the last clause, which requires what is commonly known as the electronic media ‘blackout’, is to ‘provide a “cooling off period” for electors to consider their stance on the issues without the influences of electronic media advertising’.²² This provision had been in place for about 50 years before being deemed unnecessary in 1991 when a complete election advertising ban was imposed (see below). However, it was re-enacted in 1992 after a High Court decision declared the complete ban invalid. The ‘blackout’ can also be seen to prevent parties making claims late in election campaigns that cannot be scrutinised before election day.

In terms of the written and authorised tags, Australia has not (yet) followed the latest move in the United States that these tags be spoken by the actual candidate. The US Bipartisan Campaign Reform Act of 2002 requires candidates to use their own voices to endorse their advertisements at the same time as their images cover at least eighty per cent of the television screen. The aim of this provision is to force candidates to take responsibility for any ‘attack’ advertisements that they produce.²³ A prediction that the requirement would reduce the amount of negative advertising, given that ‘the long-standing practice in political advertising [is] to avoid like the plague associating your candidate with attack ads’, has not eventuated, with the 2004 presidential campaign featuring high levels of negative advertising.²⁴ This will be explored further below.

Minimal rules on the content of advertisements

As noted in the Introduction to this paper, there are few regulations governing the *content* of political advertising in Australia, although such regulation has been the subject of considerable discussion and controversy over the years. The Australian Electoral Commission notes that the federal parliament has determined that the Electoral Act:

... should not regulate the content of political messages contained in electoral advertising, rather, the intent of the Electoral Act is to ensure electors are informed about the source of political advertising, and to ensure that political advertising does not mislead or deceive electors about the way in which a vote must be cast.²⁵

Hence, the Electoral Act’s clauses on the content of political advertisements relate only to material that is defamatory or that may mislead voters as to how they mark their ballot papers. That is:

- s. 329(1) states that it is an offence to print, publish or distribute any matter or thing that is likely to mislead an elector in relation to the *casting of a vote*. Note here that this section applies not only to printed matter, but also to electoral advertisements broadcast on radio

or television. The important point about this section is that it relates only to the *technical* aspects of the way in which the ballot paper is actually marked.²⁶ This means that any assessment of what is misleading and deceptive can be based only on what the advertisement says about the technical aspects of *how* people mark their ballot papers, not material that influences *which* candidate or party people vote for.²⁷

- s. 350 (1) makes it an offence to make or publish any false and defamatory statement in relation to the personal character or conduct of a candidate, where that statement is proven not to be true.

Thus, there is no legislative control over advertising content that aims to influence voters in their choice of candidate or party, except in cases where defamatory content is proved.

Until 2002, the then Federation of Australian Commercial Television Stations (FACTS) dealt with complaints about the truthfulness of electoral advertising broadcast on commercial television. (FACTS has since changed its name to Free TV Australia. It vetted only television advertisements; there was no similar body vetting newspaper or radio advertisements.) The industry body had believed that political advertisements came under the auspices of the *Trade Practices Act 1974*, which would have given it control over the content of such advertising. (Under that Act, advertising can be challenged if it is misleading or deceptive, or is likely to mislead or deceive.²⁸) Accordingly, during the 2001 election campaign, FACTS forced the withdrawal of five advertisements that it deemed to be false or misleading.²⁹ However, after receiving legal advice that the Trade Practices Act did not regulate *political* advertisements, FACTS announced in November 2002 that it would no longer seek substantiation for statements made in political advertisements and would not consider complaints regarding the accuracy of statements.³⁰ It argued that, given that a Senate Finance and Public Administration Legislation Committee had rejected legislative options prohibiting misleading or inaccurate political advertising, it had no means of enforcement.³¹

The FACTS decision means that there are no legal or industry checks on the veracity of statements made in televised political advertisements. On 1 July 2004, Free TV Australia cleared a revised Commercial Television Industry Code of Practice with the Australian Broadcasting Authority, but this code does not mention political advertising beyond allowing in an election period the broadcast of an additional minute per hour of non-program matter that is political matter.³² Calls in the wake of the FACTS decision in 2002 for either laws or an independent watchdog to govern political advertising did not result in action on either option. As one media outlet explained: 'FACTS is basically washing its hands of the matter, handballing it to Australian Parliaments ... so it's open slather, as long as people aren't defamed'.³³ Senator Bob Brown lamented at the time that the FACTS decision was a disaster for democracy.³⁴

A brief period of content regulation

Although there is currently no legislation governing 'truth' in the content of political advertising, this was not always the case. In February 1984, parliament passed an amendment to the *Commonwealth Electoral Act 1918* to insert s. 329(2), under which it was an offence to

print, publish, distribute or broadcast any electoral advertisement containing a statement that was untrue or that was, or was likely to be, misleading or deceptive. The Australian Democrats introduced the section, which was subject to little scrutiny in parliament.

In September of the previous year, the Joint Select Committee on Electoral Reform, which was established in May 1983 to inquire into all aspects of the conduct of federal elections, reported for the first time. It essentially was silent on the issue of misleading political advertisements, citing only the need for an extended inquiry into the broadcasting and television provisions concerning elections. In the subsequent parliamentary debate on the amendments to the Electoral Act, including s. 329(2), only a few references were made to 'misleading advertisements'; much of the debate focused on the election funding and disclosure scheme.

In its second report, published in August 1984, the Joint Select Committee on Electoral Reform turned its attention to political advertising. Its principal recommendation was the repeal of s. 329(2), given the section's potential to 'seriously disrupt the orderly process of political campaigning'.³⁵ The committee noted the concerns of both its members and witnesses that the section allowed candidates to use injunctions to prevent the publication of an opponent's political advertisements, thereby obtaining publicity for the candidate and disrupting the opponent's advertising campaign.³⁶ Given the tight time-frame of an election campaign, a court ruling might not be made in time to be useful, which could cause 'grave injustice' to the candidate or party and 'disrupt the normal political process'.³⁷ The committee argued that, while fair advertising was a desirable objective, 'it is not possible to achieve such "fairness" by legislation', especially given that political advertising differed from other advertising in that it 'promotes intangibles, ideas, policies and images'.³⁸ It recommended that the 'safest course' was to leave the decision as to whether political advertising was true or false to voters and the law of defamation. In concluding that s. 329(2) should be repealed because its 'broad scope' made it 'unworkable', the committee expressed concern that the difficulties with the clause were not raised in the debate on the amendments to the Electoral Act (noted above) when it was introduced.³⁹

Democrat Senator Michael Macklin submitted a dissenting report to the main committee report in which he argued that it would be a 'denial of essential elements of democracy if all restraints on political advertising were removed'.⁴⁰ He noted that arguments that the electorate would 'reward or punish political parties for the truth or falsity of their advertising' were similar to assertions made during parliament's discussion of the Trade Practices Act that consumers would judge the truthfulness about advertisers' claims about their products.⁴¹ In that case, legislation regulating such advertising had been introduced because it was accepted that citizens often had insufficient information to be able to ascertain the truthfulness of product advertising for themselves. Macklin argued that voters also were excluded from full information and that the Australian Electoral Commission should therefore be responsible for monitoring the veracity of political advertising claims.⁴² He claimed that repealing s. 329(2) gave parliament 'a licence to lie', which 'cannot enhance the democratic process in any way'.⁴³

Most of the parliamentary debate on s. 329(2) came in October 1984 when the Labor government introduced a Bill proposing its repeal. Democrat senators continued their opposition to lifting the ban on misleading advertisements, arguing that the new Bill was deliberately timed to benefit the government in the forthcoming election campaign.⁴⁴ Senator Colin Mason reasoned:

[The Democrats] would like nothing more in this country than to see in the newspapers and the media balanced and reasonable advertisements which lay out the policies of political parties and their intentions for the future so that electors can read them and know before they vote that their content is true. ... But it cannot happen if we pass this Bill because we will take away the one slender, and admittedly difficult to administer, sanction that might encourage that process.⁴⁵

In a rejoinder to the Democrats' position, Labor Senator Robert Ray argued:

... we are concerned with the possibility of the democratic process being totally overturned by the secondary considerations in the Act—the injunction route. We are concerned that virtually every advertisement can be put off the air or out of the newspapers by injunction. The last thing we want is an election campaign in which a minority group, desperate for publicity and unprincipled, uses the injunction route to get publicity.⁴⁶

The broader argument was of the difficulty in separating opinion from fact. Liberal Senator Peter Durack observed:

... adequate enforcement of laws of this kind during election or referendum campaigns has always been a matter of grave difficulty. Claims, counter-claims and so on, sometimes of a rather extravagant nature, which are part and parcel of electioneering, are virtually impossible to control by any legal process.⁴⁷

As a result of this debate, s. 329(2) was duly repealed in October 1984, eight months after its assent.

