

APPENDIX A

Submissions and comments

We have consulted with DET, DH, DoT, DPC, DTF and MTIA, and we considered their views when reaching our audit conclusions. As required by the *Audit Act 1994*, we gave a draft copy of this report, or relevant extracts, to those agencies and asked for their submissions and comments.

Responsibility for the accuracy, fairness and balance of those comments rests solely with the agency head.

Responses were received as follows:

| | |
|--|----|
| Department of Education and Training | 33 |
| Department of Health | 35 |
| Department of Premier and Cabinet | 38 |
| Department of Transport | 47 |
| Department of Treasury and Finance | 50 |



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BRI2296596

Mr Andrew Greaves
Auditor-General
Victorian Auditor-General's Office
Level 31, 35 Collins Street
Melbourne VIC 3000

Dear Mr Greaves

Proposed report: Government Advertising

Thank you for the letter of 28 February 2022 and the opportunity to comment on the proposed report for this performance audit.

The department is committed to ensuring government campaign advertising is cost-effective and complies with all relevant requirements, particularly those of the *Public Administration Act 2004* (PAA).

The department has reviewed the proposed report and accepts the recommendation made to document risk-based processes for checking advertising campaigns' compliance with the PAA. The attached action plan addresses the recommendation in the report. It is noted that the department did in fact take the steps consistent with those recommended by VAGO to ensure compliance, including seeking legal advice (internal and external) and preparing a briefing to seek approval of the campaign that addressed compliance with the relevant PAA provisions.

If your team would like to discuss the content of this response further, please contact Bella Stagoll, Executive Director, Integrity, Assurance and Executive Services Division on (03) 7022 0120 or bella.stagoll@education.vic.gov.au.

Yours sincerely



Jenny Atta
Secretary
Department of Education and Training
15 / 03 / 2022

Your details will be dealt with in accordance with the *Public Records Act 1973* and the *Privacy and Data Protection Act 2014*. Should you have any queries or wish to gain access to your personal information held by this department please contact our Privacy Officer at the above address.



DET action plan: Government advertising

| # | Recommendation: That DPC, DET, DoH, DTF and MTIA: | Response | # | The department will: | By the end of: |
|---|--|----------|-----|--|-------------------|
| 4 | document risk-based processes for checking advertising campaigns' compliance with the PAA. In particular, for high risk and/or sensitive campaigns, agencies should: <ul style="list-style-type: none"> • seek detailed and/or external legal advice • ensure that the agency head confirms compliance with the PAA. | Accept | 4.1 | document risk-based processes for checking advertising campaigns' compliance with the PAA. In particular, for high risk and/or sensitive campaigns DET will: <ul style="list-style-type: none"> • seek detailed and/or external legal advice • ensure that the agency head confirms compliance with the PAA. | December 2022 |



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Andrew Greaves
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Victorian Auditor-General's Office
Via e-mail: andrew.greaves@audit.vic.gov.au

Dear Mr Greaves

Government Advertising Audit – Proposed Report

Thank you for providing the department with the proposed report for the Government Advertising performance audit.

The department welcomes the report and appreciates the Victorian Auditor-General's Office's consideration of these issues.

The department maintains that it:

- complied with the *Public Administration Act 2004 (Vic) (Act)* and the *Public Administration (Public Sector Communication) Regulations 2018 (Vic) (Regulations)* in relation to the department's government advertising which was considered in the report; and
- sought appropriate legal advice and approvals in relation to this government advertising.

As set out in the report, the department acknowledges there are different interpretations of the Act and Regulations and notes the recommendation of a review of the laws to assess whether they provide clear standards.

The department considers that any such review should take into account that the Act and Regulations should be interpreted in the context of the constitutional implied freedom of political communication and should not be interpreted as prohibiting advertising that concerns political issues, even where those issues are contentious.

The department accepts the report's recommendations which are addressed to it, namely to document risk-based processes for checking advertising campaigns' compliance with the Act and that for high-risk and/or sensitive campaigns, agencies should:

- seek detailed and/or external legal advice; and
- ensure that the agency head confirms compliance with the Act.



The department is already taking steps to revise its risk assessment and quality assurance processes in relation to:

- the compliance of any high-risk and/or sensitive campaigns with the Act and Regulations, including in relation to seeking legal advice; and
- the agency head (or their appropriate delegate) confirming compliance.

I also look forward to further strengthening our approach to any similar campaigns in the future.

