

What is Happening to Australian Democracy?

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Australia nominally has all the right democratic institutions—regular elections, parliamentary sovereignty, ministerial responsibility, an independent judiciary, federalism, a non-partisan and expert public service and a free press. But these institutions don't always work the way they should and democracy is not just about formal institutions; it is also about how the public opinion climate is formed, how well-informed citizens are and their capacity to actively participate in public debate. At both these levels—institutional and participatory—there is cause for concern.

At the institutional level, one could point to the growing concentration of power in the executive and more particularly the Prime Minister and his office minders; the increasing propensity of Canberra to dictate to the States on policies and priorities; the prospect of a diminished role for the Senate as watchdog and scrutineer and as a source of publicly available information²; the silencing of the public service in its dealings with the public; and the refusal of Ministers to accept responsibility for failings of their departments or their minders.

Of no less importance to a healthy democracy is the way opinions are formed. Here, incumbency offers a huge advantage. Voters are generally ill-informed on most public policy issues—understandably so, given the cost of acquiring information. Government leaders, with an aura of authority and with good communication skills, can greatly influence the climate of opinion. They have greater financial resources at their disposal

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² The then Deputy Leader, John Anderson, is reported to have said that, with the Coalition control of the Senate, the era of 'endless witch-hunting committees' had ended (John Uhr in *The Public Sector Informant* May 2005).

than their opponents and easy access to an often uncritical media. They can release selective information, obfuscate, denigrate their critics, intimidate recalcitrant journalists and discourage ‘unfriendly’ comments from persons (including academics) or community groups that are dependent on government grants, contracts, or tax immunity. They can make political appointments to ‘independent’ statutory authorities, whose views and decisions subsequently impact on public opinion. And they have ongoing access to advice from experienced public servants.

In view of this incumbency advantage, it would be quite reprehensible for governments to use public money for partisan propaganda in the guise of ‘information’. Yet this abuse is rampant in Australia today, at both State and Federal levels. The Howard Government’s advertising budget has grown markedly during the last eight years (totalling nearly 2 billion dollars since 1996³) and has tended to peak close to election time. Much of the advertising (such as on superannuation choice, bushfire protection, anti-smoking, defence recruitment, national security alert etc.) is about legitimate dissemination of information. But much is not.

Ideally, ‘information’ advertisements paid for by public money should relate to legislation already enacted (or at least fully discussed by the Parliament) and any judgmental argumentation in them should be scrupulously balanced, with alternative views presented. The ads should also be subject to independent oversight. Recent advertisements such as on GST in 1998, on Medicare in 2004 and most recently on industrial relations (IR) reform fail these tests. The decisions were made by a Government Committee (the Ministerial Committee on Government Communications) which is not accountable to Parliament or answerable to Cabinet and not subject to independent oversight.⁴ Nor can their content be described as non-political. The

³ Josh Gordon in *The Age* 22 July 2005.

⁴ Stephen Bartos, Submission to Senate Finance and Public Administration References Committee, Inquiry into Government Advertising, 2004.

Broadcasting Services Act offers no great impediment to the broadcasting of blatant political advertising by governments using taxpayers' funds.⁵

The current IR newspaper ads (responding to pre-emptive advertising by the ACTU) are said to cost \$20 million and are particularly controversial. Unlike the Medicare ads, which related to new legislated rights, the IR ads relate to a *proposed* and *unlegislated* policy change—one that is highly divisive. And they do not tell a full and balanced story. For example the ads claim that workers would be safeguarded by a 'modern award system', that award wages would not fall below the 2005 Safety Net Review decision, that the right to join a union would not be removed, that workers would be protected against 'unlawful' dismissal and that the nation would benefit from having 'one set of national laws.'

An honest and balanced advertisement should have spelt out further details of the Prime Minister's policy announcement on May 26 – viz. that, under the new laws;

- (a) the new award safeguards will be narrower (e.g. not covering redundancy pay, overtime and penalty rates);
- (b) those who end up with Australian Workplace Agreements (AWAs) will have no award protection;
- (c) unlawful dismissal is more restrictive than 'unfair' dismissal and a complaint requires more costly and cumbersome Court action in the former case;
- (d) the minimum wage could, over time, decline both in real purchasing power (as there is no guarantee the Safety Net will be adjusted for inflation) and relative to average earnings;
- (e) the 'no disadvantage' test will not apply, leaving the possibility that some workers with no individual bargaining power will be worse off;
- (f) the bargaining power of trade unions will appreciably decline relative to managerial prerogative; and

⁵ Caretaker conventions discourage such advertising in the period between when writs are issued and the elections are held. But there is nothing to prevent intensive government advertising before the caretaker period begins—and there is evidence of a noticeable spike in that lead-up period. See Richard Grant, 'Federal Government Advertising', Australian Parliamentary Library Research Note 62, 2003–04, p.6.