In 1995, the Australian Democrats moved an amendment to the Electoral and Referendum Bill 1995, reintroducing a 'truth in advertising' provision that was similar to the repealed s. 329(2) of the Electoral Act. The Senate passed the Bill, but the House of Representatives rejected it. The Bill lapsed when parliament was dissolved for the 1996 election.

The Joint Standing Committee on Electoral Matters and content regulation

Since 1983, the Joint Standing Committee on Electoral Matters has held an inquiry after each federal election into the conduct of the election. Although the issue of truth in political advertising has been a recurrent concern, the committee consistently has rejected tighter regulations. In its report on the 1993 federal election, it argued that 'voters remain the most appropriate arbiters of the worth of political claims'.⁴⁸ The committee claimed that it would be 'entirely inappropriate' for the Australian Electoral Commission to compromise its neutrality by making judgments on truth in advertising.⁴⁹

In its report on the 1996 election, the committee referred to both the private sector's regulation of misleading advertising under the Trade Practices Act and s. 113 of the South Australian *Electoral Act 1985*, which bans 'inaccurate statements of fact which are misleading to a substantial or significant extent'.⁵⁰ It recommended that a version of the South Australian Act be introduced into Commonwealth legislation (the Electoral Act and the Broadcasting Act) and that the Australian Electoral Commission be made responsible for assessing whether there was sufficient evidence to refer complaints to the Director of Public Prosecutions. The committee agreed that the earlier s. 329(2) was 'not the proper mechanism for enforcing "truth" in political advertising', noting that, in addition to the limitations that earlier committees had identified, there was the matter of the Constitution's guarantee of freedom of political discussion, which prevented the banning of political advertisements (see below).⁵¹

Responding to the committee's report on the 1996 election, the Howard Government affirmed its belief that political advertising should be truthful in its content. However, it said that 'any legislation introduced to enforce this principle would be difficult to enforce and could be open to challenge'.⁵²

In its reports on the 1998 and 2001 elections, the Joint Standing Committee on Electoral Matters noted continuing calls for reform of the Electoral Act and the relevant broadcasting legislation to prevent 'misleading statements of fact in electoral advertisements during election periods'.⁵³ For example, in its report on the 1998 election, it noted the comments of the Labor Member for Barton, Robert McClelland, who was concerned that the distribution of election material immediately before polling day made it difficult for a candidate to rebut any misleading statements that such material contained.⁵⁴ McClelland argued that changing the law to prevent misleading statements of fact, rather than opinion, would resolve this problem. In a similar vein, in its report on the 2001 election, the committee noted that Democrat Senator Andrew Murray had introduced a Bill 'to amend the Electoral Act to prohibit any electoral advertisement containing a purported statement of fact that is "inaccurate or misleading to a material extent"'.⁵⁵ The committee quoted Murray arguing that his Charter of Political Honesty Bill required political advertising to meet similar standards of probity and honesty as commercial advertising must meet under the Trade Practices Act.⁵⁶

However, none of these arguments swayed the committee from its opinion that regulating for 'truth' in political advertising was 'unwise and unworkable'.⁵⁷ In both of its reports, the committee supported the objections of the Howard Government and the Australian Electoral Commission to such regulation. It went into some detail in its report on the 2001 election to argue against Murray's proposed legislation, noting the findings of the Senate Finance and Public Administration Legislation Committee to which Murray's Bill had been referred in May 2001 for detailed consideration. The Senate committee had highlighted four key differences between the trade practices model and the proposals to regulate political advertising:

- there was an implied constitutional right to freedom of discussion on political matters

- political parties and candidates had various avenues of communication open to them, which made regulation of advertising somewhat artificial
- the Trade Practices Act allowed only for civil penalties whereas Murray's Bill contained criminal penalties, and
- prosecution under the Trade Practices Act was a prolonged process and it was doubtful that prosecution under the Electoral Act could proceed quickly enough for it to be useful (that is, within the short period of an election campaign).⁵⁸

In the report on the 2001 election, the Joint Standing Committee also rejected the introduction of legislation similar to that in place in South Australia, reversing its recommendation in its report on the 1996 election when it had argued that such legislation should be introduced. Again, the committee noted the findings of the Senate Finance and Public Administration Legislation Committee, which had discussed the South Australian legislation in some detail.⁵⁹ The Senate committee had observed that the South Australian provision had a narrower application than the repealed s. 329(2) of the Commonwealth Electoral Act in that it was limited to statements of fact, rather than any statements (including expressions of opinion) that were 'untrue'. However, it went on to note the comments of former South Australian Electoral Commissioner (now Australian Electoral Commissioner) Andrew Becker, who argued that the legislation had provided opportunities for individual candidates to lodge nuisance complaints, in which they complained about advertisements simply for the sake of complaining, thereby disrupting the electoral process.⁶⁰ In response to a question from Senator Andrew Murray about whether the legislation had restrained people from telling lies, Becker observed: 'The difficulty is in defining what the lie is'.⁶¹ He did not consider that the legislation had improved the behaviour in South Australia in terms of the content of political statements, and commented that the penalties had not proved to be a significant deterrent.⁶²

Controlling for content: the experience overseas

Internationally, little attention is paid to the issue of 'truth' in political advertising, even by the major international bodies studying democracy such as the International Institute for Democracy and Electoral Assistance (IDEA) and the Administration and Cost of Elections (ACE) project. The latter's examination of advertising regulations distinguishes three kinds of regulations: those providing free or subsidised advertising for candidates or parties, those controlling or banning advertising activities, and those defining the campaign period to which advertising rules apply.⁶³ The discussion on controls over advertisements is limited to rules concerning paid political advertisements and the display of posters.

In practice, it appears that few countries legislate for 'truth' in political advertising. Parliaments in the United Kingdom, Canada and New Zealand have all shied from legislating standards of truth in political advertising, citing difficulties of definition, effectiveness and rapid adjudication. Even the principle of a code of truth in political advertising has been criticised, given the imperatives of electoral participation and freedom of speech.