Finally, the department notes the report's recommendations addressed to other agencies in relation to cost-effectiveness. The department always seeks to ensure value for money including in relation to any government advertising. The department will take into account the comments in relation to campaign objectives and appropriate evaluation of government advertising.

Yours sincerely



Professor Euan M Wallace AM
Secretary

15/03/2022

Department of Health action plan to address recommendations from *Government Advertising*

| No. | VAGO recommendation | Action | Completion date |
|-----|--|--|-----------------|
| 1 | Recommendation 4 DH document risk-based processes for checking advertising campaigns' compliance with the PAA. In particular, for high-risk and/or sensitive campaigns, DH should: <ul style="list-style-type: none"> • seek detailed and/or external legal advice • ensure that the agency head confirms compliance with the PAA. | Accept The department will further enhance its processes for checking high-risk and/or sensitive advertising campaigns' compliance with the PAA. | 1 July 2022. |



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D22/16867

Mr Andrew Greaves
Auditor-General
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Dear Auditor-General,

I am writing in response to your letter dated 28 February 2022 enclosing the proposed performance audit report entitled 'Government Advertising', in relation to the 'Our Fair Share' (OFS) and 'Victoria's Big Build' (VBB) advertising campaigns (Audit Report).

The Department of Premier and Cabinet (DPC) attaches its action plan to acquit the proposed performance audit recommendations in the Audit Report. DPC has carefully considered the Victorian Auditor-General's Office's (VAGO) recommendations in the Audit Report and has accepted the majority of them. For the reasons outlined in the attachment, DPC has either partially accepted or not accepted others. Where this is the case, the recommendations either deal with matters which are solely for the Government itself to decide, or are unlikely to achieve the objective underlying the recommendation.

DPC notes that this is the first time VAGO has conducted an audit relating to Part 5A of the *Public Administration Act 2004* (PAA), which contains new provisions that were inserted by the *Public Administration Amendment (Public Sector Communication Standards) Act 2017*, and which commenced on 26 September 2017. This is also the first Auditor-General review of the application and operation of these laws.

Under Part 5A of the PAA, government advertising must:

- be published in the public interest (s 97B);
- not be designed or intended to influence public sentiment for or against (among others) the current Commonwealth Government or the current Victorian Government (s 97C(a)); and
- if on television, be for a specific purpose, relevantly including promoting commercial or economic development within Victoria and generating revenue for Victoria through consumption of products or services provided by the Victorian Government (s 97D).

DPC notes that Victoria is the only jurisdiction (apart from the Australian Capital Territory) that has express advertising prohibitions on directly or indirectly influencing public sentiment for or against a political party, a candidate for election, a member of Parliament, the current Commonwealth or State Government.

DPC welcomes the findings by VAGO in the Audit Report that the OFS and VBB campaigns met the public interest requirements under the PAA and that there was no evidence of bad faith on the part of the agencies.

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DPC also welcomes VAGO's recognition that Part 5A of the PAA is relatively new and unique to Victoria and, further, that there are differing legal interpretations of the operation of the Part.

DPC does not accept VAGO's assessment and conclusion in the Audit Report that parts of the OFS and the VBB campaigns were not fully compliant with the political and television advertising requirements in Part 5A of the PAA. DPC considers that the OFS and VBB campaigns were legally compliant with the PAA. DPC's officers acted in good faith and had the benefit of legal advice about the PAA. As VAGO has noted in the Audit Report, there are conflicting interpretations of the political advertising requirements in Part 5A of the PAA, most notably in relation to s 97C. In DPC's view, VAGO has formed a different view regarding the compliance of the campaigns based on a different interpretation of the relevant provisions of the PAA and its assessment of the various materials.

The OFS and VBB campaigns were both in the State interest. The OFS campaign was for the purpose of highlighting funding issues and intended to secure additional Commonwealth funding, which would both intrinsically benefit Victoria's economy and more broadly promote commercial and economic development in Victoria through the consequent investments in health, transport infrastructure and education. The VBB campaign facilitated, and continues to facilitate, public understanding of the benefits of the various transport infrastructure projects to support the legitimate goal of increasing public acceptance of the travel disruptions arising from these projects. Further, as the VBB campaign is continuing, arrangements are in place to ensure that appropriate approvals and governance standards are being met.

DPC commits to advising the current and any incoming Government about the different interpretations of the advertising laws in the PAA, including s 97C. However, it is a matter for the Government whether or not to conduct a review of the PAA and whether any legislative reform should be sought. In this regard, any amendment of the PAA is ultimately a matter for Parliament.

