



Government Advertising

April 2022

Independent assurance report to Parliament
2021–22:15

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Government Advertising

Independent assurance report to Parliament

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The Hon Nazih Elasmr MLC
President
Legislative Council
Parliament House
Melbourne

The Hon Colin Brooks MP
Speaker
Legislative Assembly
Parliament House
Melbourne

Dear Presiding Officers

Under the provisions of the *Audit Act 1994*, I transmit my report *Government Advertising*.

Yours faithfully



Andrew Greaves
Auditor-General
6 April 2022

The Victorian Auditor-General's Office acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders past and present.

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Audit snapshot

Do government advertising campaigns comply with the *Public Administration Act 2004* and are they cost-effective?

Why this audit is important

The Victorian Government spends at least \$80 million a year on advertising.

Given the potential political sensitivity, public sector agencies must comply with the advertising laws and show how the public will benefit from these campaigns.

In 2017, the Victorian Parliament passed laws to ensure government advertising is in the public interest and to stop public sector agencies publishing political advertising.

What we examined

We looked at whether two government advertising campaigns complied with the 2017 laws and were cost-effective. They were:

- the 2019 Our Fair Share (OFS) campaign, which advocated for more Commonwealth funding for Victoria
- Victoria's Big Build (VBB), a multi-year campaign about major transport projects.

We examined the six agencies involved in the campaigns.

What we concluded

In our opinion, the campaigns did not fully comply with the 2017 laws. Most OFS and a small number of VBB advertisements were political, in that they could easily be seen to:

- promote the current Victorian Government
- in the case of the OFS campaign, criticise the current Commonwealth Government.

The agencies interpret the 2017 laws differently. They maintain they complied with their obligations.

The conflicting interpretations show the laws are not sufficiently clear. This needs to be remedied.

In addition, the agencies could not show, nor is it clear, that the campaigns were cost-effective.

What we recommended

We made seven recommendations, including:

- a review of the 2017 laws
- stronger oversight of government advertising
- better evaluation and reporting of advertising cost-effectiveness.

Key facts

Our Fair Share campaign

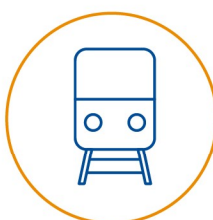


April–June 2019

\$1.7m

DET | DH | DoT

Victoria's Big Build campaign



From February 2018

\$11.5m

DoT | MTIA

The 2017 laws require government advertising to:



Be in the public interest



Have no political content



Comply with TV standards

Source: VAGO, based on information from the Department of Premier and Cabinet's *Victorian Government Advertising Report 2019–20* and agencies' annual reports between 2017–18 and 2020–21 for Our Fair Share and Victoria's Big Build campaign costs.

What we found and recommend

We consulted with the audited agencies and considered their views when reaching our conclusions. The agencies' full responses are in Appendix A.

Legal compliance

Compliance with the *Public Administration Act 2004*

In 2017, the Parliament introduced new laws into the *Public Administration Act 2004* (PAA) to regulate government advertising and communication. The laws aim to ensure government advertising is in the public interest and not party political. They also limit government advertising on television to certain purposes, such as promoting public safety or promoting economic development.

Before the Parliament passed the laws, it added extra clauses. The extra clauses were meant to stop other types of political advertising, particularly advertising promoting the government of the day. They require public sector agencies to ensure advertising is not designed or intended to influence public sentiment for or against the current Victorian or Commonwealth governments.

We audited two government advertising campaigns against the laws:

- The 2019 OFS campaign, which advocated for more Commonwealth funding for Victorian schools, health care and transport projects.
- The VBB campaign, a multi-year campaign about the Victorian Government's major transport projects and related travel disruptions. We looked at two phases of the campaign—one from 2018 and part of a later VBB campaign from 2019–20.

The two campaigns met most of the requirements in the laws, including the public interest requirements. However, in our opinion, they did not always comply with the Parliament's extra clauses on political advertising:

- Most OFS advertisements included statements that could easily be seen as criticising the Commonwealth Government's funding for schools, health and transport in the lead-up to the 2019 federal election.

- Most OFS advertisements, and a small number of VBB advertisements, included messages that could be easily seen as promoting Victorian Government spending on projects.

It is also our opinion that the OFS campaign did not comply with the limits on television advertising.

Conflicting interpretations of the law

We sought independent legal advice from the Victorian Government Solicitor's Office (VGSO) about the 2017 laws. Its advice informed our interpretation of the laws, our assessment of the campaigns and our conclusions.

The audited agencies interpret the laws differently. They have their own legal advice, obtained prior to campaign launch and during this audit. The agencies state that they were motivated either solely or in part (Department of Education and Training (DET)) by the public interest and believe they complied with their legal obligations.

The conflicting legal opinions show the intent and operation of the laws are not sufficiently clear. We support an independent review of the laws to assess whether they provide clear standards.

Internal compliance systems

The Department of Premier and Cabinet (DPC) helps to promote compliance with the 2017 laws by publishing guidance for agencies. But its information for agencies, and for the public, does not mention the extra clauses added by Parliament.

The agencies involved in the campaigns told us they were aware of the 2017 laws. But their internal compliance systems were not always:

- clearly documented—except for DET and Major Transport Infrastructure Authority (MTIA)
- proportionate to the risks involved in the campaigns.

Whole-of-government oversight arrangements

Government advertising campaigns also go through a central approval process. An officer-level committee—the Advertising Approval Group (AAG)—assesses campaigns to ensure they comply with legal and policy requirements.

In the case of these two campaigns, DPC (which chairs the AAG and provides its secretariat) did not always ensure the process was robust. DPC:

- did not ensure that the AAG's terms of reference and responsibilities were clear
- did not ensure the AAG had adequate information about legal risks involved in the campaigns, or sufficient time and expertise to discharge its responsibilities
- allowed officers involved in developing the campaigns to sit on the AAG when it reviewed the campaigns. This meant those officers effectively reviewed their own work, undermining the oversight arrangements.

The AAG secretariat in DPC is small and lacks the resources needed to support the AAG's functions effectively.

Accountability for compliance

In the case of the OFS campaign, one of the agencies involved—DPC—did not accept it was legally responsible for the campaign.

DPC prepared the campaign with DET, the Department of Health (DH) and the Department of Transport (DoT). DPC initiated the campaign, helped develop the advertisements and arranged the media bookings.

The three other agencies accept that they caused the campaign's publication and that they were legally responsible for compliance. DPC does not. We disagree.

Recommendations about legal compliance

We recommend that:

Response

Department of Premier and Cabinet	1. commissions and publishes an independent expert review of the government advertising laws in the <i>Public Administration Act 2004</i> (including section 97C(a)(iv) and (v)) that: <ul style="list-style-type: none"> consults relevant stakeholders assesses whether the laws are clear provides a report including any recommended legislative changes and advises the government on any recommended changes (see Section 2.2).	Not accepted by: Department of Premier and Cabinet
	2. updates its information for agencies, and the public, about the government advertising laws in the <i>Public Administration Act 2004</i> to include section 97C(a)(iv) and (v) (see Section 2.3).	Accepted by: Department of Premier and Cabinet
	3. strengthens the whole-of-government oversight arrangements for government advertising to: <ul style="list-style-type: none"> clearly describe the respective responsibilities of public sector bodies, the Advertising Approval Group and Department of Premier and Cabinet in ensuring compliance with the <i>Public Administration Act 2004</i> ensure the Advertising Approval Group has sufficient information, time, expertise and resources to fulfil its terms of reference require officers involved in developing campaigns to excuse themselves from Advertising Approval Group meetings when the Advertising Approval Group is reviewing and approving their campaigns keep clear records of all approvals (see sections 2.4 and 2.5). 	Accepted by: Department of Premier and Cabinet
Department of Premier and Cabinet Department of Education and Training Department of Health Department of Transport Major Transport Infrastructure Authority	4. document risk-based processes for checking advertising campaigns' compliance with the <i>Public Administration Act 2004</i> . 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 <i>Public Administration Act 2004</i> (see Section 2.3). 	Accepted by: Department of Education and Training, Department of Health, Department of Transport, Major Transport Infrastructure Authority Partially accepted by: Department of Premier and Cabinet

Cost-effectiveness

Cost-effectiveness of the audited campaigns

The agencies involved in the two campaigns could not demonstrate that the campaigns were cost-effective. This was partly due to inadequate planning. The agencies did not always set clear and measurable campaign objectives and performance targets.

In addition, agencies did not evaluate their campaigns once they had finished, to check whether they met their campaign objectives and targets. A review was undertaken for VBB only; however, the conducted assessment was not systematic or objective enough to be considered an evaluation.