United States

The Constitution of the United States precludes any regulation of ‘truth’ in political advertising.⁶⁴ The Constitution’s First Amendment states that ‘Congress shall make no law ... abridging the freedom of speech’, and the US Supreme Court has ruled that this Amendment has its ‘fullest and most urgent application precisely to the conduct of campaigning for political office’.⁶⁵ In addition, the court has ruled against compensation for defamatory statements made in campaigning unless such statements can be shown to have been made with ‘actual malice’.⁶⁶

Some American states have legislation, similar to that in the United Kingdom, New Zealand and Canada, protecting the reputation of candidates in political campaigns, but these statutes potentially are subject to constitutional difficulties.⁶⁷

United Kingdom

In June 2004, the UK Electoral Commission released a report that canvassed the issues relating to the principle and practicality of a code on political advertising.⁶⁸ In this report, the commission noted that there was an established system of self-regulation for non-broadcast advertising that was based on a code written by the industry through the Committee of Advertising Practice and interpreted and applied by the Advertising Standards Authority. The main principles of this code are that advertisements should be ‘legal, decent, honest and truthful, and prepared with a sense of responsibility to consumers and to society’.⁶⁹

Until 1999, this code governed political advertising, although such advertising was exempt from some of the code’s requirements, including those relating to truthfulness. However, following concerns raised after the 1997 general election that rulings for or against political parties could damage the impartiality of the self-regulatory system, and that the Advertising Standards Authority could not respond to complaints with the speed necessary at an election, it was decided in 1999 that political advertising should be exempt from the code in total.⁷⁰ In addition, the Committee on Standards in Public Life considered the issue of political advertising and concluded in its 1998 report that the best option was for political parties themselves to adopt a new code of practice.⁷¹

In its 2004 report, the UK Electoral Commission rejected the introduction of a code for political advertising on the grounds that:

- a statutory code on political advertising might clash with the right to free speech enshrined under the Human Rights Act, and would be inconsistent with, and stricter than, the regulation of other non-broadcast advertising
- political claims were often subjective, more so than claims made in other advertising
- the code might be open to spurious claims

- any code would require the support of political advertisers, and some political parties had indicated that they were not in favour of such a code
- a system considering complaints was unlikely to deliver sufficiently prompt adjudications to be of any value, and it was unlikely that pre-clearance of advertising copy would be found to be acceptable, and
- a separate, independent and authoritative adjudicatory body would be needed, given that the Electoral Commission was not prepared to take on such a role because it would risk compromising its independence.⁷²

The commission concluded that political advertising should continue to be exempt from the general advertising practice code, except for the broad requirement that ‘all marketing communications should be prepared with a sense of responsibility to consumers and society’.⁷³ However, it recommended that political advertisers undertake to be guided by the code, especially the sections relating to legality and decency, among others.⁷⁴ The commission noted that, given that its priority was to promote and protect the interests of the electorate, it was ‘concerned, above all, that political advertising should encourage participation and provide voters with information to support their voting decisions’.⁷⁵

Canada

Canada’s regulations on political advertising explicitly prohibit the use of false or misleading information delivered with the intention of affecting the election result. Part 6, s. 91 of the Canada Elections Act 2000 states:

No person shall, with the intention of affecting the results of an election, knowingly make or publish any false statement of fact in relation to the personal character or conduct of a candidate or prospective candidate.⁷⁶

Part 16 of the Act, which covers communications, makes no reference to truth in advertising. Instead, it sets out the rules relating to the authorisation and transmission of political messages.

The *Canadian Code of Advertising Standards*, which sets the criteria for acceptable advertising in Canada, differentiates between ‘political’ advertising, which it defines as government advertising concerning policies, practices or programs, and ‘election’ advertising, which it defines as advertising regarding a political party, an election candidate or matter for referendum within an election period.⁷⁷ The code specifically excludes *election* advertising from its ambit, saying:

Canadians are entitled to expect that election advertising will respect the standards articulated in the Code. However, it is not intended that the Code govern or restrict the free expression of public opinion or ideas through election advertising, which is excluded from the application of this Code.⁷⁸

New Zealand

New Zealand's Electoral Act 1993 prevents the publication, distribution or broadcast of 'false' statements of fact for the two days before polling day, and on polling day itself. This section, s. 199A, was introduced in 2002 and states:

Every person is guilty of a corrupt practice who, with the intention of influencing the vote of any elector, at any time on polling day before the close of the poll, or at any time on any of the 2 days immediately preceding polling day, publishes, distributes, broadcasts, or exhibits, or causes to be published, distributed, broadcast, or exhibited, in or in view of any public place a statement of fact that the person knows is false in a material particular.⁷⁹

The parliamentary committee that proposed this section commented that the aim was to provide a disincentive for candidates to attempt to sway voters by spreading false information so late in the election campaign that it could not be verified or refuted.⁸⁰ The absence of legislation governing statements outside this two-day period suggests that the committee believed there would be enough time for such statements to be checked.

New Zealand's Broadcasting Standards Authority has sole jurisdiction for complaints about television and radio advertising in 'election programmes', and regulates these advertisements according to its Election Programmes and Advertisements Code. The Broadcasting Act 1989 defines an 'election programme' as one that encourages or persuades or appears to encourage or persuade voters to vote—or not to vote—for a political party or person at an election, or that advocates or opposes a candidate or political party.⁸¹ The code notes that an 'election programme' is subject to the standards requirements of the Broadcasting Act, except for the requirement for balance, as well as the standards requirements of the Codes of Broadcasting Practice for Radio and Television and the Advertising Standards Authority Codes of Advertising Practice.⁸² The latter codes include an 'advertising code of ethics', which states that, as a basic principle: 'No advertisement should be misleading or deceptive or likely to mislead or deceive the consumer'.⁸³ Rule 2 of this code covers 'truthful presentation' and says:

Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).⁸⁴

Section E2 of the Broadcasting Standards Authority election program code sets some balance in the *standards* for political advertising in New Zealand, stating:

The expression of opinion in advocacy advertising is a desirable and essential part of a democratic society and such opinions may be robust. However, an 'election program' must not include material which denigrates a candidate or political party or party policy.⁸⁵

In a note to the code, the authority notes that it recognises the Advertising Standards Authority's Advertising Code of Ethics, which 'provide useful guidelines for "election programmes"', and highlights as being of 'particular relevance' the rule relating to 'advocacy advertising'. This states not only the need to allow robust opinions in a democratic society, but also that:

... the spirit of the Codes should be given more weight than literal interpretation but factual information should be clearly distinguishable from opinion. The identity of an advertiser in matters of public interest or political issue should be quite clear.⁸⁶

New Zealand's legislation recognises the need for speed in settling complaints about advertisements in an election period. Under the Broadcasting Act, complaints about election programs are made in the first instance to the broadcaster, who has 48 hours to determine formal complaints. Dissatisfied complainants may then take the complaint to the Broadcasting Standards Authority, which must endeavour to make a decision within 48 hours.

Advertising bans and party political broadcasts

For a short period in the early 1990s, Australia banned paid political advertising in electronic media. This was a complete ban, as opposed to the electronic media blackout on the three days before polling day, noted above. The Joint Standing Committee on Electoral Matters had discussed such a ban in its 1989 report, *Who Pays the Piper Calls the Tune*, expressing concern about the rising cost of political advertising for parties and candidates and the increasing dependence that parties had on corporate funding in order to pay for advertising. Although the committee considered a ban on political advertisements, it decided that this would impinge on freedom of speech and would benefit the major parties at the expense of minor parties, single-issue groups and Independents. Instead, it recommended the allocation of free time for political broadcasting on television and radio for elections and the complete disclosure of all forms of income and expenditure by registered political parties.⁸⁷

However, the then Labor government decided against the free-time option and included a complete ban on political advertising in its Political Broadcasts and Political Disclosures Bill 1991. The Australian Democrats amended this Bill in the Senate to provide for free television advertising time. Under the *Political Broadcasts and Political Disclosures Act 1991*, which came into force in January 1992, television stations were required to provide six minutes a day free time to parties and candidates for federal elections at times set by the Australian Broadcasting Tribunal (the Australian Broadcasting Authority's predecessor). Of this time, the government and the Opposition were to be allotted forty per cent each, the Democrats ten per cent, and other candidates the remainder.⁸⁸ The Act contained no restrictions on political advertisements in newspapers.