DPC accepts the recommendations regarding governance and is working to implement them. DPC has arrangements in place designed to ensure advertising by agencies complies with Part 5A of the PAA. These arrangements will be further strengthened by implementing several of VAGO's recommendations. Where DPC works with other agencies in relation to the co-ordination of an advertisement campaign, DPC is responsible for supporting compliance and providing information regarding agency obligations under the PAA. However, it is ultimately the relevant agency who is primarily responsible for the publication of the campaign and compliance with Part 5A of the PAA.

DPC also accepts the recommendation to document risk-based processes for checking advertising campaigns for compliance with the PAA. In this regard, DPC will review the existing risk-based processes and update them accordingly. These processes take into account a range of factors, on a case by case basis, when assessing which mitigating controls should be implemented in respect of any campaign to ensure that it is compliant.

DPC is committed to, and supportive of, improving the reporting of advertising campaign expenditure across agencies, as recommended by VAGO. However, DPC acknowledges that to achieve this will require a significant commitment of both time and resources.

Thank you for the opportunity to respond to the recommendations and findings of the performance Audit Report.

Yours sincerely



Jeremi Moule
Secretary
15 / 03 / 2022

Encl.

Department of Premier and Cabinet's (DPC) response and action plan to recommendations from the Victorian Auditor-General Office's (VAGO) in relation to the Performance Audit - *Government Advertising*

| No. | VAGO recommendation | Action | Completion date |
|-----|---|--|-----------------|
| 1 | <p>Recommendation 1</p> <p>DPC commission and publish an independent expert review of the government advertising laws in the <i>Public Administration Act 2004</i> (Vic) (PAA) (including section 97C(a)(iv) and (v)) that:</p> <ul style="list-style-type: none"> • consults relevant stakeholders • assesses whether the laws are clear • provides a report including any recommended legislative changes and advise the Government on any recommended changes. | <p>DPC does not accept this recommendation.</p> <p>It is a matter for the Government to decide whether an external review of the PAA should be undertaken and whether any legislative reform should be sought.</p> <p>DPC commits to advising the current and any incoming Government on the different interpretations of the advertising laws in the PAA, including s 97C(a), and of VAGO's view that an external review of the PAA should be undertaken. DPC notes that there are limited Parliamentary sitting days between now and the upcoming State election to undertake a review and implement any possible legislative reform.</p> | January 2023 |
| 2 | <p>Recommendation 2</p> <p>DPC update its information for agencies, and the public, about the government advertising laws in the PAA to include section 97C(a)(iv) and (v).</p> | <p>DPC accepts this recommendation.</p> <p>DPC has provided sufficient information to agencies about compliance with the PAA and the amendments to the PAA.</p> <p>However, DPC accepts the recommendation that guidance materials be updated to specifically provide guidance on each section of Part 5A of the PAA. DPC will, in the lead up to the 2022 State Election, update and re-circulate guidance for Senior Communications Executives (SCEs) relating to Part 5A of the PAA and the <i>Public Administration (Public Sector)</i></p> | May 2022 |

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| | | Communication) Regulations 2018 (Vic) (Regulations) (including ss 97C(a)(iv) and (v) and other relevant provisions). | |
| 3 | <p>Recommendation 3</p> <p>DPC strengthen the whole-of-government oversight arrangements for government advertising to:</p> <ul style="list-style-type: none"> clearly describe the respective responsibilities of public sector bodies, the AAG and DPC in ensuring compliance with the PAA ensure the AAG has sufficient information, time, expertise and resources to fulfil its terms of reference require officers involved in developing campaigns to excuse themselves from AAG meetings when the AAG is reviewing and approving their campaigns keep clear records of all approvals. | <p>DPC accepts this recommendation.</p> <p>DPC notes that some Government advertising must be prepared and considered urgently (for example in a pandemic or emergency), which involves less information and administrative processes than would otherwise be available.</p> <p>DPC has taken steps to improve governance arrangements for government advertising, including in relation to the arrangements for the current and continuing campaigns, and is confident that campaigns meet all appropriate legal requirements and governance arrangements.</p> <p>DPC considers that many of these recommendations could be achieved with an enhanced briefing pack for new AAG members, and DPC will strengthen guidance for SCEs.</p> | August 2022 |

