



RBA RESPONSE TO “ELECTORAL FINANCE REFORM - PROPOSAL”

MINISTRY OF JUSTICE

29 October 2009

Statement of Interest

The Radio Broadcasters Association represents the non-competing interests of The Radio Network, MediaWorks Radio and 11 independently owned stations.

Our membership accounts for approximately 94% of all radio advertising revenues, a sum of around \$268 million.

Members of the RBA are regularly used by political parties and candidates during election campaigns. Expenditure on radio in the 2008 election was approximately \$590,000 and in 2005, approximately \$485,000.

Executive Summary

The RBA believes that the general philosophy and principles of funding of election campaigns should be a decision of Parliament.

However, we have an interest in the mechanics of how election advertising is managed and recommend to the Ministry that the current system is in need of change.

At the outset, we express our deep concern about the comment on Page 9 “*a decision has been made at this stage to put the finer details of the regime to one side until public submissions on these options have been received and the legislation is drafted. The public will have an opportunity to make submissions on the final details....before a Parliamentary Select Committee*”.

Our experience over the years regarding legislation affecting advertising and marketing is that once it is “embedded” in legislation, it is difficult to persuade a Select Committee to recommend, or Ministers to accept changes. There are serious flaws in the management environment for election advertising in the old Act, now repealed, and we urge both the Ministry and Minister to address these in the draft legislation rather than leaving it for later inclusion. We note with concern that some of the absurdities in the previous Act, including the right to complain about election advertisements long after polling day, and the absence of any mechanism for halting advertisements against which complaints have been upheld remain unaddressed.

These items are included at the end of our submission on the current Proposal Document.

Chapter 2 – State Funding

1. Funding available for allocation to political parties

We note the Government’s proposal to hold funding available at the 2008 level of \$3.2 million. We confine ourselves to commenting that this sum was in fact established for the 2005 General Election, that its spending power through media rate inflation had declined to \$2.8 million by the 2008 General Election and, assuming a further but somewhat slower rate of inflation between 2009 and 2011 of 9%, will have declined further to effective spending power of approximately \$2.5 million. This is some 22% less than Parliament allocated in 2005.

2. Restriction of state funding to use in broadcast media i.e. radio & television

As noted in our earlier submission, the reasoning, as we understand it, behind the restriction to television and radio was the capacity of broadcast media to reach virtually 100% of the population in a very short period of time, and their ability to deliver significant repetition of election advertisements within the short time frame of a typical election campaign.

This continues to be the case as the following comparison shows:

	<i>Weekly Reach All persons 18+ Years</i>	<i>Average hours per week spent listening/watching/reading</i>
Radio	78%	15.09
TV	98%	18.81
Newspapers	73%	2.23
Magazines	93%	5.95
Internet	68%	4.02
Cinema	53%	0.40

Source: ACNielsen Panorama

The RBA recommends that political parties should, in the future, have the right to “top up” the state funding allocation, provided they stay within whatever overall spending cap is imposed by Parliament. This would enable political parties to achieve what is known as “effective frequency” – the number of times a prospective voter needs to hear an advertisement before responding to it. At present, particularly for smaller parties, their state funded allocation falls well short of achievement of “effective frequency” – but at the same time, they can hardly ignore the opportunity provided by access to state funding. They will achieve far greater communications efficiency if, in some instances, they are able to add to this expenditure with funding of their own.

Chapter 6 – Regulated Campaign Period

The RBA confines itself to issues relating to “best practice” in advertising campaign management.

1 Status Quo

The status quo seriously constrains “best practice” principles for both candidates (since they have to assume the incumbent government will run full term and can be “wrong footed” in either under- or over-spending depending on their level of investment prior to the announcement of the actual polling day), and parties (of whom only the incumbents can forward plan knowing the actual polling day before its public announcement).

It is therefore necessary, if the government believes in pursuit of “best practice” and efficient use of election advertising funds to change from the status quo.

2 Writ Day

Such compressed timing gives very substantial advantage to the incumbent government. In particular, it disadvantages prospective new candidates who under the present three monthly rule have a longer period of time to establish their presence without the compressed “noise levels” of the campaign, including of course, activities of political parties.

It also has the effect of concentrating expenditure even more through the confinement of candidate spending to the month before the Election into a time period (i.e. spring) where there is already seasonal pressure, reflected in some difficulties in availability, at least in the major cities, and higher rates.

3 1 August

This, to us, seems to do little to mitigate the inefficiencies prompted by the time compression noted above under the “writ day” option.

4 1 May

This seems to us to be the best of the options proposed by Government. It is far enough out from the election day to mitigate the inefficiencies created by the time compression created by the Writ Day and 1 August options, yet is not so long as to unduly favour candidates and/or parties which are wealthy enough to be able to spend right to their limit.

Chapter 7 – Election Advertising

The RBA supports the thrust of Chapter 7.

We do suggest that it would be useful to make explicit the following additions:

- That the same rules apply to parties and candidates (i.e. removal of the prohibition against negative advertising on the part of candidates).
- That the definition of advertising should be media neutral.
- That the underlying principle of advertising being paid for, in cash or kind, is an essential part of the definition.
- The section on “exceptions” perhaps needs a “catch all” description, or empowerment of the new Electoral Commission to quickly and simply add other exceptions to this list, since the ingenuity of the human mind will doubtless come up with other possibilities that may appear to be an “exception” when it is in reality a paid advertisement.