In the event, the new provisions never applied to a federal election. The forced withdrawal of political advertisements in various state elections led to strong criticism of the law, and the High Court of Australia subsequently struck down the legislation in a ruling in August 1992

on the grounds that the Constitution contained an implied guarantee of freedom of political communication in relation to political matters.⁸⁹ Significantly, the Court found that it could be valid in some circumstances to control the use of the media for political advertising, but it ruled that the advertising ban went beyond a justifiable restriction of the freedom of political communication.⁹⁰

Although there is no ban on broadcast political advertising in Australia beyond the three-day, pre-polling day blackout, this is not the case in the United Kingdom, which has decided that the benefits of a ban outweigh its costs. The country's Broadcasting Act 1990 states that 'any body whose objects are wholly or mainly of a political nature' is not permitted to advertise on radio or television. This is a major difference between the British system and the American and Australian systems of political advertising. The Broadcasting Act (UK) thereby relegates political advertising to outlets other than radio or television. As a result, both the major parties spend roughly eighty per cent of their advertising budget on billboards and hoardings. Paid advertisements in newspapers are relatively unusual.

The principal argument for the ban is to preclude a spending race of the type that characterises the American system. Large and small parties alike have defended the ban on these grounds. There is also concern that broadcasters might act partially if it was possible for political parties to purchase advertising time. The UK Electoral Commission concluded in a report on party political broadcasting in January 2003 that continuing the ban on paid political advertisements was 'in the interests of the electorate and therefore the public interest' as well as 'in the interests of political parties and broadcasters'.⁹¹

New Zealand also bans 'election programmes' (as defined above) from radio and television, except in the defined period of an election campaign. This ban does not apply to the broadcast of news, current affairs or comment programs covering political matters.⁹²

Both the United Kingdom and New Zealand allow for publicly funded party political broadcasts during an election campaign. In the United Kingdom, the party political broadcasts, which the British Broadcasting Corporation introduced in 1924 as part of its public service role, are based on a number of rationales, including:

- political parties should be able freely to publicise their platforms and policies to voters, and voters should be able to receive this information
- free broadcasts contribute to the fairness of the election campaign as, to an extent, they compensate for the parties' differential ability to attract campaign funds, offsetting the ability of one party to outspend its rivals in other advertising, and
- free broadcasts represent the only direct access that political parties have to the broadcast media as the parties are prohibited from taking paid-for advertising in the broadcast media.⁹³

The UK Electoral Commission noted in its review of party political broadcasting in 2003 that there was ‘widespread scepticism’ about the value of party political broadcasts, with research suggesting that many viewers and listeners switched off when such broadcasts came on. Concerns included that the broadcasts had done little to raise the level of political participation in the 2001 general election and that the parties viewed the broadcasts primarily as a chance ‘to rally the faithful and raise party morale’.⁹⁴ In response, the commission argued that, although the figures suggested that the broadcasts had little effect on voters, comparisons showed that they were more effective than other campaign tools and were therefore an important campaigning mechanism for parties. It concluded that the principle that parties should be able freely to publicise their platforms and policies to voters, remained ‘compelling’.⁹⁵

In New Zealand, the government provides a ‘broadcasting allocation’ of \$2.08 million to be distributed to qualifying political parties to allow them to purchase broadcast time. Academic Andrew Geddis notes that this amount has not changed since the allocation was introduced in 1990.⁹⁶ In addition, the New Zealand Electoral Commission invites broadcasters voluntarily to contribute time for the broadcasting of election programs. The commission then allocates the total amount of time to those parties that have requested a share, according to criteria set out in the Broadcasting Act.⁹⁷

Advertising costs and the public funding scheme

A newspaper article published the day after Prime Minister John Howard called the 2004 election claimed that the two major parties would spend a combined \$40 million on the campaign, of which \$30 million would be spent on mass media advertising in an ‘advertising blitz’.⁹⁸ Subsequent stories have reported similar figures, with only rare exceptions.⁹⁹ For example, one post-election analysis claimed that the Liberal Party had spent only \$10 million on advertising and Labor a mere \$8.7 million in the six-week campaign.¹⁰⁰ Given the consistency of the other reports, it may be that these totals, citing figures from a media research company, are aberrations.

Of course, the expenditure of \$40 million does not necessarily equate to an advertising ‘blitz’ in that much depends on the production and broadcast/publication costs of the advertisements. Presumably, the higher the costs, the fewer advertisements and advertising slots the parties can afford. In an earlier commentary on election advertising, academic Stephen Mills claimed that media outlets charged political parties up to fifty per cent more than the going rate for advertisements.¹⁰¹

The Australian expenditure on political advertising is minuscule when compared with the expenditure on election advertisements in the United States. Media reports in August 2004 giving the expenditures for the George W. Bush and John Kerry presidential campaigns noted that, thus far, they had spent a combined \$US209 million (A\$299 million)—or \$US116 million (A\$166 million) and \$US93 million (A\$133 million) respectively—on campaign advertising for the November 2004 election.¹⁰² In July 2004 alone, Bush spent

about \$US38 million (of the \$US46 million he spent that month) on advertising. In the general election campaigns, US House and Senate candidates spent \$US487 million and the national party committees spent \$US400 million in the 18 months to June 2004.¹⁰³

The American figures are a firmer guide to what is being spent on election campaigns in that country than the Australian figures are to Australian campaigns, in that US law requires that details of campaign expenditure be lodged with the Federal Election Commission whereas the Australian figures tend to be media estimates based on interviews with advertising agencies and 'media buyers'.¹⁰⁴ Parties are fairly tight-lipped about their campaign plans, especially their budgets, and appear rarely to give exact details to the media.¹⁰⁵ As a result, there is considerable confusion as to both the total expenditure on election campaigns and the particulars of that spending.¹⁰⁶

The transparency of campaign-specific expenditure in Australia was lost in 1997 when a legislative change again removed the requirement for parties to file election returns disclosing election expenditures.¹⁰⁷ Today, parties lodge *annual* disclosure returns, giving total receipts, debts and expenditures for the financial year and details of those individual receipts of \$1500 or more. The parties do not break down their expenditure totals, which makes it impossible to trace how much parties are spending on their election campaigns, even when the return covers an election year. In contrast, it is possible to trace the campaign expenditure of non-party endorsed (independent) candidates and non-party endorsed Senate groups because they are among those still required to file election (rather than annual) returns.¹⁰⁸

The major political parties had argued that filing annual returns *and* election returns created an excessive administrative burden, but in changing the law in order to eliminate election returns and thereby reduce their paperwork, they have undermined the original purpose of the scheme to publicly fund election campaigns that was introduced in 1984. That is, the scheme was intended to help candidates and parties defray the direct costs of an election campaign, not to fund on-going administrative costs or provide a financial base from which to fight future elections. In the words of the Australian Electoral Commission:

[The funding scheme] was introduced as a strict reimbursement scheme with the Act limiting the amount of funding payable to the lesser of the funding entitlement or expenditure proven to have been incurred directly on that campaign. In administering this scheme the AEC demanded original vouchers in support of claimed expenditure and, for example, would only accept claims for what were considered to be expenditures additional to the ongoing costs of maintaining and running a political party.¹⁰⁹

The demand for receipts meant that there could be a difference between the amount to which a party was entitled and the amount that it was paid according to its receipted election expenditure.¹¹⁰ Legislative amendments in 1995 changed the basis of election funding to a direct payment, regardless of expenditure. The commission claimed that these changes 'did not alter the underlying principle that funding was *provided to parties and candidates as a subsidy to their costs of contesting a particular federal election campaign*, although that principle is not spelled out in the [Electoral] Act'.¹¹¹

However, given that parties no longer file election expenditure returns, it is not possible to track campaign expenditure, including the amount spent on advertising, or to compare the amounts spent with the amounts paid in election funding. Nor is it possible to say with certainty that parties are using their public election funding to pay for their campaigns. In fact, a recent criticism of the public funding scheme is that the removal of the link between funding and reimbursement has created a situation in which ‘profiteering’ can occur. That is, in removing the requirement for candidates and parties to provide evidence of their campaign expenditures, a candidate or party could be paid in public funding (according to the entitlement formula) more than it spent on its election campaign.¹¹²

The elimination of election expenditure returns also makes it difficult to judge the effectiveness of public funding in achieving the broader aims of aiding parties and candidates to pay for increasingly expensive campaigns without turning to private donors, especially corporate donors. That is, public funding is intended to reduce the reliance of parties and candidates on private donations, thereby reducing the necessity or temptation for them to seek funds that may come with conditions imposed or implied.¹¹³ Public funding is also intended to level the playing field for those parties and candidates without the support of financially powerful interest groups.