This meant agencies could not show that their spending on the campaigns was effective or provided value for money.

We found similar problems in our last audit of government advertising in 2012, but agencies are yet to adequately address the issues. DPC provides some guidance to agencies on evaluations, but it must be strengthened to promote better practice.

Public reporting

Under government financial reporting rules, agencies must report publicly on all campaigns over \$100,000 in their annual reports. DPC also publishes two reports every year—one summarising all major government advertising campaigns and one reporting on whole-of-government advertising expenditure.

These reports promote accountability and transparency, but they can be improved.

The agencies' public reports were often incorrect and incomplete. Some reports contained errors, such as figures that did not add up or figures that did not match paid invoices. DPC's reporting on whole-of-government advertising expenditure excludes significant costs, such as creative development, and Master Agency Media Services (MAMS) fees. Therefore, it does not reflect the true cost of government advertising. Agencies also publish data mostly in Portable Document Format (PDF) reports, which makes comparison and analysis difficult. As a result, agencies are not reporting campaign costs in an accountable and transparent manner.

MAMS refers to the Master Agency Media Services media buying contract through which Victorian Government media strategy, planning, buying and reporting services can be procured.

Recommendations about cost-effectiveness

We recommend that:

Response

Department of Premier and Cabinet	<p>5. revises 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 the Advertising Approval Group meetings record the Advertising Approval Group'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 better practice for evaluations identified in this report • agencies and the Advertising Approval Group 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 (see sections 2.4 and 3.1). 	<p>Partially accepted by: Department of Premier and Cabinet</p>
<p>Department of Premier and Cabinet</p> <p>Department of Treasury and Finance</p>	<p>6. 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 (see Section 3.2). 	<p>Accepted by: Department of Premier and Cabinet, Department of Treasury and Finance</p>
Department of Premier and Cabinet	<p>7. in its whole-of-government reporting:</p> <ul style="list-style-type: none"> • provides total campaign advertising in more accessible formats such as online dashboards • ensures that its reporting on whole-of-government advertising expenditure reflects total campaign expenditure, including creative and campaign development, Master Agency Media Services fees and other costs (see Section 3.2). 	<p>Accepted by: Department of Premier and Cabinet</p>

1.

Audit context

The Victorian Government uses advertising to communicate with the public about important issues, such as government services, changes to the law and health and safety. It spent at least \$84.6 million on advertising in 2019–20.

In 2017, the Victorian Parliament introduced new laws to ensure government advertising is in the public interest, and to stop public sector agencies publishing political advertising.

Agencies are required to evaluate their campaigns to show whether they were cost-effective. DPC and agencies are required to report publicly on their advertising costs.

This chapter provides essential background information about:

- Government advertising in Victoria
 - Legal requirements
 - Whole-of-government oversight arrangements
 - The two audited advertising campaigns
-

1.1 Government advertising in Victoria

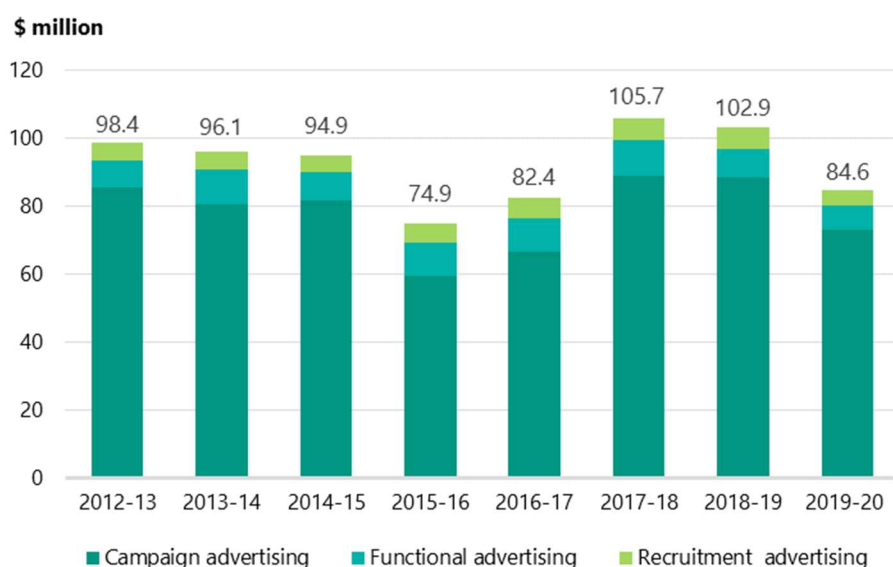
Governments use advertising to communicate with the public about issues such as government services, changes to laws and health and safety.

The Victorian Government classifies advertising into three categories:

- Campaign advertising is intended to inform, educate, motivate or change behaviour. Examples are road safety and regional tourism campaigns.
- Functional advertising includes simple, one-off advertisements such as legal notices and requests for tender.
- Recruitment advertising promotes job vacancies in government.

Government spending on these categories varies from year to year. Figure 1A shows publicly reported expenditure on advertising from 2012–13 to 2019–20 (the government is yet to publish its 2020–21 expenditure). Campaign advertising accounts for most of the expenditure.

FIGURE 1A: **Victorian Government advertising expenditure**



Note: The Victorian Government's publicly reported advertising expenditure does not reflect total costs (see Section 3.2).

Source: VAGO, based on Victorian Government Annual Advertising reports.

1.2 Legal requirements

Government advertising must comply with a range of Victorian and Commonwealth laws. In this audit, we looked at the PAA.

In 2017, the Victorian Parliament added new laws to the PAA to regulate government advertising and communication. The objects of the laws include ensuring advertising is in the public interest and not party political.

Before the Parliament passed the laws, it added some extra clauses. They were intended to stop other types of political advertising, particularly advertising that uses public money to promote the government of the day. The extra clauses require public sector agencies to ensure advertising is not ‘designed or intended to directly or indirectly influence public sentiment for or against’:

- the current government of the state
- the current government of the Commonwealth.

The government at the time opposed the extra clauses at first, noting that they might stop the state government advocating for Victorians against the Commonwealth. But it later agreed to the amendments and they passed into law.

In 2018, the Victorian Government added more detailed standards through the *Public Administration (Public Sector Communication) Regulations 2018* (the Regulations).

The legal requirements in the PAA and Regulations apply to ‘public sector communication’. For simplicity, in this report we use the term ‘advertising’ to refer to all paid public sector communication.

The agency that publishes the advertising, or causes it to be published, is responsible for complying with the legal requirements.

In the PAA and Regulations, **public sector communication** means information, material or messages published by or on behalf of a public sector body.

FIGURE 1B: Main legal requirements in the PAA and Regulations

Legal requirements in the PAA and Regulations

Public interest requirements	<p>Section 97B requires public sector agencies to ensure publication of government advertising is in the public interest.</p> <p>The Regulations list 12 examples of purposes that are in the public interest. They include:</p> <ul style="list-style-type: none">• informing the public of new, existing or proposed policies, projects or legislation• promoting public safety, personal security or behavioural change• advocating on behalf of Victoria to advance Victoria's position or interests.
Political advertising requirements	<p>Section 97C requires public sector agencies to ensure that government advertising is not ‘designed or intended to directly or indirectly influence public sentiment for or against’:</p> <ul style="list-style-type: none">• a political party• a candidate for election• a member of Parliament• the current government of the state• the current government of the Commonwealth. <p>The Regulations set out further restrictions. For example, they prohibit advertising that refers to a political party or includes a political party's slogan, image or brand.</p>

Legal requirements in the PAA and Regulations

Television advertising requirements	<p>Section 97D requires public sector agencies to ensure that the purpose of government advertising on television is one of the following:</p> <ul style="list-style-type: none">• promoting public safety, personal security or behavioural change• promoting social cohesion, civic pride or community spirit within the general public• promoting commercial or economic development within the state• generating revenue for public sector bodies or for the state through consumption of products or services delivered by or in partnership with public sector bodies• promoting compliance with legislative requirements.
Other requirements	<p>The PAA and the Regulations also have other requirements for government advertising. For example, government advertising must not:</p> <ul style="list-style-type: none">• denigrate without grounds, individuals, groups or organisations• present information as fact if the information 'is not reasonably able to be substantiated as fact'• promote services, activities or infrastructure projects for which funding is not yet approved.

Source: VAGO.

1.3 Whole-of-government oversight arrangements

The Victorian Government also has whole-of-government oversight arrangements for its campaign advertising.

Planning, approval, evaluation and reporting

The oversight arrangements include central processes for planning, approving, evaluating and reporting on government advertising.