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| 4 | <p>Recommendation 4</p> <p>DPC document risk-based processes for checking advertising campaigns' compliance with the PAA. In particular, for high-risk and/or sensitive campaigns, DPC should:</p> <ul style="list-style-type: none"> • seek detailed and/or external legal advice • ensure that the agency head confirms compliance with the PAA. | <p>DPC partially accepts this recommendation.</p> <p>DPC accepts this recommendation to document risk-based processes for checking DPC's advertising campaigns' compliance with the PAA. DPC will review the existing risk-based processes and update them as needed.</p> <p>DPC considers that such risk-based processes will identify a range of factors to be considered when assessing which mitigating controls should be implemented in respect of any campaign.</p> <p>In accepting this recommendation DPC notes that it is difficult to prospectively assess whether a campaign is sensitive or high-risk. There is a real likelihood that reasonable minds may differ as to what constitutes a 'sensitive or high risk' campaign. In addition, such an assessment may be different with the benefit of hindsight.</p> <p>DPC accepts that in appropriate circumstances, seeking legal advice as to whether a campaign complies with the PAA and/or agency head confirmation may be appropriate mitigating controls. Such legal advice may be provided by internal or external legal advisers. However, seeking legal advice on a proposed campaign should be determined on a case by case basis.</p> | May 2022 |
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| 5 | <p>Recommendation 5</p> <p>DPC revise the Governance Guidelines and associated processes to ensure that:</p> <ul style="list-style-type: none"> • it assesses agency compliance with the Governance Guidelines • agencies provide a cost-benefit analysis when seeking approval for high risk or high-cost campaigns • minutes of AAG meetings record the AAG's deliberations regarding the responsibilities in its terms of reference, including ensuring value for money, compliance with legislation and appropriate evaluation of campaigns • agencies have sufficient guidance to ensure that campaigns are evaluated in an objective and systematic way against campaign objectives. At a minimum this should include the better practice for evaluations identified in this report • agencies and AAG have sufficient guidance on how to assess: <ul style="list-style-type: none"> ○ public benefit, value for money and effectiveness, and financial performance ○ whether a campaign is likely to be sensitive and/or high-risk. | <p>DPC partially accepts this recommendation.</p> <p>DPC accepts the recommendations regarding revising Governance Guidelines and associated processes to ensure that:</p> <ul style="list-style-type: none"> • minutes of AAG meetings record the AAG's deliberations regarding the responsibilities in its terms of reference, including ensuring value for money, compliance with legislation and appropriate evaluation of campaigns; • agencies have sufficient guidance to ensure that campaigns are evaluated in an objective and systematic way against campaign objectives. At a minimum this should include the better practice for evaluations identified in this report; and • agencies and AAG have sufficient guidance on how to assess public benefit, value for money and effectiveness, and financial performance. <p>DPC notes difficulties with assessing agency compliance with Governance Guidelines (as the relevant agencies have primary responsibility for compliance).</p> <p>DPC repeats its observations above under recommendation 4 regarding the difficulties with determining when a campaign will be sensitive or high risk. This will impact on implementing VAGO's recommendations.</p> <p>DPC however commits to working with VAGO to improve the guidance it provides to agencies.</p> | August 2022 |
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| 6 | <p>Recommendation 6</p> <p>DPC include reporting guidance to agencies on:</p> <ul style="list-style-type: none"> reporting campaign expenditure, to ensure consistent and complete reporting of campaign costs requirements for ensuring the accuracy of public reporting, including ensuring documentation of underpinning calculations and use of the Master Agency Media Services dashboard to check accuracy public reporting on campaign evaluation summaries in their annual reports and acquitting costs against approved budgets. | <p>DPC accepts this recommendation.</p> <p>DPC considers these recommendations could be implemented, utilising media expenditure data available through the MAMS contract.</p> <p>However, agencies would remain responsible for accurate reporting of the 'total' campaign expenditure in their annual reports (just as they are responsible for all other data reported in annual reports). This is because DPC does not have the ability to interrogate the accuracy or otherwise of agencies' reporting.</p> | <p>May 2022</p> <p>(July 2023 for any changes to Financial Reporting Directions – in conjunction with DTF)</p> |
| 7 | <p>Recommendation 7</p> <p>DPC, in its whole of government reporting:</p> <ul style="list-style-type: none"> provide total campaign advertising in more accessible formats such as online dashboards ensure that its reporting on whole-of-government advertising expenditure reflects total campaign expenditure, including creative and campaign development, MAMS fees and other costs. | <p>DPC accepts this recommendation.</p> <p>DPC is supportive of the advertising (media) expenditure data it publishes being in a more accessible format and which reflects the total campaign expenditure. Whilst this recommendation has merit and is highly desirable in the longer term, it will require significant resources to achieve.</p> <p>There are a range of complexities in implementing this recommendation, which include the current arrangements for initiating and operationalising advertising campaigns in circumstances where:</p> <ul style="list-style-type: none"> advertising campaign expenses (such as 'creative and campaign development') are managed through | <p>2023</p> |