In the absence of campaign expenditure details, there is not enough information to assess whether the funding scheme has met these goals. However, Member of Parliament Carmen Lawrence has observed that public funding of elections has not reduced the reliance on private, corporate and union donations. Rather, ‘All that has happened is a blowout in both public (doubled since 1993) and private funding as parties engage in an increasingly expensive bidding war at elections’.¹¹⁴ Lawrence’s comments echo those of academics who undertook analysis when more information was available. They argued that public funding had encouraged, rather than contained, runaway campaign costs because it provided a floor for campaign spending.¹¹⁵ Presumably, this floor supports advertising outlets as well as parties, in that the former may charge more for publishing or broadcasting political advertisements because they know that parties have access to public funds to cover the costs.

Geddis highlights an additional problem in relation to New Zealand that is equally applicable to Australia. That is, that the delay between the date of an election and the publication of the donation disclosure details for the financial year in which the election is held means that the details of those making donations to political parties around the time of an election are not known ‘for some considerable time after the election’.¹¹⁶ In the case of the 2004 election, returns for the 2004–05 financial year are not due until October 2005 (a year after the election) and are not made public until February 2006. As Geddis observes: ‘Therefore, during the election campaign voters are left in the dark as to who is financially supporting the parties in their bid to win public power’.¹¹⁷ In contrast, the details of those who must file election returns (for example, independent candidates and non-party endorsed Senate groups) are made public twenty four weeks after polling day.

Australia's style of political advertising

Negative advertising: the 'Americanisation' of Australian campaigning?

An assumption is often made that Australian political advertisements have been relatively civil when judged against the standards of those in American election campaigns. For example, an Australian television report on the US presidential elections opened with the following observation: 'And if you thought Australian politicians sometimes fight dirty at election time, it seems they're novices compared to their American counterparts'.¹¹⁸ However, academic analysis suggests that negative political advertisements are an important—and an inevitable—part of campaigning in Australia, given that in an adversarial party system, political advertising 'by its very nature ... must knock the other side'.¹¹⁹ Campaign specialists Fritz Plasser and Gunda Plasser have gone so far as to claim in their global study of campaign practices that: 'To spend "heavily on extensive and overwhelmingly negative television advertising" ... has become a trademark of comparably short and condensed Australian campaign seasons'.¹²⁰

Early in the 2004 Australian election campaign, there were signs that it would contain a major negative component. A story within days of the election being called noted that the Liberal Party was developing television advertisements 'designed to make viewers feel uncomfortable whenever they see Labor leader Mark Latham'.¹²¹ The article reported that, 'in an election campaign all sides of politics expect will be characterised by scare tactics', Treasurer Peter Costello had refused to rule out negative advertisements.¹²² In its post-election analysis, Labor put some of the blame for its loss on the Coalition's negative advertising campaign, which former Labor leader Simon Crean described as a 'dishonest but ultimately effective advertising blitz'.¹²³

In her study of Australian political advertisements since 1949, political scientist Sally Young found that the level of negativity in newspaper and television election campaign advertisements had increased over time such that, since 1993, more than sixty per cent of party political advertisements have been negative.¹²⁴ Before this, only the 1951 election campaign had had more than sixty per cent negative advertising. Although some commentators have blamed this increase in negative advertising on the 'Americanisation' of Australian election campaigns, the United States historically has had a lower proportion of negative advertising than Australia.¹²⁵ According to Young's figures, negative advertising comprised more than fifty per cent of campaign advertising in nine Australian elections between 1949 and 1996 whereas only three US elections between 1952 and 1996 featured such a high proportion of negative advertising.¹²⁶ Offering a specific example, Young observed that a study of the 1992 US elections found that thirty seven per cent of the advertisements were negative whereas she found that in the 1993 Australian election, seventy five per cent of the advertisements were negative.¹²⁷

It should be noted here that these figures reflect the situation a decade ago and may not accurately represent current practice. For example, commentary on the 2004 US presidential

campaign claims that the level of negativity is higher than it has been in elections over the past decade and that the negativity is occurring earlier than usual. An article in May 2004 noted that seventy five per cent of incumbent president George W. Bush’s advertisements thus far had been negative and that his level of negative advertising already was higher than the levels of the 2000, 1996 and 1992 campaigns.¹²⁸

In terms of content in past decades, while the absolute number of negative advertisements in Australia is significantly higher than in the US, the content of these advertisements is very different. Young found that, historically, Australian advertisements were far less likely to attack an opponent’s personal characteristics, and offered a comparison of the 2000 US presidential election, where one academic found that seventy one per cent of advertisements contained a personal attack, and the 2001 Australian federal election, where she found only 6 per cent of political advertisements contained a personal attack.¹²⁹ She observed that a ‘relatively positive’ aspect to Australia’s negative advertisements was that seventy per cent of the negative advertisements that criticised party leaders focused on their policies and/or performance, and not their personal characteristics.¹³⁰ (Of course, it may not be necessary for a party’s *advertisements* to target an opponent’s personal characteristics if such comments are carried in the general news instead. For example, Prime Minister John Howard’s query in the 1998 campaign as to whether then Opposition Leader Kim Beazley had the ‘ticker’ for the top job stuck with Beazley into the 2001 campaign. Howard himself may have attracted an unwanted, hard-to-shake tag arising from media reports a month before the 2004 election that alleged that a member of his own party described him as a ‘lying rodent’. Three weeks after the allegations were first published, the tag was still appearing in the media and in public, and political cartoonists had taken to drawing Howard with a rat’s tail.¹³¹)

Looking at which of the major parties was more negative, Young’s research indicated that the Coalition used negative advertising more extensively than the Australian Labor Party until 1987, when Labor became ‘the major advocate of negative advertising’.¹³² Young notes that Labor has been ‘particularly enamored’ with negative advertising since the perceived success of its 1993 advertisements attacking the goods-and-services tax.¹³³ However, mid-campaign reports of the 2004 election claimed that the Liberal Party had been more negative than Labor, allegedly firing the ‘first negative shot of the campaign’, with television, radio and direct-mail advertisements targeting Labor leader Mark Latham’s management of the Liverpool council.¹³⁴ An online opinion poll conducted in the fourth week of the six-week campaign found, as shown in Table 2, that the Liberal–National Coalition was running the most negative campaign while Labor was running the most effective campaign.¹³⁵

Table 2: Views of the 2004 election campaign

	Lib–Nat Coalition	Labor
Which party has run the most negative campaign?	54	23
Which party has run the most positive campaign?	29	46
Which party has run the most effective campaign?	34	41

Source: Channel 9–*Bulletin* poll, conducted by the Australian National University

As noted above, a separate, forthcoming, Parliamentary Library brief will examine the campaign techniques of the 2004 election, including negative advertising, in more detail.