DPC outlines the arrangements in the Victorian Government Advertising Planning and Approval Process. In this report, we call this document the Governance Guidelines.

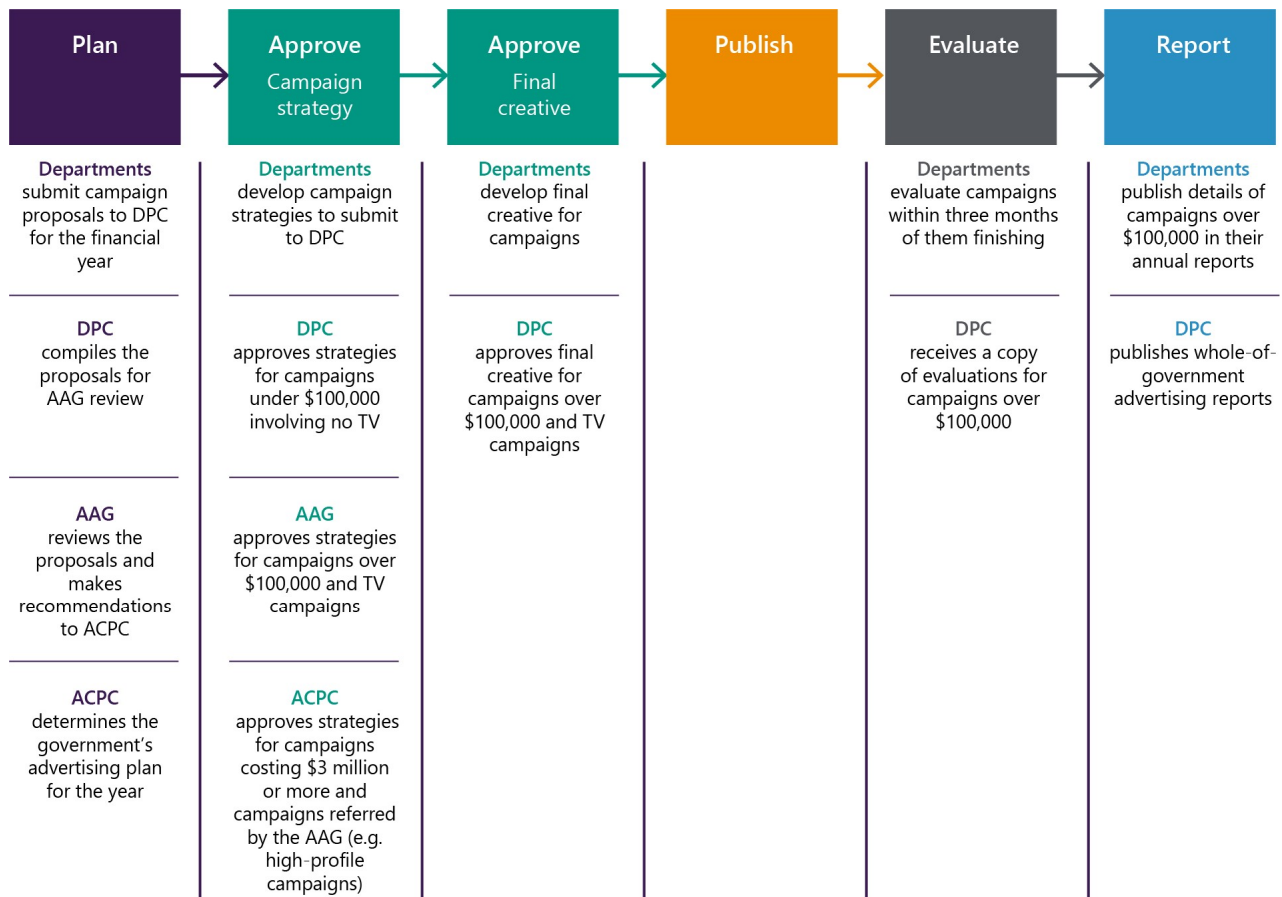
The Governance Guidelines say the government maintains 'robust review and governance processes' to maximise the efficiency and effectiveness of government advertising, and ensure advertising is undertaken 'for an appropriate purpose that delivers a genuine public benefit'.

There are four main bodies involved in the arrangements:

- **Departments** each have a senior communications executive (SCE) who coordinates the process for their department and its portfolio agencies.
- **DPC** provides secretariat support for the arrangements. It also issues other guidelines and standards on government advertising.
- **AAG** is an officer-level committee chaired by a DPC executive officer. Its members include two SCEs from departments (membership rotates every six months) and two members nominated by ministers. It undertakes 'detailed peer review' of campaigns.
- The Advertising and Communications Planning Committee (**ACPC**) is a Cabinet committee responsible for government advertising and communication.

Figure 1C gives an overview of the arrangements and the main responsibilities of these bodies.

FIGURE 1C: Overview of the Victorian Government advertising process



Source: VAGO, based on Victorian Government Advertising Planning and Approval Process, DPC, 2019.

Expenditure controls

To help control and track advertising expenditure, the government has a central state purchase contract for MAMS. Agencies must use the appointed MAMS contractor to plan and buy advertising space. The government sets an annual funding envelope for MAMS expenditure during its annual planning process.

Agencies can develop creative material in-house or engage an external creative agency through the state purchase contract for marketing services.

Funding envelope, in this context, means the total amount that the government allocates for campaign advertising during the financial year.

1.4 The two audited campaigns

This is our first audit of government advertising since the Parliament introduced the 2017 laws in the PAA.

We looked at two government advertising campaigns—the OFS campaign and the VBB campaign. We examined whether the campaigns complied with the 2017 laws and related regulations, and whether the campaigns were cost-effective.

Our Fair Share

The OFS campaign ran from April to June 2019. Its objectives included securing more Commonwealth funding for Victorian public schools, health care and transport projects.

The OFS campaigns grew from a February–March 2019 radio campaign called Fairer Funding. DET funded that campaign, which focused on funding for schools.

In March 2019, following discussion with the Premier’s Private Office, DPC asked three agencies—DET, DH (which was then part of the Department of Health and Human Services) and DoT—to prepare a broader integrated campaign that covered funding for schools, health and transport. The Premier’s Private Office advised us that it is common practice for it to have discussions with DPC on major advertising campaigns.

The Premier launched the school and health parts of the campaign on 14 April 2019. The transport part of the campaign began a week later, on 21 April 2019. The campaigns involved advertisements on television, radio, print media and digital platforms and on ‘live banners’ at football stadiums.

The publicly reported cost of the campaign in 2018–19 was \$1.7 million.

The OFS campaign coincided with the 2019 federal election, which was announced on 11 April 2019 and held on 18 May 2019. This led to complaints that the campaigns involved political advertising.

FIGURE 1D: **Timeline for the OFS campaign**



Source: VAGO, based on department records.

Victoria’s Big Build

The VBB campaign is a multi-year campaign that launched in February 2018. Its objectives include informing Victorians about travel disruptions associated with major transport infrastructure projects.

DoT (which was then part of the Department of Economic Development, Jobs, Transport and Resources) started the campaign in 2017. It was concerned that individual transport projects were running separate campaigns on travel disruptions, creating clutter and confusion for people affected by the projects. It wanted an integrated campaign covering all major transport projects and disruptions.

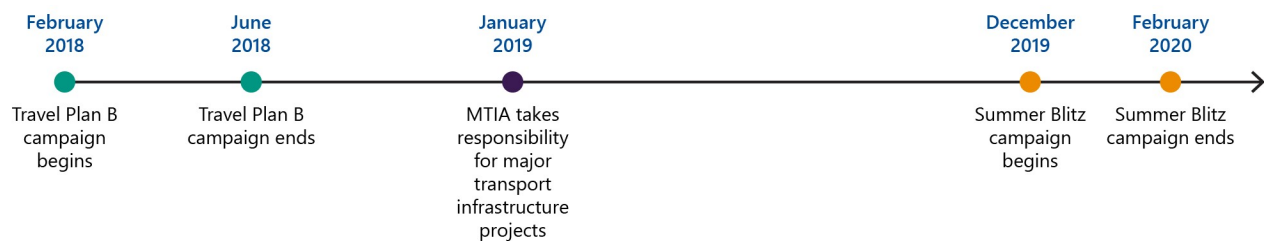
In January 2019, the Victorian Government created MTIA to take responsibility for major transport infrastructure projects. The MTIA also took over responsibility for the VBB campaign.

The publicly reported cost of the VBB campaign between 2017–18 and 2020–21 was \$11.5 million, out of a total \$33.75 million spent on advertising related to disruptions from transport construction during the same period.