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| | | <ul style="list-style-type: none"> individual contracts (involving hundreds of suppliers) entered into by numerous departments and agencies; departments and agencies are responsible for their advertising budgets and expenditure and they have their own internal financial reporting systems on such expenditure to accurately report these costs. There is no unified and co-ordinated reporting system for all advertising costs; any whole-of-government reporting by DPC to reflect 'total' campaign expenditure is reliant on the information provided by departments and agencies; and establishing a common reporting system across agencies and departments will take substantial resources and co-ordination. | |
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Dear Mr Greaves

Victorian Auditor-General's Office – Proposed Report – Government Advertising

Thank you for your letter of 28 February 2022 relating to the '*Government Advertising*' performance audit and for the opportunity to provide comments on the proposed report.

The Department of Transport and the Major Transport Infrastructure Authority (MTIA) appreciates the opportunity to participate in this audit and acknowledges the seven (7) recommendations outlined in the report of which, one (1) relates to both the Department and MTIA.

The Department and MTIA's action plan on the proposed report is attached for your consideration.

The Department and MTIA are committed to communicating travel disruptions associated with the delivery of major infrastructure works to Victorians, ensuring that commuters are informed of disruptions and the reasons for them occurring in advance.

MTIA research demonstrates that Victoria's Big Build campaign advertising has been successful in ensuring that 85 per cent of impacted Victorians are aware about disruptions before starting their journey, giving them a welcome opportunity to change their travel behaviour in advance. Research further demonstrates that commuters are more likely to be resilient when faced with ongoing disruptions if they understand the reasons for them occurring. We welcome your view in the report that the current campaign has struck a balance between disruptions and project information.

We acknowledge VAGO's conclusion that there are conflicting interpretations of section 97C of the *Public Administration Act 2004* and look forward to working closely with the Department of Premier and Cabinet to achieve greater clarity and assurance.



As has been communicated throughout the audit, MTIA does not agree that any advertisements for Victoria's Big Build were political in nature. Similarly, the Department does not agree with the conclusions reached by VAGO in relation to Our Fair Share.

If you require further information, please contact **Rebecca Skelton** – Chief Communications and Experience Officer on mobile 0477 340 141 or email rebecca.skelton@transport.vic.gov.au or **Rob Pearce** – General Counsel on mobile 0432 933 723 or email rob.pearce@transport.vic.gov.au



Paul Younis
Secretary
Department of Transport

16 March 2022

Enc.
DoT and MTIA's Action Plan in response to VAGO's Government Advertising - Proposed Report

Government Advertising

VIC Department of Transport Action Plan

| No. | VAGO recommendations | Action | Completion date |
|-----|---|--|------------------|
| 4. | <p>We recommend that DoT and MTIA document risk-based processes for checking advertising campaigns' compliance with the PAA. In particular, for high-risk and/or sensitive campaigns, agencies should:</p> <ul style="list-style-type: none"> seek detailed and/or external legal advice; and ensure that the agency head confirms compliance with the PAA. | <p>Accepted</p> <p>DoT and MTIA will update their internal processes to include documenting a risk-based approach for checking advertising campaigns' compliance with the PAA. For sensitive or high-risk advertising campaigns this will include:</p> <ul style="list-style-type: none"> the requirement to obtain detailed internal legal advice (or external legal advice as appropriate) on compliance with the PAA; and briefing the relevant agency head on the legal advice and seeking approval for the campaign and confirmation of compliance with the PAA. | 31 December 2022 |

VIC Department of Transport – Government Advertising – Action Plan



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Andrew

Dear Mr ~~Greaves~~

**RESPONSE TO PROPOSED AUDIT REPORT –
GOVERNMENT ADVERTISING**

Thank you for your letter dated 28 February 2022, inviting the Department of Treasury and Finance (DTF) to respond to the proposed audit report on Government Advertising.

DTF notes the conclusions of the proposed audit report and the recommendation directed jointly at DTF and the Department of Premier and Cabinet (DPC). DTF accepts in full the recommendation.

A proposed action plan for implementing the recommendation directed at DTF and DPC is attached to this letter.

Should you have any queries or require additional information in relation to this letter, please contact Matt Cugley, Chief Communications Officer by email matt.cugley@dtf.vic.gov.au.

Thank you for the opportunity to comment on the proposed review.

Yours sincerely



David Martine

Secretary

8 /3/2022

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