One explanation for the emphasis on negative advertising in Australia may be that it is a product of Australia's compulsory voting system. The absence in Australia of 'neutral' advertisements encouraging people to vote may partly explain its higher percentage of negative messages. As Young comments:

... unlike their American counterparts, Australian politicians do not need to spend a great deal of time and money during election campaigns on encouraging voters to turn up to vote, in their advertising; they can concentrate on persuading voters *how* to vote.¹³⁶

Generally speaking, then, on the question of whether there has been an 'Americanisation' of Australian campaigning, Young disputes the assumption that 'undesirable' campaign techniques, seen as prevalent in the United States, are leading Australian election campaigns astray. Importantly, she observes:

... it seems negativity is already a quite distinctly Australian feature. If anything, Australia seems to have anticipated or led the trend towards more negative advertising rather than to have followed it.¹³⁷

That said, Young acknowledges that she has found an increased focus in Australian televised political advertising on party leaders, rather than parties, which some would consider a move towards 'Americanisation' and a more 'presidential' focus. She understands this development to be both a by-product of the modernisation of political campaigns and a consequence of the major parties sending observers to the United States to study, and ultimately imitate, specific advertising strategies.¹³⁸

Negative themes in Australian campaign advertising

The Liberal Party advertised the 'communist bogey' to great effect in the election campaign of 1949 and in campaigns throughout the 1950s and 1960s. In its 1975 campaign, it urged voters to 'Turn on the Lights', and in 1980, it ran a highly effective scare campaign against a wealth tax on family homes.¹³⁹

The Australian Labor Party ran an advertisement in the last week of the 1987 federal election campaign that featured housewife Wendy Woods, who complained incessantly about the Opposition Leader's proposed spending cuts. One commentator claimed:

[Whingeing] Wendy did ... precisely what the best political spots are designed to do—namely crystallise and reinforce vague, unexpressed prejudices voters have about the candidates.¹⁴⁰

The exemplar of such a strategy—reinforcing prejudices—was Labor's 1993 pitch against a goods-and-services tax (GST). Television advertisements presented various basic items alongside a cash register showing that a GST would increase their cost by a flat fifteen per

cent. The Coalition protested that the campaign was one of ‘relentless misrepresentation’, and noted that several items would actually fall in price.¹⁴¹ In the same year, the Coalition ran an advertisement showing members of the public in the crosshairs of a gun-sight to illustrate the pervasiveness of Labor’s unemployment record. The message was that, under a Labor government, no-one was safe from losing his or her job. In response, then Prime Minister Paul Keating described the advertisement as alien to Australian culture.¹⁴² Queensland Liberal leader Joan Sheldon commented after the election that the ‘federal Liberals must sue or sack their advertising agency—preferably both’.¹⁴³

Labelling a party or person as ‘arrogant’ has been a common tactic of recent Australian political advertising campaigns.¹⁴⁴ In the 1996 campaign, advertising executive Mark Pearson developed a campaign strategy for the Liberal Party based on what was seen as a successful Labor formula: ‘a single ‘Neanderthal’ proposition—always negative and stressing the risk of voting for the opposition’.¹⁴⁵ The advertisements stressed Keating’s arrogance and divisiveness, and used Labor’s visual ploy of cash registers to play on fear of tax increases if Labor was returned.¹⁴⁶ Labor’s advertisements focused on the positive of Keating’s leadership and the negatives of a Coalition win (the prospect of a GST and the abolition of Medicare). As a whole, the 1996 campaign was labelled at the time as ‘Australia’s most negative election advertising campaign ever’.¹⁴⁷ Young observes that several commentators viewed the ‘opponent-focused assault’ on Keating as ‘an “Americanization” of Australian politics’.¹⁴⁸

The 1998 campaign was also marked by negativity and fear. The Coalition returned to its 1980 attack, running television advertisements against Labor’s plans to introduce a capital gains tax retrospectively. It used and trumped Labor’s slogan, ‘Australia Deserves Better’, with ‘Don’t Go Back to Labor—Australia Deserves Better’. Labor’s advertisements focused on the introduction of the GST, again claiming that such a tax would increase prices and insisting that a Coalition win would mean Australians would be ‘stuck with [a GST] forever’. Also in Labor’s arsenal were advertisements targeting Coalition members and senators who had supported the full sale of Telstra.¹⁴⁹ In the final week of the campaign, *The Australian* described the ‘frenetic television advertisements’ as ‘deliberately and disgracefully simplistic and negative’ and condemned the entire campaign as ‘an insult to the electorate’.¹⁵⁰ Other media commentary disagreed, with one commentator arguing that, although there was ‘much pious hand-wringing among social commentators about the effect on our political culture of negative advertising ... our parties deploy attack advertising for the simple, brutal reason that it works’.¹⁵¹ In a similar vein, another commentator argued:

If the [negative] advertising is directed at undecideds, then the advertising really has to attract their attention and make them think seriously about their vote. It’s human nature that attacking something is usually more effective than speaking softly and talking about campaign promises.¹⁵²

Political advertising in the 2001 election campaign continued to pursue negative themes. Labor portrayed the Coalition government as ‘mean and tricky’ and in one advertisement targeted Treasurer Peter Costello, although it claimed that this was not a personal attack

because it did not deal with Costello's private life.¹⁵³ The Coalition's advertisements focused on its own handling of economic and border security issues or 'keeping Australia in safe hands' and attacked Labor's economic record and campaign spending commitments.¹⁵⁴ As noted above, the Federation of Commercial Television Stations banned several advertisements from both sides in this election on the grounds that they were misleading.¹⁵⁵

Accentuating the negative as a winning strategy

A major question about the use of negative advertising is whether it is a winning strategy or whether voters find it off-putting. In the United States, the effect of negative advertising on the quality of political judgment and election turnout is disputed.¹⁵⁶ Some argue that negative political advertising promotes political involvement in that it engages otherwise disinterested citizens, stimulating voter turnout and confirming a commitment to free speech.¹⁵⁷ According to these academics, 'exposure to negative advertising appears to increase the probability that citizens will make it to the polls on Election Day'.¹⁵⁸ Others claim negative advertising is damaging to political participation in the United States, deterring the non-aligned from voting and entrenching existing partisan preferences.¹⁵⁹ According to these academics: 'Negative campaigning transforms elections into an entertaining spectator sport. A healthy democracy, though, requires more than citizen spectators. We need citizen participants'.¹⁶⁰ However, even these critics concede that negative advertisements are more potent than positive ones and that they may be useful in attracting swinging voters.¹⁶¹

Falling between these positions is a recent study that concludes that negative campaign advertising is no more effective in attracting voters than positive advertising.¹⁶² That is, the researchers conclude:

... attack ads probably are liked less than advocacy ads, but they are not necessarily any more memorable, and there is no good evidence that they are any more effective than advocacy ads in producing the consequences their sponsors intend.¹⁶³

This study notes the assumption, often perpetuated in the media, that negative advertising works because voters remember negative advertisements more than positive ones. An Australian newspaper columnist wrote of the 1998 election that negative campaigning worked in that voters 'exhibit greater recall of negative charges levelled in attacks spots, because negative accusations about politicians reinforce the underlying disposition of most voters' psyches'.¹⁶⁴ More recently, an American newspaper article discussing the negativity in the 2004 presidential campaign cited a political consultant as saying:

Focus groups will tell you they hate negative ads and love positive ads ... But call them back four days later and the only thing they can remember are the negative ones.¹⁶⁵

The article also reported that studies had shown that people were not only more likely to recall negative advertising, but that it took fewer airings of the advertisements for people to remember them. Interestingly, this did not affect the rate of advertising for the US Senate race in South Dakota in 2002, where residents were bombarded with more political

advertisements than anywhere else in the country. Between January and early October 2002, the two Senate candidates alone ran about 21 000 commercials.¹⁶⁶

A bonus for the candidate or party running a negative campaign may be the additional news coverage that such advertisements attract in the media. An exemplar of this effect in the 2004 US presidential campaign was the Swift Boat Veterans for Truth advertisement, which accused presidential candidate John Kerry of lying about his war record. The group spent about US\$450 000 (A\$638 000) on the 30-second advertisement, which initially was broadcast only in Ohio, Wisconsin and West Virginia. However, the controversy over its content 'played out for weeks' in media across the US (and around the world), giving the group's message 'priceless coast-to-coast media coverage for free'.¹⁶⁷ As one commentator noted: 'The influence of this ad is a function not of paid exposure but of the ad's treatment in the free media'.¹⁶⁸ Of course, a party deliberately may design a controversial advertisement in order to take advantage of this publicity 'bonus' effect. In the 2004 Australian campaign, the Liberal Party's advertisement labelling Labor leader Mark Latham as the 'learner from hell' generated several stories in the media.¹⁶⁹

Accentuating the positive

The emphasis placed on the importance of negative political advertising suggests that there is little room for accentuating the positive in Australian election campaigns. In fact, negative political advertising must be seen as part of a broader election strategy. The general pattern of political advertising in national election campaigns is 'positive early, intensely negative at the end'.¹⁷⁰ That is, in the early stages, 'positive' advertisements sell the governing party's record or the opposing party's promises; in the later stages, 'negative' advertisements attack the other side.