- (e) uniformity of IR laws will be achieved by unilateral imposition from Canberra rather through federal–State cooperation.

The ads also claim that workers on AWAs earn 13 per cent more than those on certified (collective) agreements. The figures used include senior managers and bureaucrats who comprise a disproportionate proportion of AWAs. Comparing like with like and adjusting for hours paid, workers on collective agreements earn generally more than those on AWAs.⁶

If the Government wanted to conduct a ‘partisan political debate with the ACTU and the ALP’, it had other means—through news releases, talk shows, various other media forums and if necessary through Liberal Party ads. Even strong media supporters of the Government have declared the advertisements to be an ‘inappropriate use of taxpayers’ money’.⁷

It is possible that some recent government advertisements were technically ‘unlawful’⁸ but this is hard to prove because of the vague and open-ended nature of the guidelines—which give a government enormous flexibility in interpretation.

The Auditor General is required to look at the efficacy and effectiveness of government spending and has recommended a new set of guidelines on government advertising. These formed the basis of a Senate Order in 2003, which sought to toughen the controls on government advertising and to make them subject to Parliamentary scrutiny. But the Howard Government, although it promised when in Opposition that it would pass laws to

⁶ Although one might expect registered individual contracts to have higher rates of pay than collective agreements, because of compositional differences and the payment of a ‘contract premium’ by some employers, in fact non-managerial workers on registered individual contracts (99 per cent of whom are on AWAs) earn 2 per cent less per hour than those on registered collective agreements. For women, the disadvantage is 11 per cent. See David Peetz, *The impact of individual contracts on workers*, Report Card on IR changes, launched at the University of Sydney Law School, 21 June 2005.

⁷ Steve Lewis in *The Australian*, 12 July 2005. For other media comment see: Ross Gittins, ‘You are telling lies but I am selling reform’, *Sydney Morning Herald* 11 July 2005; ‘Unethical use of our money’, Editorial, *Canberra Times*, 11 July 2005; Paul Robinson, Paul and Tim Colebatch, ‘PM’s spin inflates value of wage deals’, *The Age* 14 July 2005.

⁸ Tony Harris, Submission to Senate Finance and Public Administration References Committee, Inquiry into Government Advertising and Accountability, 23 August 2004.

ensure ads were not partisan-political and were independently vetted, has chosen to retain the outdated and vague 1995 guidelines and reject the Senate order.

As a result, Australia lags behind most comparable English-speaking countries in this area. The sort of taxpayer-funded propaganda campaign that the Australian government is currently engaged in would almost certainly be illegal in the US.⁹ In New Zealand, Canada and Britain the guidelines are more clearly and precisely defined and regulations are in place to ensure independent accountability. Kim Beazley has said that the Opposition would introduce legislation into Parliament to force the Federal Government to get approval from the Auditor General for advertising campaigns.¹⁰

Australians support democratic ideals and, thanks in part to compulsory voting, a relatively high proportion of them take an interest in politics. But they are understandably concerned about the way democracy works—increasingly so.¹¹ To help allay these concerns, governments must ensure public money is used only to provide honest and balanced information. Audit values such as political equality, transparency and accountability are at stake.

⁹ Section 632 of the Treasury Postal Service Executive Office of the President and General Government Appropriation Act of 2000 prohibits the use of appropriated funds for ‘publicity or propaganda purposes. Congress has enacted a number of statutes that restrict agencies’ authority to spend funds for ‘publicity or propaganda’ or lobbying. These various laws raise substantial difficulties of interpretation but they provide a much stronger safeguard against abuse than in Australia. I am grateful to Andrew Leigh for drawing this to my attention.

¹⁰ ABC Online 21 July 2005.

¹¹ Scott Brenton, *Public Confidence in Australian Democracy*, Democratic Audit of Australia, May 2005.