Out of the many VBB campaign phases since 2018, we selected two for examination:

- the initial Travel Plan B phase that ran from February to June 2018. This campaign involved television, radio, newspaper, digital and outdoor (billboard) advertising.
- the Summer Blitz phase that ran from December 2019 to February 2020. This campaign involved television, radio, newspaper and digital advertising.

FIGURE 1E: **Timeline for the VBB Travel Plan B campaign and Summer Blitz phases**



Source: VAGO, based on DoT and MTIA records.

2.

Legal compliance

Conclusion

In our opinion, the two advertising campaigns did not fully comply with the PAA. Some of the campaign advertisements included political advertising. One campaign did not comply with limits on television advertising.

The agencies involved in the campaigns interpret the laws differently. They maintain that they complied with their legal obligations.

At the very least, this suggests that the laws are not sufficiently clear.

This chapter discusses:

- Compliance with the *Public Administration Act 2004*
 - Conflicting interpretations of the law
 - Internal compliance systems
 - Whole-of-government oversight arrangements
 - Accountability for compliance
-

2.1 Compliance with the *Public Administration Act 2004*

We assessed the OFS and VBB campaigns against the requirements in the PAA and the Regulations.

The campaigns complied with most of the requirements. For example, they met the public interest requirements in the PAA and Regulations.

The campaign objectives included:

- advocating for better funding for Victorian schools, health care and transport infrastructure, in the case of the OFS campaign
- informing people about travel disruptions caused by major transport projects, in the case of the VBB campaign.

Publication of this information was in the public interest.

However, in our opinion, there were instances of non-compliance with two requirements—political advertising and television advertising requirements.

Political advertising requirements

The OFS and VBB campaigns both discussed current Victorian Government spending and projects. The OFS campaign also discussed current Commonwealth Government spending.

Under the 2017 laws, agencies had to ensure that the advertisements were ‘not designed or intended to directly or indirectly influence public sentiment’ for or against those governments.

The agencies involved in the campaigns told us they had no intention to influence public sentiment about current governments. They said that they were motivated either solely or in part (DET) by the public interest.

We found no evidence of bad faith on the part of the agencies. However, they did not take sufficient steps to ensure all their advertisements complied with the 2017 laws.

Our Fair Share

Based on the objectives, content and timing of the OFS campaign, our opinion is that parts of the advertisements were designed in way that could easily influence public sentiment about the current Victorian and Commonwealth Governments.

The agency’s campaign strategies listed extra objectives, in addition to securing more funding for Victoria. For DET and DoT, those objectives were to:

- raise community awareness of state investment in schools and transport networks
- raise community awareness of a ‘disparity’ or ‘discrepancy’ in current Commonwealth funding for schools and transport.

Logically, raising community awareness of these issues would be expected to increase positive sentiment towards the current Victorian Government, and negative sentiment towards the current Commonwealth Government.

The OFS advertisements included content that could easily be seen as promoting current Victorian Government funding and criticising current Commonwealth Government funding. Figure 2A shows some print advertisement examples.

FIGURE 2A: Example of OFS print advertisements



Source: DET.



Source: DH.



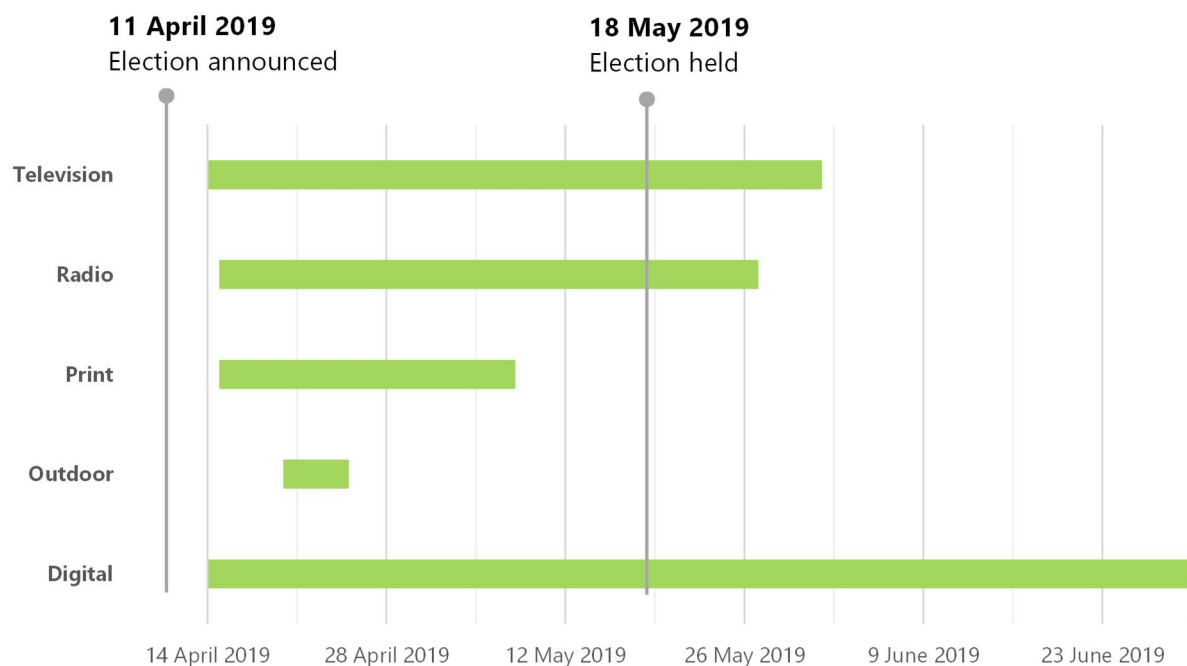
Source: DoT.

The DET advertisement states, 'The Victorian Government believes every student should be fully supported to succeed. That's why we've invested \$10.8 billion into education for our growing state'. It then states, 'But Canberra's proposed funding deal means Victorian public schools could miss out on \$500 million of federal funding every year.'

These advertisements did more than state facts and data about government funding. The statements about the Victorian Government appeared to have a positive tone. They referred to billions of dollars or 'record levels' of investment. The statements about 'Canberra' were negative. They used language such as 'cuts' and 'miss out'. Members of the public were likely to find the language in some of the advertisements to be particularly emotive. One of the television advertisements included the line 'don't let Canberra short-change our kids'.

The advertisements ran during the 2019 Commonwealth election campaign. Figure 2B shows that agencies' media buy focused on the weeks leading up to the election on 18 May 2019.

FIGURE 2B: **OFS campaign advertisement placement**



Note: Figure shows combined dates for all DET, DH and DoT campaign advertising.

Source: VAGO, based on DET, DH and DoT invoices, records and annual reports.

Agencies told us they were targeting a political issue, not the current Commonwealth Government. They said that neither the Commonwealth Government nor the canOpposition had committed to the funding sought by Victoria. They said they used the term 'Canberra' in a broad sense. They noted that Commonwealth funding depends on laws passed by the Commonwealth Parliament and intergovernmental arrangements, as well as decisions by Commonwealth Government ministers.

In our assessment, the agencies did not design the advertisements to make this clear. We encouraged DPC, DET and DH to provide us with evidence that the public would have understood the statements about 'Canberra' to refer to the Commonwealth Parliament, other bodies or the Commonwealth broadly. They did not.

At the time the advertisements were published, Victorian Government ministers were involved in public disputes with Commonwealth Government ministers about school funding, national health reform funding and funding for major road projects. In this context, in our opinion, members of the public could likely understand the criticisms of 'Canberra' as including criticisms of the current Commonwealth Government.

Other integrity agencies also interpreted the advertisements in this way. In August 2019, the Independent Broad-based Anti-corruption Commission (IBAC) and the Victorian Ombudsman wrote to the Premier following complaints about the campaign (see Appendix D for a copy of this letter). They decided that investigation of complaints could not be justified. They said that it was highly unlikely that department secretaries' statements that they were motivated solely by the public interest could be contradicted, and that they made no criticism of any departmental secretary. However, they stated, 'we consider that the timing and content of the campaign advertisements would have had the effect of influencing public sentiment against the Government of the Commonwealth. This would have been the likely perception of a reasonable member of the Victorian public, whatever their political allegiance.'

Victoria's Big Build

In our opinion, a small number of VBB advertisements were also designed in a way that could easily be seen to influence public sentiment about the current Victorian Government. This is based on the content of those advertisements and campaign records.

Most of the Travel Plan B and Summer Blitz VBB advertisements started with information about transport projects and their benefits. This was part of the campaign strategy. Research showed that people were more likely to accept travel disruptions if they understood the benefits of the transport projects.