The Liberal Party clearly used this strategy in the 2001 campaign. In the first weeks of the 33-day campaign, its television advertisements stressed that in the unstable international environment after the September 11 terrorist attacks, it was important to 'keep Australia in safe hands'.¹⁷¹ In the week before polling day, the Coalition was reported to have spent up to \$1 million a day attacking the Labor Party's economic record and campaign spending promises.¹⁷²

In many ways, positive and negative political advertisements are complements. A positive message affirming an achievement or pledge is normally delivered with an implication that the opponent has not or could not deliver similarly. Examples here include Labor's 1972 'It's Time' campaign and the Liberal Party's 1996 'For All of Us' slogan. Negative messages often imply a corresponding strength in the party presenting the advertisement. The 'Keeping Australia in Safe Hands' television advertisement stated:

The global community has been pushed closer to recession and unfortunately Australia is not exempt from this. In these uncertain times, you must decide who is more likely to make those tough decisions.

Nonetheless, the use of overtly negative advertisements in the crucial days before the three-day, pre-election electronic media blackout prevents further advertisements from being broadcast reflects the parties' perception of the effectiveness of such negative advertising.

Conclusion

Two weeks into the 2004 election campaign, Prime Minister John Howard demanded that the Labor Party withdraw some of its television advertisements on the grounds that they were misleading.¹⁷³ The advertisements, which warned that the tax pressure on 'hard-working families' would get worse under the Howard Government, claimed that Labor's tax policies would 'ease the squeeze', with Labor 'taking the pressure off families'. However, Labor leader Mark Latham later conceded that some families would be worse off under the policies, which led Howard to allege that Latham's 'policy had been exposed as a fraud' and to call for the advertisements to be withdrawn. Labor refused, with an ALP campaign spokesman reported as saying that the party stuck by its policy.¹⁷⁴

As outlined in this paper, there is currently no legal basis on which Labor could have been forced to withdraw its advertisements, had it been proved that Howard was correct in his allegation that the advertisements were misleading. The Electoral Act states only that advertisements cannot mislead voters as to how they mark their ballot papers nor can they defame a candidate's character or conduct. In the absence of an industry watchdog enforcing codes of practice or other guidelines, there are no rules that mediate the message. Candidates and parties have absolute control over the content of their political advertisements in terms of whether or not they contain fact or fiction.

The fourth week of the 2004 campaign opened with media reports that the Liberal Party had taken the 'gloves off' to attack Latham's economic credentials, 'saturating the national airwaves with claims he was inexperienced' and 'highlighting his alleged failings as Liverpool mayor'.¹⁷⁵ Senior Liberal Party members defended the advertisements on the grounds that the attacks were not personal, but targeted Latham's performance record.¹⁷⁶ (Recall here that this is similar to Labor's defence of its attacks on Costello in the 2001 campaign, noted above.) In response, Latham condemned the advertisements for focusing the campaign on 'American-style negative advertising' rather than the 'real-life problems for the Australian people'.¹⁷⁷ He claimed that Labor would continue to run a positive campaign.¹⁷⁸ In the wake of the election, some analyses nominated Labor's inability to counter the Liberal Party's scare campaign on interest rates as one explanation for Labor's election loss. However, as outlined in this paper, negative advertising in Australian election campaigns cannot be blamed on an 'Americanisation' of campaigning because Australian campaigns have been overwhelmingly negative for some years.

Endnotes

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4. *ibid.*, and Annie Lawson, 'Advertising's big names set to carve up \$30m election pie', *The Age*, 11 October 2001.
5. S. Theimer, 'Candidate, party spending tops \$1 billion', *Washington Post*, 21 August 2004.
6. Jason Koutsoukis, 'Major parties welcome new election advertising rules', *The Age*, 25 August 2004, p. 3, and Elizabeth Colman, 'Not [sic] let up for PM', *The Australian*, 26 August 2004, p. 2.
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8. See R. Peake, 'Anything goes in election ads, says watchdog', *Canberra Times*, 29 November 2002, A. Crabb, 'Parties escape lie test', *The Age*, 22 November 2002, B. Ruse, 'Vet call over political ads', *West Australian*, 27 November 2002.
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10. S. Young, 'Scare campaigns: negative political advertising in Australia', Paper presented to the Australasian Political Studies Association conference, University of Tasmania, Hobart, 29 September–1 October 2003, p. 27. Young analysed 1112 newspaper advertisements from the period 1949 to 2001 and 223 television advertisements from 1972 to 2001.
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12. S. Young, 'Spot on: the role of political advertising in Australia', *Australian Journal of Political Science*, vol. 37., no. 1, p. 82.
13. See R. Grant, 'Federal government advertising', *Research Note*, no. 62, Parliamentary Library, Canberra, 21 June 2004, available at: <http://www.aph.gov.au/library/pubs/rn/2003-04/04rn62.htm>.
14. *ibid.*, p. 93.

15. C. Lloyd, 'The 1990 Media Campaign', in C. Bean, I. McAllister and J. Warhurst (eds), *The Greening of Australian Politics*, Longman Cheshire, Melbourne, 1990, p. 102.
16. A. McKenzie, 'Petty politicking', *The Australian*, 29 March 2001.
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22. Senator Bob Collins, Minister for Transport and Communications, 'Transport and Communications Legislation Amendment Bill (No. 3) 1992: Explanatory Memorandum', p. 16.
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25. Australian Electoral Commission, *op. cit.*, p. 1.
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28. See s. 52 of the *Trade Practices Act 1974*.
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30. See Peake, *op. cit.*, Crabb, *op. cit.*, and Ruse, *op. cit.*
31. See Senator Andrew Murray (Australian Democrats), *Facts aren't facts*, media release, no. 02/571, 21 November 2002, http://www.democrats.org.au/news/?press_id=2261&display=1
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36. Joint Standing Committee on Electoral Reform, *Second Report*, Australian Government Publishing Service, Canberra, August 1984, pp. 23–24.
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42. *ibid.*, pp. 45, 49.
43. *ibid.*, p. 50.
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56. *ibid.*
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89. *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106. In a background paper on electoral advertising, the Australian Electoral Commission notes: 'The Constitution is predicated on representative government, and freedom of communication is essential to that system'. See AEC, *ibid.*, paragraph 77, p. 9.
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93. UK Electoral Commission, *Party Political Broadcasting*, *op. cit.*, p. 11–13.
94. *ibid.*, p. 13
95. *ibid.*
96. A. Geddis, 'Reforming New Zealand's election broadcasting regime', *Public Law Review*, September 2003, vol. 14, no. 3, p. 166. See also Geddis, 'Regulating the funding of election campaigns in New Zealand', *op. cit.*, especially p. 593.
97. Geddis notes that in order to qualify for a share of the time, parties must have been registered, or have candidates intending to stand in at least five constituency seats, at least three months before parliament was dissolved for the election. See the discussion in Geddis, 'Reforming New Zealand's election broadcasting regime', *ibid.*, pp. 165–69.
98. Catalano, *op. cit.*