Chapter 9 – Monitoring & Compliance

The RBA supports the general intent to centralise responsibility for electoral administration.

To the 3 bodies already mentioned, we would add the terms of the Broadcasting Act 1989, since conflict between the terms of this Act and the Electoral Act has been a source of confusion in the past.

Other Items Proposed for Inclusion in Draft Legislation

As noted earlier, the RBA is dismayed that some important administrative / management issues have been left to one side in this proposal and urge that they be considered for inclusion in the first draft of the Bill.

From our point of view, they are as follows:

1. Budgetary Control

In past elections, the Electoral Commission has had the responsibility of ensuring that parties do not exceed the state funded advertising allowance, further that payment to advertising suppliers, mostly media companies could be made only by the Electoral Commission, within the limits of the state funding cap.

However, political parties typically and understandably plan and book their advertising activities directly. Thus, advertising suppliers are placed in the invidious position of not knowing whether orders placed are within the spending cap.

The RBA encourages member stations to get signed declarations from political advertisers that all bookings are within statutory limitations. At the same time, we're aware of the fact that this has no legal teeth. The injustice and absurdity of this administrative regime became very clear in the 2005 Election, where the National Party overspent its allowance by the amount of GST. Media proprietors were thus placed in the extremely unjust situation of not being able to recover some \$170,000 from either the Electoral Commission or the National Party, despite the latter's willingness to pay.

So far as we can see, there are two main possibilities for preventing such an anomaly occurring in the future. The first is to require political parties to get pre-approval from the Electoral Commission before booking advertising activities, with the ultimate responsibility for controlling the budget being with the Commission. Alternatively, parties themselves could be responsible for payment, as well as booking of campaigns, and in the event of a overrun, have some sort of redress mechanism between the Electoral Commission and the political party.

However this matter is resolved, the situation arising over the National Party overspend in 2005 was highly inequitable and damaging to the media and needs correction.

2. Handling of Complaints about Election Advertisements

The current situation for handling of complaints about election advertisements is quite anomalous. Because radio and television advertising is controlled by the Broadcasting Act, complaints about election advertisements must be heard by the Broadcasting Standards Authority, assessing them against the BSA Code for Election Advertising.

As the BSA has a statutory relationship only with broadcasters any sanctions resulting from an upheld complaint can be directed only at the broadcaster. In reality, while broadcasters do scrutinise election advertisements with some care, they are inclined to give political advertisers the benefit of the doubt in terms of compliance with the Code, preferring to make minimal intervention in the democratic process.

In doing so, they are exposing themselves to the risk of “carrying the can” for a political advertiser who is immune from the jurisdiction of the Broadcasting Standards Authority. Even insisting on indemnification from political advertisers is of dubious legality and irrelevant other than where mandatory penalties are imposed.

Furthermore, the sanctionary powers of the BSA are quite limited and unlike the Advertising Standards Complaints Board (which deals with complaints about election advertisements in all other media), has no provision requiring cessation of an advertisement found in breach of the Code. All they can do is admonish, fine and/or insist on a corrective statement being made. While the broadcaster would be reckless to continue running an offending advertisement, there is technically no reason why they could not continue to do so.

Furthermore, this is the only time when the BSA is called upon to adjudicate on advertisements – in all other circumstances, they are assessing editorial material.

By comparison, non TV/radio complaints are heard by the Advertising Standards Complaints Board, an industry-funded body applying self-regulatory standards in advertising. Like the BSA, it has a Code for Election Advertising which in general thrust is not dissimilar to the BSA Code. Indeed, the two organisations collaborate to achieve compatibility where practicable.

However, there are important differences – the ASA has a record for faster turnaround of complaints, being experienced in the field, and not subject to the statutory constraints of the BSA. In the event of a complaint being upheld, the advertisement is immediately withdrawn on a voluntary basis by all media, usually within 24 hours. Thus, it is more effective in reducing any “harm” to the democratic electoral process.

The RBA therefore strongly recommends that control of all election advertising be vested in the Advertising Standards Complaints Board.

Another aspect of the hearing of complaints on election advertisements in the broadcast media, which is in our view anomalous is the complaint “window” of 60 working days after the alleged “offence”. If the underlying purpose of

management of complaints about election advertising is to minimise “harm” to the democratic process, this time window is absurd. In effect, it means that a complaint can be lodged and has to be heard by the BSA up to three months after an election has taken place. Whether the complaint is upheld or not, it is clearly a waste of the BSA’s time and money since the Election has long since been decided.

If, in the end, the BSA continues to adjudicate over election advertising (not our recommendation), there should be a **shorter** than normal complaint window (we would suggest 5 working days) to reflect the fast pace and short duration of an election campaign.

3. Payment Terms

Normal commercial payment terms for radio advertising, including that conducted by Government Departments, is for payment by the last day of the month following placement of the advertisement. For no explicit reason, the previous Electoral Finance Act required 60 days credit be given for election advertisements. This is clearly unfair and we urge that election advertising be treated on the same basis as normal Government and commercial advertising credit terms.



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