However, a small number of advertisements focused more on the Victorian Government's projects than the disruptions. The VBB Travel Plan B print advertisement in Figure 2C is one example. The advertisement devoted more space to the projects and their benefits (highlighted in yellow) than to the travel disruptions.

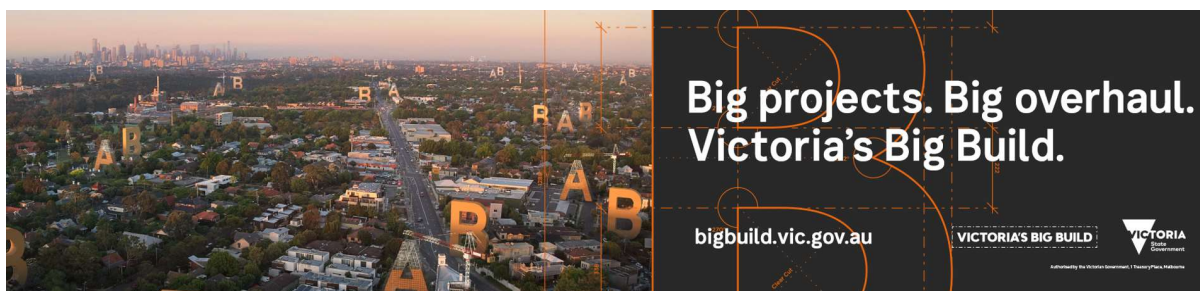
FIGURE 2C: **Travel Plan B campaign half-page print advertisement**



Source: MTIA, published in 2018.

A small number of VBB Travel Plan B advertisements did not mention disruptions at all. The billboard advertisement at Figure 2D is an example.

FIGURE 2D: **Example of Travel Plan B billboard advertisement**



Source: MTIA, published in 2018.

After the Travel Plan B phase, MTIA told us it strengthened the disruption information in the VBB advertisements.

We could see this improvement in the VBB Summer Blitz phase, which ran in late 2019 and early 2020. Most of those advertisements struck a balance between information about the projects and the disruptions. There were some exceptions. For

example, the 60-second television advertisement spent 42 seconds describing the Victorian Government's transport projects before mentioning disruptions.

Internal campaign records also show that DoT and MTIA tested their advertisements' impact on feelings towards the Victorian Government.

- DoT researched the effectiveness of the 2018 VBB Travel Plan B phase. One of the survey questions looked at the television advertisements' impact on feelings towards the Victorian Government. It asked people if they agreed or disagreed with the statement, 'The ad makes me feel positive towards the Victorian Government'.
- One area of MTIA's research on the 2019–20 Summer Blitz phase asked people if they knew that transport projects were part of a coordinated master plan by the Victorian Government. It reported results on how that knowledge made them feel about the Victorian Government. MTIA told us these questions referred to the Victorian Government generally, not the current Victorian Government.

Television advertising requirements

In our assessment, the OFS campaign also did not comply with the television advertising requirements in the PAA.

The Parliament intended the 2017 laws to limit government advertising on television. When introducing the laws into the Parliament, the responsible minister said '[t]elevision is a high value, mass market medium'. The minister said that under the laws, 'television advertising will be restricted to specific purposes'.

The agencies involved in the OFS campaign told us that the purpose of the television advertisements was 'to promote commercial or economic development within the State'. That is a permitted purpose under the laws. Agencies have their own legal advice. They said that investing in education, public health and transport promotes economic development through better outcomes.

However, the campaign objectives and content show that the purposes of the advertisements included raising awareness of funding issues and securing more Commonwealth funding. Improved economic outcomes may have been a secondary purpose, or a long-term consequence of more funding. In our opinion, it was not the dominant purpose of the advertisements.

2.2 Conflicting interpretations of the law

To inform our interpretation of the 2017 laws, we sought independent expert advice from VGSO. Its advice informed our assessment of the campaigns.

VGSO expressed the view that the political advertising requirements in section 97C of the PAA set an objective standard for assessing whether government advertising is designed or intended to influence public sentiment. This means it is necessary to look at:

- the content and nature of the advertisements
- relevant contextual factors, such as timing of the advertisements.

VGSO said while it was not beyond doubt, it did not think it was necessary to establish a state of mind on the part of any person.

In other words, there is no need to prove motive on the part of a public sector body. It is the communication and its influence on public sentiment that matters.

The agencies interpret the laws differently. They have their own legal advice. The agencies argue that section 97C sets a subjective standard. This means it is necessary to focus on the motives or intentions of the person or body that published the advertisement. The agencies say they were motivated either solely or in part (DET) by the public interest and had no intention of influencing public sentiment for or against current governments. They also say that, even if section 97C involves an objective assessment, in their view the campaigns complied with the Act.

In our opinion, VGSO's interpretation is consistent with the wording of the PAA, which imposes an obligation on public sector bodies to ensure that the communication is not designed or intended to directly or indirectly influence public sentiment for or against the current governments of the state or Commonwealth.

The 2017 laws are relatively new and unique to Victoria, and the courts are yet to consider these conflicting interpretations. In the meantime, the different interpretations are causing debate about whether agencies complied with the law.

When the government introduced the 2017 laws into the Parliament, it said 'we are providing the Auditor-General with a clear, transparent set of standards by which to judge any public sector communication activity now and into the future.' The issues that arose in this audit suggest the standards are not clear or transparent enough.

IBAC and the Victorian Ombudsman wrote to the Premier in 2019, in response to complaints about the OFS campaign, proposing amendments to the laws (see Appendix D for a copy of this letter). Following this audit, we support an independent expert review of the laws to assess whether they are clear and to recommend amendments.

2.3 Internal compliance systems

Under the PAA, the public sector agency that publishes advertising, or causes it to be published, is responsible for complying with the 2017 laws.

DPC has helped to promote awareness of the laws amongst agencies by:

- circulating information and discussing the laws at meetings with agency SCEs
- publishing information on the Victorian Government's www.vic.gov.au website.

However, DPC's information omits the extra clauses added by the Parliament. For example, a DPC presentation to agencies following the introduction of the laws in 2017 referred to 'requirements around not influencing opinion for or against [any] political party... [or] candidate'. It did not mention the extra clauses on influencing public sentiment for or against the current Victorian and Commonwealth governments. The information on the www.vic.gov.au website does not mention the extra clauses either.

The agencies involved in the campaigns told us they were aware of the 2017 laws and believed they complied with them. However, only two of the agencies—DET and

MTIA—had clearly documented internal approval processes for advertising campaigns.

In addition, the agencies' steps to check compliance were not always proportionate to the risks involved in the campaigns.

The OFS campaign was high risk because it proposed to criticise Commonwealth funding for Victoria in the lead-up to a Commonwealth election. Agencies were aware that the campaign would attract criticism. The Victorian Ombudsman had already enquired into a complaint about DET's earlier Fairer Funding campaign. Agencies sought advice from department lawyers and briefed their secretaries. However, the written legal advice was brief and in one case—DoT—mostly verbal. It would have been prudent for agencies to get detailed or external legal advice.

There was a level of risk associated with the VBB campaign as well, as there had been criticism of transport advertising in Parliament before it passed the 2017 laws. However, DoT and MTIA did not seek any legal advice about the implications of the laws before publishing their advertisements.

2.4 Whole-of-government oversight arrangements

Under the arrangements, the AAG is also meant to ensure that advertising campaigns comply with government standards.

In the case of the OFS and VBB campaigns, the AAG approved the campaigns without recording any discussion about legal compliance. We raised this issue with DPC in 2019 following our 2018–19 financial audit of its accounts. DPC agreed to ensure AAG meeting minutes reflect the AAG's discussions and decisions.

In this audit, we identified other issues that potentially limited the 'robust' processes described in the Governance Guidelines.

For these campaigns ...	Because ...	Which created a risk that ...
DPC did not ensure the AAG's responsibilities were clear	it did not update the AAG's terms of reference to specifically mention legal compliance until mid-2020, and it is yet to update the Governance Guidelines	some AAG members did not know they were meant to review the campaigns' legal compliance.
DPC did not require agencies to provide detailed advice to the AAG about the 2017 laws	DPC issues a template form for agencies to submit material to the AAG. The form's only mention of the 2017 laws is a compliance checklist, where agencies tick a box to confirm compliance. Other information about legal risks is optional	agencies would not fully inform the AAG about legal risks.