99. Sinclair, op. cit., and Craig Clarke, 'Liberals fire first shot in TV ad war', *Adelaide Advertiser*, 1 September 2004, p. 8.
100. Shoebridge, 'Coalition spent more on advertising', op. cit.
101. S. Mills, *The New Machine Men*, Penguin Books, Victoria, 1986, pp. 189–90. He cites an advertising agent's suggestion that parties paid up to 50 per cent more for advertising time than private companies.
102. Theimer, op. cit.
103. *ibid.*
104. See Catalano, op. cit., and Lloyd, op. cit., who cite 'media buyers' and party 'advertising agencies', respectively.
105. See, for example, Chris Jones, 'Coalition gets ads out first', *Courier Mail*, 1 September 2004, which concludes with the following sentence: 'Labor's campaign spokesman Stephen Smith yesterday declined to reveal his party's advertising budget, or when commercials would start running.'
106. See, for example, the difference in figures between Simon Lloyd's combined two-party total of \$17 million for the 2001 election and Annie Lawson's \$30 million for the same election (Lloyd, op. cit. and Lawson, op. cit.). Lloyd's report has a sub-heading, 'Labor and the Liberals are spending much less on advertising than in 1998'. He notes the amount spent on 'TV and print advertising' in the first 10 days of the campaign, then gives the combined \$17 million budget of the two major parties and compares this total with the higher amounts spent in 1998 (\$30 million) and 1996 (\$27.2 million) on 'marketing'. Lawson's article notes that, in the 1998 campaign, the two major parties spent about \$17 million combined on 'broadcast and print advertising', with 'Similar amounts ... believed to have been spent on direct mail'. The media's tendency to conflate the broader 'marketing' costs with the narrower 'advertising' costs creates confusion as to how much the parties actually are spending on political advertising, understood as print and broadcast advertising.
107. This requirement had been introduced as part of the scheme establishing public funding for election campaigns in 1984, but was removed in 1992, reinstated in 1995 and removed again in 1997.
108. Those who must file election returns include non-party endorsed candidates, unendorsed Senate groups and joint-endorsed Senate groups, and third parties who make donations totalling \$200 or more to an individual candidate. Candidates must declare the totals of their campaign expenditure in each of six specified categories: broadcast advertisements (including production costs), published advertisements (including production costs), display advertisements at a theatre or other place of entertainment (including production costs), campaign materials where the name and address of the author is required (for example, 'how to vote' cards, pamphlets, and posters), direct mail, and opinion polling or other research related to the election. Candidates do not need to declare other campaign expenditure, such as the hire of premises and equipment, freight, telephone charges, and travel costs. For further details, see the Australian Electoral Commission web site (www.aec.gov.au).

109. Australian Electoral Commission, *Funding and Disclosure Report: Election98*, Commonwealth of Australia, Canberra, 2000, p. 5.
 110. The commission noted in its funding and disclosure report on the 1990 election that it paid parties and candidates \$14 010 less than their total entitlement in 1984, \$11 742 less in 1987 and \$116 520 less in 1990. See Australian Electoral Commission, *Election Funding and Financial Disclosure Report: Election 1990*, Australian Government Publishing Service, Canberra, March 1990, p. 9.
 111. Australian Electoral Commission, *Election98*, op. cit., p. 5, emphasis added.
 112. It is alleged that this occurred with Pauline Hanson's One Nation in 1998, when the party was said to have spent only about \$1.3 million on the campaign, but received just over \$3 million in public election funding. (See W. Brown, 'Party funding and other touchy political issues', *Courier Mail*, 5 February 1999, cited in Joint Standing Committee on Electoral Matters, *The 1998 Federal Election*, op. cit., p. 125.) However, the Australian Electoral Commission is not in favour of a return to a scheme based on the reimbursement of proven campaign expenditure, arguing that the 'opportunity for profiteering on funding existed, and most likely occurred', under the earlier scheme in that claimants could provide evidence for expenditures that were not a true cost to the party. For example, a party could enter a contract to pay for services that would otherwise be provided voluntarily: 'The contracts are legally binding and clearly constitute claimable campaign expenditure but the contracts may never be paid out on, or some or all of the fee may later be donated back to the party'. See Australian Electoral Commission, *Funding and Disclosure Report: Election96*, Commonwealth of Australia, Canberra, 1997, p. 6.
 113. The Joint Standing Committee on Electoral Matters discusses this intention in its *First Report*, op. cit., pp. 152–54.
 114. Carmen Lawrence, address to the Sydney Institute, cited in M. Grattan, 'Money and the politics of schmooze', *Sydney Morning Herald*, 25 August 2000.
 115. See E. Chaples, 'Financing elections in Australia: reflections on a decade of public funding and (non) disclosure', Paper presented to the Australasian Study of Parliament Group annual conference, Hobart, 21–22 September 1990, p. 7, and G. Starr, 'Public funding and the decade of parties in decline', Paper presented to the Australasian Study of Parliament Group annual conference, Hobart, 21–22 September 1990, p. 3. The latter observed (p. 3):

Organisers planning a two million dollar campaign did not reduce their fund-raising activities because they were sure of an extra million dollars. Rather, they used the million dollars as a base and up-scaled their plans to suit a three million dollar campaign.
- For later versions of this argument, see D. Tucker and S. Young, 'Public Financing of Australian Election Campaigns', in G. Patmore (ed.), *The Big Makeover: a New Australian Constitution*, Pluto Press, Sydney, 2001, pp. 60–71, and S. Young, *The Persuaders: the Hidden Machine of Political Advertising*, Pluto Press, North Melbourne (forthcoming, 2004).
116. Geddis, 'Regulating the funding of election campaigns in New Zealand', op. cit., p. 590.
 117. *ibid.*

118. K. O'Brien, 'Foot soldiers wage dirty war in US election campaign', *The 7.30 Report*, Australian Broadcasting Corporation, transcript available at: <http://www.abc.net.au/7.30/content/2004/s1185201.htm>
119. H. Mayer, 'The Morality of Political Advertising', in H. Mayer and R. Tiffen (eds), *Mayer on the Media: Issues and Arguments*, Allen & Unwin, St. Leonards, New South Wales, 1994, p. 115.
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121. L. Sinclair and S. Canning, 'Ads go for subliminal yuck factor', *The Australian*, 1 September 2004, p. 7.
122. *ibid.*
123. S. Crean, 'What now for the ALP?', *The Age*, 16 October 2004, p. 11.
124. Young, 'Scare campaigns', *op. cit.*, p. 11.
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126. Young, 'Scare campaigns', *op. cit.*, p. 26.
127. *ibid.*
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131. See, for example, "'Rat' sets trap for PM', *Sunday Mail*, 19 September 2004, which reported that a person dressed in a rat suit had followed Howard on a street walk in his electorate as protesters called out, 'lying rodent for PM'.
132. Young, 'Scare campaigns', *op. cit.*, p. 12.
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134. Penberthy, *op. cit.*, Marriner and Dodson, *op. cit.*, and 'Latham attacks defended', *West Australian*, 21 September 2004, p. 10.
135. The Channel 9–*Bulletin* poll, conducted by the Australian National University. Results from the online poll's questions about campaigning, asked on 22 September, available at: http://www.anuinnovation.com.au/pages/22_SEPT.pdf
136. Young, 'Scare campaigns', *op. cit.*, p. 5.
137. *ibid.*, p. 27.

138. *ibid.*, and Young, *The Persuaders*, *op. cit.*
139. See P. Kelly, *The End of Certainty*, Allen & Unwin, St. Leonards, New South Wales, 1994, p. xvii. Also, Mills, *op. cit.*, p. 153.
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This paper has been prepared to support the work of the Australian Parliament using information available at the time of production. The views expressed do not reflect an official position of the Information and Research Service, nor do they constitute professional legal opinion.

Acknowledgements

We would like to thank Dr Sally Young, Cathy Madden and Jerome Davidson for their helpful comments on earlier versions of this Paper.