For these campaigns ...	Because ...	Which created a risk that ...
Agencies did not provide adequate advice to the AAG about legal risks	<p>for the OFS campaign, agencies completed the checklist but only one (DH) disclosed that there was a legal risk and it had sought legal advice. It included two sentences on the issue</p> <p>for the VBB campaign, DoT and MTIA provided no information:</p> <ul style="list-style-type: none"> • DPC's checklist did not require agencies to confirm compliance with the 2017 laws when the Travel Plan B phase went to AAG. DPC added that requirement later • For the Summer Blitz phase, MTIA did not complete the checklist due to an error, which was not corrected by DPC 	AAG members could not make an informed assessment about legal compliance.
DPC gave the AAG limited time to review material before meetings and deadlines	DPC routinely sent material to AAG members the day before meetings or approval deadlines. On one occasion, DPC emailed OFS material (three television advertisements) to AAG members at 12.24 pm for 'urgent review', because the material had to go to the ACPC later that afternoon. AAG members approved the material in 27 minutes	AAG consideration was rushed and members lacked time to properly read and review material.
DPC did not ensure an independent 'peer review' process	on at least four occasions, DPC allowed officers who had worked on the campaigns to sit as AAG members when the AAG reviewed and approved campaign material	the process became one of 'self-review' for those officers, undermining the robustness of the arrangements.

In addition, DPC did not always clearly document its own approval of final creative material for the campaigns. We could infer DPC's approval from other evidence, but this created a risk of confusion and publication of unapproved advertising.

DPC advised that its secretariat for the AAG currently consists of two full-time equivalent officers. These resources need to be reviewed to ensure the secretariat can support the AAG's functions more effectively in the future.

2.5 Accountability for compliance

The AAG's and DPC's role in campaigns can also blur lines of accountability for legal compliance.

The PAA makes the public sector agency that publishes the advertising, or causes it to be published, responsible for complying with the 2017 laws. But the AAG's terms of reference say it is responsible for ensuring legal compliance. DPC's Governance Guidelines do not clarify the respective responsibilities of each body.

In the case of the OFS campaign, DPC also played a significant role in developing the campaign. DPC commonly coordinates cross-agency activities. In this case, it:

- initiated the campaigns with DET, DH and DoT following discussion with the Premier's Private Office. In internal briefings, two agencies wrote that DPC had 'briefed' or 'directed' them to prepare the campaign
- asked agencies to prepare the campaigns for a mid-April 2019 launch date
- advised some agencies about their budgets for the campaign
- provided feedback and input into the content of the advertisements on behalf of itself and the Premier's Private Office
- attended meetings with the creative agency working on the campaign and proposed to attend recording sessions for the advertisements
- arranged the media bookings for the campaign advertisements with the government's media contractor, and co-signed media booking forms.

Based on the above, we consider that DPC caused the advertisements to be published along with DET, DH and DoT. In our opinion, it shared legal responsibility and accountability for the campaigns.

During this audit, DET, DH and DoT accepted legal responsibility for the campaign. However, DPC argued it did not cause the advertisements to be published. It has a different interpretation of the term 'causes' in the PAA. It argued that its role in the OFS campaign was not significant.

If DPC takes a similar role in government advertising campaigns in future, it also needs to accept accountability for the campaigns' legal compliance.

3.

Cost-effectiveness

Conclusion

The agencies involved in the two advertising campaigns could not show that the campaigns were cost-effective. Systems for assessing cost-effectiveness were inadequate. Agencies did not always set clear campaign objectives and targets for assessing the campaigns' performance. They did not evaluate systematically and objectively whether the campaigns met their objectives.

Inadequate reporting on campaign costs limits accountability and transparency around these issues. Public reporting is often incorrect, incomplete, inconsistent and hard to access.

This chapter discusses:

- Cost-effectiveness of the audited campaigns
 - Public reporting
-

3.1 Cost-effectiveness of the audited campaigns

The Governance Guidelines say that the Victorian Government is committed to maximising the efficiency and effectiveness of advertising expenditure. The Guidelines require agencies to set objectives and measures for campaigns, and to evaluate campaigns against those metrics. This ensures agencies are accountable for their spending, and that they document lessons learned to improve future campaigns.

In the case of the OFS and VBB campaigns, agencies could not show that the campaigns were cost-effective. They could not show that the campaigns met their campaign objectives or that they provided value for money. This situation arose because of:

- inadequate planning of objectives and measures by agencies
- missing or inadequate evaluations
- inadequate whole-of-government guidance and oversight by DPC.

Inadequate planning of campaign objectives and measures by agencies

Before campaigns begin, agencies are meant to plan how they will evaluate campaign effectiveness. DPC's Campaign Strategy Approval Form, which agencies submit to the AAG when seeking approval for campaigns, requires them to list campaign objectives, along with benchmarks and target measures for judging their success.

In the case of the OFS and VBB campaigns, these plans were incomplete or inadequate.

One agency involved in the OFS campaign—DH—did not develop any plan for how it would evaluate its campaign. It left this section of its form blank.

In other cases, agencies used measures that did not fairly represent performance. Their objectives and measures were not always clearly defined or measurable. Figure 3A provides an example for each of these.

Campaign **objectives** are the outcomes or impacts that the agency is trying to achieve.

A **target** is a measure for expected or desired level of activity.

A **benchmark** is the industry or sector-level standard that agencies use to assess their own performance.

Cost-effective means that agencies achieve their campaign objectives for the least cost.

Value for money means achieving the desired outcome at the best possible price. It requires consideration of non-financial factors, such as quality, as well as financial factors.

Evaluation involves an objective and systematic assessment against campaign objectives.

FIGURE 3A: **Example of a campaign objective, target and benchmark that were not clearly defined or measurable**

Category	Agency statement	Issue
Objective	Raise awareness of the health funding challenges within Victoria and advocate for better funding for Victorian health care provision, particularly hospitals (OFS)	DH did not identify: <ul style="list-style-type: none">• whose awareness needed to be raised• what the health funding challenges were• who it would advocate and how it would do this.
Target	Positive anecdotal evidence from staff on the ground at disruption (VBB)	DoT and MTIA did not include details on how they would measure or assess this.
Benchmark	Low awareness of school funding sources (OFS)	DET did not describe how it rated or measured 'low' awareness. The benchmark also did not provide a clear baseline against which DET could measure any change in awareness.

Source: VAGO.

The inadequate planning increased the risk that agencies could not effectively evaluate the cost-effectiveness of their campaigns.

Missing or inadequate evaluation

Agencies are meant to evaluate their campaigns against their campaign objectives within three months of the campaign's conclusion. DPC's form asks agencies to:

- report whether they met their campaign objectives, benchmarks and targets
- acquit their final expenditure against their planned expenditure for each objective.

The agencies involved in the OFS campaigns did not comply with these requirements. DPC did not consistently follow up with agencies to ensure compliance.

Where agencies reviewed the campaigns, these reviews were not systematic and objective assessments against campaign objectives. For example:

- In the case of the VBB campaign, DoT sought to evaluate against its objectives. It concluded that Travel Plan B met its objectives. However, one of DoT's targets was to achieve 90 per cent awareness among public transport and road users. In the review, DoT did not show it had achieved that target. Another target measure said DoT would consider anecdotal evidence from staff on the ground at project sites. The evaluation did not include such evidence.
- For Summer Blitz, MTIA commissioned other research on the VBB campaign, including survey and focus group feedback on their advertisements. However, this research was also not an objective and systemic evaluation of the campaign.
- For all the campaigns audited, the agencies received a post-campaign report from the MAMS provider after the completion of the campaign. The report included cost, reach and engagement analytics. However, it did not constitute an objective and systematic assessment against campaign objectives.

We reported similar problems in our last audit of government advertising in 2012. That audit identified that agencies were either not evaluating campaigns or that their evaluations were inadequate. It also found that DPC was not requiring agencies to acquit their expenditure against approved budgets.

Agencies are yet to properly address these issues.

Inadequate guidance provided by DPC

DPC needs to improve its guidance to agencies to ensure that evaluations are appropriately planned and completed. The Governance Guidelines did not provide sufficient guidance on how to:

- ensure public benefit
- evaluate campaigns
- monitor campaigns' value for money and effectiveness.

DPC changed the Governance Guidelines from 2019. It now advises agencies to ensure their campaign objectives are SMART and to set targets covering both the implementation and impact of their campaigns. The Guidelines also provide examples of possible objectives, benchmarks and target measures.

SMART objectives are specific, measurable, achievable, relevant and time-bound.

However, they do not require agencies to ensure evaluation plans:

- are based on a robust program logic
- include data sampling, collection and analysis details
- include adequate evidence to show that the campaign was likely to be successful
- include whether the campaign represented the least cost for the required quality
- show each campaign's contribution to whole-of-investment advertising objectives and compare to industry benchmarks.

DPC's guidance on how to evaluate campaigns is also not consistent with better practice. For example, other jurisdictions require agencies to undertake:

- cost-benefit analysis of high-cost campaigns before approval
- evaluations using a preferred provider.

Inadequate whole-of-government oversight by DPC

DPC and the AAG are meant to oversee planning and evaluation of campaigns. In the case of these two campaigns, they did not effectively address agencies' non-compliance with requirements.

At the planning stage, the AAG's terms of reference require it to ensure that campaigns provide value for money, set individual campaign quality benchmarks and ensure campaigns are appropriately evaluated. In the case of the OFS and VBB campaigns, the AAG approved the campaigns without recording any discussion about these issues. The AAG approved DH's OFS campaign strategy, even though it was missing benchmarks or target measures.

At the evaluation stage, the Governance Guidelines require agencies to submit evaluations to DPC for all campaigns over \$100,000. The AAG's terms of reference also require it to ensure appropriate evaluation of campaigns. DPC and AAG should have been aware that evaluations for the OFS campaign and the Summer Blitz phase of the VBB campaign were missing. DPC did not follow up with agencies to ensure compliance.

DPC has not ensured that the AAG has the required expertise and guidance to fulfil this part of its terms of reference by:

- assessing whether campaigns are strategic, coordinated and at an appropriate level of expenditure
- ensuring that campaigns provide value for money
- ensuring campaigns are appropriately evaluated.

DPC submitted that AAG members are properly qualified to perform their role and fulfil their terms of reference. We note that the AAG's terms of reference involve several areas of specialist expertise, such as legal compliance, assessing value for money and evaluation. DPC did not provide evidence that AAG members all have such specialist expertise.

Program logic is the framework for the relationships between resources, activities and results. In the case of advertising, it may be one of many activities that contributes to the achievement of results.

3.2 Public reporting

Public reporting promotes accountability and transparency around how much agencies spend on advertising and whether that spending is cost-effective.

The current arrangements involve two levels of reporting, shown in Figure 3B.

FIGURE 3B: **Public reporting on government advertising expenditure**

Agency reporting	Whole-of-government reporting	
Published by individual agencies	Published by DPC	
Requirements in <i>Financial Reporting Directions 22/</i> (FRDs) and Governance Guidelines	Requirements in Governance Guidelines	Financial reporting directions are issued by the Minister for Finance under the <i>Financial Management Act 1994</i> . They set rules for agencies about financial policy and disclosure, as well as some non-financial matters such as annual reports.
Agency annual reports include details for all campaigns over \$100,000: <ul style="list-style-type: none">• name• start and end dates• a summary of the campaign• costs classified into five categories—<ul style="list-style-type: none">• advertising (media buy)• creative and campaign development• research and evaluation• print and collateral• other campaign costs.	Annual Victorian Government Campaign Activity Summary report collates details of all campaigns over \$100,000 from agency annual reports. Annual Victorian Government Advertising Report publishes an overview of all government advertising expenditure.	
Deadline for reporting	No deadline for reporting	

Source: VAGO.

Incorrect, incomplete, inconsistent and inaccessible reporting

The agencies involved in this audit complied with reporting requirements overall. However, there were several problems with their public reporting that limited their transparency and accountability.

In this audit, public reporting was sometimes ...	Because ...	For example ...
incorrect	<p>agencies did not have reliable processes for recording and verifying campaign costs.</p> <p>guidance does not require agencies to ensure reported costs are correct, or cover what steps they should take to ensure accurate reporting.</p> <p>DPC replicated agencies' information in its whole-of-government reports without checking its accuracy.</p>	<p>agencies' reported costs did not match invoices.</p> <p>DoT's OFS reporting had a calculation error. The total cost cited in its report was \$40,000 higher than the sum of the various campaign costs.</p>
incomplete	<p>FRDs require agencies to report campaign advertising costs that relate to the MAMS contract. DPC only reports on partial spending on media buy (or MAMS) costs in its Annual Advertising Report's overview of total government advertising expenditure.</p> <p>some agencies are not covered by the FRDs.</p>	<p>MTIA has not reported VBB letterbox drop costs.</p> <p>DPC's reporting on total government expenditure excludes some significant costs, such as campaign and creative development and fees and levies for MAMS costs.</p> <p>Visit Victoria, which spends a significant amount on advertising, does not have to report on its campaign expenditure. It advised us that this is to maintain competitive advantage and to protect its commercial and intellectual property.</p>
inconsistent	<p>guidance does not define cost categories and/or provide guidance on how to classify costs.</p> <p>guidance is not sufficiently clear on when similar or repeat campaigns should be reported in aggregate or individually.</p>	<p>for the OFS campaign, DH recorded its translation costs under the 'print and collateral' category. DET recorded its translation costs under 'other'.</p> <p>DET included the costs of its earlier Fairer Funding campaign in its OFS reporting, even though it was a separate campaign.</p>
hard to access	<p>agencies mostly publish information in PDF format.</p>	<p>it is difficult to analyse and compare spending by different agencies, by different campaigns or by expenditure over time.</p>

Our 2012 audit also identified problems with the way agencies record and report advertising expenditure. We recommended:

- agencies introduce rigorous business operations processes to enable consistent and accurate reporting of their advertising expenditure
- DPC make total advertising and communications expenditure publicly available.

The Victorian Parliament's Public Accounts and Estimates Committee also recommended enhancing reporting requirements so that agencies have to identify and report on performance against advertising budgets.

Agencies are yet to adequately action these recommendations.

Improving accuracy and accessibility

There are already resources within government that agencies could use to strengthen their reporting. The Department of Treasury and Finance (DTF), which manages the government's MAMS contract, has several data dashboards that DPC and other agencies could use to cross-check their records and improve their reporting and accountability.

Agencies could also look to good practice in other states. South Australia's public reporting on government advertising includes:

- information about the campaign's proposed budget as well as actual spending
- a summary of campaign evaluations, which reports on whether campaigns met their objectives.

An example of where advertising costs are more accessible is the Government Advertising Spend dashboard on our website (audit.vic.gov.au), which collates publicly available Victorian Government advertising spend data in an interactive format. Agencies could explore similar formats to make their public reporting more accessible and effective.

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



Department of Education and Training

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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



Secretary

Department of Health

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Andrew Greaves
Auditor-General
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.



Department of
Premier and Cabinet

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D22/16867

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

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.

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.



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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Ref: BSEC-1-22-10810R

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

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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Mr Andrew Greaves
Auditor General
Victorian Auditor-General's Office
Level 31, 35 Collins Street
MELBOURNE VIC 3002

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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APPENDIX B

Acronyms, abbreviations and glossary

Acronyms

AAG	Advertising Approval Group
ACPC	Advertising and Communications Planning Committee
DET	Department of Education and Training
DH	Department of Health
DoT	Department of Transport
DPC	Department of Premier and Cabinet
DTF	Department of Treasury and Finance
FRD	<i>Financial Reporting Directions 22I</i>
IBAC	Independent Broad-based Anti-corruption Commission
MAMS	Master Agency Media Services
MTIA	Major Transport Infrastructure Authority
OFS	Our Fair Share
PAA	<i>Public Administration Act 2004</i>
PDF	Portable Document Format
SCE	senior communications executive
VAGO	Victorian Auditor-General's Office
VGSO	Victorian Government Solicitor's Office
VBB	Victoria's Big Build

APPENDIX C

Scope of this audit

Who we audited	What we assessed	What the audit cost
<ul style="list-style-type: none">• DPC• DET• DH• DoT• DTF• MTIA	<p>We assessed whether the two audited government advertising campaigns:</p> <ul style="list-style-type: none">• complied with the PAA and Regulations• were cost-effective.	<p>The cost of this audit was \$775,000.</p>

Our methods

As part of the audit we:

- obtained independent legal advice on the PAA
- reviewed guidelines and policies on government advertising
- met with department and agency staff
- liaised with other integrity agencies
- analysed OFS and VBB campaign advertisements and records
- analysed government advertising expenditure data.

Compliance

We conducted our audit in accordance with the *Audit Act 1994* and ASAE 3500 Performance Engagements. We complied with the independence and other relevant ethical requirements related to assurance engagements.

Unless otherwise indicated, any persons named in this report are not the subject of adverse comment or opinion.

APPENDIX D

IBAC and Victorian Ombudsman joint letter to the Premier

On 15 August 2019, the IBAC and Victorian Ombudsman issued a joint letter to the Premier on the outcome of their inquiries into the OFS campaign. We include the letter here.

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15 August 2019

VO ref: C/19/4462
IBAC ref: CD/19/48763

The Honourable Daniel Andrews MP
Premier of Victoria
Level 1, 1 Treasury Place
EAST MELBOURNE VIC 3002

Dear Premier

Fight for Victoria's Fair Share Campaign

As you will probably be aware, our offices have received complaints [REDACTED]

[REDACTED] about the above campaign.

You will be aware that the complaints are, in effect, that the campaign breached the *Public Administration Act 2004* (Vic) (PAA). [REDACTED] complaint to the Ombudsman was specifically about an advertisement endorsed by the Department of Education and Training as part of the campaign.

The complaint to IBAC was made by [REDACTED] in relation to the authorisation, approval or endorsement by four Departments¹ of the advertisements which were part of the above campaign. The complainants allege in substance that there was a breach of section 97C of the PAA by the Departments in the authorisation, approval or endorsement of the campaign. A similar complaint was also made to the Victorian Public Sector Commission in relation to the Department of Transport.

In support of their allegation, [REDACTED] state that the content, tone and the timing of the release of these advertisements during the caretaker period prior to the May federal election, indicate the campaign's design or intent was to influence public sentiment against the current Government of the Commonwealth, contrary to the PAA.

¹ Department of Health and Human Services, Department of Education and Training, Department of Treasury and Finance, Department of Premier and Cabinet.

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Enquiries by the Ombudsman

In response to the Ombudsman's enquiries with the Department of Education and Training, the Department confirmed the advertisement was endorsed by a number of senior departmental staff, as well as the Department of Premier and Cabinet. It provided a copy of the Department's *Campaign Strategy Approval* documents, which justified the campaign among other things on the grounds that the Victorian Government is seeking funding parity across all school sectors in its negotiation with the Commonwealth. The Department later said that its public interest purpose is:

to advocate on behalf of Victoria to advance Victoria's position or interests (regulation 4(c) of the PAA)

Enquiries by IBAC

IBAC requested the Victorian Public Sector Commission, consistent with its power to monitor compliance with public sector values and codes of conduct, to seek information from each of the Departments to ascertain whether there had been a breach of the PAA, and to advise IBAC of the outcome of the Commission's consideration. Commissioner [REDACTED] wrote to the relevant heads of Department. Two of the Departments placed particular reliance upon the public interest purpose contained in regulation 4(c) of the *Public Administration (Public Sector Communication) Regulations 2018* (Vic) in support of their approval of the advertising campaign.² The Department of Premier and Cabinet role was to support governance structures that are in place to ensure that the advertising complied with applicable laws and policies including obtaining internal legal advice on compliance with the PAA.

The detailed responses of each Department Secretary refute the allegation that the campaign was 'intended or designed' to influence Victorians against the then Federal Government. The Department of Treasury and Finance played no part in the approval process for the campaign.

Conclusion and concerns

Both our agencies have considered the complaints in light of our respective functions, powers and jurisdictions, the resource commitment that would be required to investigate the allegations and the detailed responses provided by the Department Secretaries. Ultimately, we have both determined that investigation of the complaints cannot be justified. It would be highly unlikely that the detailed explanations made by each Department Secretary could be contradicted that in facilitating the campaign, they were motivated solely by the public interest in advancing Victoria's position or interest.

² Except for the Department of Treasury and Finance, which had no endorsement function with regard to the campaign.

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In this regard, it is relevant that all Department Secretaries relied upon regulation 4 of the *Public Administration (Public Sector Communication) Regulations 2018* (Vic) which prescribes a number of public interests, including 'to advocate on behalf of Victoria to advance Victoria's position or interests'.

Accordingly the complaint to IBAC will be dismissed and the complaint to the Ombudsman will be finalised.

However, we consider that the timing and content of the campaign advertisements would have had the effect of influencing public sentiment against the Government of the Commonwealth. This would have been the likely perception of a reasonable member of the Victorian public, whatever their political allegiance.

For the avoidance of doubt, we should state that while we hold the above concerns, we make no criticism of any Department Secretary nor should it be implied that we have formed any adverse view.

Public Administration Act 2004

The maintenance of an apolitical public sector is a core public sector value and is set out in the Public Sector Code of Conduct. It is recited in the objects of the Public Administration Act. We refer to various provisions of Part 5, which came into effect in September 2018:

- Section 97B:
 - (1) A public sector body that publishes or causes to be published a public sector communication must ensure that publication is in the public interest.
 - (2) Without limiting subsection (1), the regulations may prescribe public interest purposes for the purposes of this section.
- Section 97C(a)(v):

A public sector body that publishes or causes to be published a public sector communication must ensure that the public sector communication is not designed or intended to directly or indirectly influence public sentiment for or against... the current Government of the Commonwealth.

In the second reading speech for the amendments, the [REDACTED] said:

... it is critical that, when public funds are spent on advertising and communication, this activity is undertaken for a purpose that serves the public interest. This expenditure must be effective, efficient and accountable and should never seek to provide political advantage to the government of the day. This Parliament and the Victorian community have a right to expect that there are clear and rigorous standards in place for publicly funded advertising, to provide assurance that it will occur for the benefit of the public and deliver value for money.

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... The second section in the new part requires that public sector communication is not designed or intended to directly or indirectly influence public sentiment for or against a political party, a candidate for election or a member of Parliament.

... These amendments to the Public Administration Act 2004 recognise the importance of undertaking government advertising and communication but also the need for rigorous controls and oversight to safeguard the integrity of the public sector, the appropriate use of public resources and, ultimately, the robustness of our democratic process.

... Enshrining these new standards in legislation will ensure that they are applied consistently and transparently and that they will provide ongoing protection against the wasting of public funds in an attempt to achieve political benefit.

The intent of these amendments, that publicly funded advertising not be used for political advantage, is laudable and necessary. But in our view the likely public perception of the recent advertising campaign would be at odds with this intent. The effect of the advertising, despite its public interest component, was inconsistent with apolitical public sector conduct as espoused under the PAA.

Any 'public interest' purpose of a communication is, under the legislative scheme, intended to be subject to the discrete and overriding obligation that the communication does not have the effect prohibited by s 97C(a)(v). To ensure that the expectation is met that the public sector be apolitical, the provision requires amendment. The requirement that the communication be 'designed or intended' to have the prohibited effect should be removed from s 97C(a)(v). The legality of the campaign should not depend upon proof that this element exists. Removal of this element will place obligations on the public sector body authorising, approving or endorsing the communication and also on those advising it as to the campaign's compliance with the communication standard. They must ensure that the communication is apolitical and does not have the prohibited effect even if the communication can be viewed as serving a specified public interest.

We draw this to your attention as this issue is likely to remain; in our view prompt amendment of the Act and Regulations is desirable to underline the apparent purpose of the recent amendments, to reinforce the importance of an apolitical public sector and to advance the wider public interest.

Each of the complainants is being advised as to the outcome of their complaints and we will provide them with a copy of this letter.

Yours sincerely



Deborah Glass
Ombudsman



Robert Redlich
Commissioner

VO ref: C/19/4462
IBAC ref: CD/19/48763

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Page 4 of 4

Source: VAGO, from IBAC.

Auditor-General's reports tabled during 2021–22

Report title

<i>Integrated Transport Planning</i> (2021–22: 01)	August 2021
<i>Major Infrastructure Program Delivery Capability</i> (2021–22: 02)	September 2021
<i>Clinical Governance: Department of Health</i> (2021–22: 03)	September 2021
<i>Managing Conflicts of Interest in Procurement</i> (2021–22: 04)	September 2021
<i>Major Projects Performance</i> (2021–22: 05)	September 2021
<i>Administration of Victorian Courts</i> (2021–22: 06)	October 2021
<i>Protecting Victoria's Biodiversity</i> (2021–22: 07)	October 2021
<i>Management of Spending in Response to COVID-19</i> (2021–22: 08)	October 2021
<i>Supplying and Using Recycled Water</i> (2021–22: 09)	November 2021
<i>Auditor-General's Report on the Annual Financial Report of the State of Victoria: 2020–21</i> (2021–22: 10)	November 2021
<i>Results of 2020–21 Audits: Local Government</i> (2021–22: 11)	December 2021
<i>Council Waste Management Services</i> (2021–22: 12)	December 2021
<i>Business Continuity During COVID-19</i> (2021–22: 13)	February 2022
<i>Effectiveness of the Navigator Program</i> (2021–22: 14)	March 2022
<i>Government Advertising</i> (2021–22: 15)	April 2022

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www.audit.vic.gov.au

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