

The art of selling government

Television advertising has been an integral part of election campaigns for decades but political advertisements remain an unloved feature of the electoral hustings

During the 1952 U.S. presidential elections, advisers to both candidates urged their men to exploit the new medium of television. Republican Dwight Eisenhower was reluctant but agreed. He was given acting training, and made some slick one-minute commercials. His Democratic opponent, Adlai Stevenson, refused to do the same. "How can you talk seriously about issues with one-minute spots!" was his retort when an adviser suggested he make a television advertisement. Such conduct, he argued, would amount to "selling the Presidency like cereal".

Stevenson is often portrayed as a loser: out of touch, inflexible, too stuffy and intellectual. But there was a certain nobility in his refusal to change for expediency's sake. After all, he was right. You can't talk seriously about issues in one-minute spots, let alone the 30-second spots which are now usual. In the U.S., the negative "attack ad" has become such a fixture of politics that selling breakfast cereal seems dignified by comparison.

Edward Kennedy summed up a common view when he said that television, "like the colossus of the ancient world, stands astride our political system, demanding tribute from every candidate for major public office, incumbent or challenger. Its appetite is insatiable, and its impact is unique".

Although Australian political advertising has never plumbed the depths reached in America, it is almost universally unloved. As a result, the regulation of political advertising across all media is negative in character. Regulators have attempted to get rid of it altogether, most notably with the *Political Broadcasting and Political Disclosures Act* of 1991, which sought to ban political advertising. Instead, political parties were to be allocated free broadcast time which they could only use under conditions designed to force more meaningful content. But the Act was declared unconstitutional in 1992 by the High Court in *Australian Capital Television v Commonwealth*.

Prohibition having failed, we are left with harm minimisation.

Election advertisements are a peculiar form of communication. They only appear every few years so in between we tend to forget how awful they are, and are shocked anew each election. Part of the reason is that while election advertisements cost serious money - the total television budget for this year's federal election has been variously estimated at between \$15-30 million - most of that pays for air time, rather than production values. This means that the government of the nation is "sold" in advertisements which have an "Unbeatable Deals On Used Cars!" feel to them.

Almost every campaign produces at least one ad which is controversial. The 1977 Liberal Party advertisement, which portrayed a Labor government as a baby playing with a hand grenade, for example, has entered folklore.

During the 1996 federal election campaign, the Coalition came literally within minutes of disaster when the Commercial Acceptance Division of the Federation of Australian Commercial Television Stations (FACTS) withheld approval of a key advertisement which accused the Labor Party of planning to privatise Telstra.

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FACTS said the ad was misleading. Some 10 minutes before a press conference called to launch the advertisement, the Coalition's communications spokesman, Richard Alston, made a phone call to FACTS and successfully persuaded it to review its decision. A subsequent ALP complaint to the Advertising Standards Council was unsuccessful.*

While this year's election lacked a moment of such high drama, there was no shortage of controversy about political advertising:

- Even before the campaign started, the government's use of public

money to promote the GST was condemned by the Opposition. Labor's Senator Faulkner complained to the Australian Broadcasting Authority that the advertisements were clearly "political matter" and "election matter" under the relevant legislation, and that therefore the statement that they were authorised by Liberal Senator Nick Minchin "for the Commonwealth Government" was illegal.

- During the campaign itself, Labor complained that a Coalition slogan, "Doesn't Australia Deserve Better" breached the ALP's copyright, as it was similar to the Labor slogan "Australia Deserves Better."

- Labor warned the Federation of Australian Radio Broadcasters that its members could be committing a criminal offence if they used a sound bite provided by the Coalition, which featured a New Zealand chartered accountant saying that the GST had worked well in his own country. The sound bite did not have an "authorised by" tag.

- Labor complained to FACTS about two Coalition television advertisements - one claiming that the ALP would scrap work-for-the-dole schemes, the other that Labor was hiding plans to change the capital gains tax - arguing they were misleading. FACTS allowed both advertisements to be broadcast.

- A Labor advertisement which featured Kim Beazley warning that elderly people would be forced by a Coalition government to sell their homes to gain entry to nursing homes, was rejected by FACTS on the grounds that it was misleading.

- Labor had to pull the first ad in its campaign because it used footage which was copyright to the ABC without permission.

- A radio advertisement placed by a Labor-aligned group which alleged that cuts to federal law enforcement agencies had hampered the fight against crime had to be pulled. The person cited as authorising the advertisement said he had not given permission for his name to be used.

Electoral advertising laws in Australia

The most important laws relating to electoral advertising are the Commonwealth Electoral Act 1918 and the *Broadcasting Services Act*, 1992. Each state and territory also has an electoral act (most of that name) broadly mirroring the Commonwealth Act.

Schedule 2 of the *Broadcasting Services Act* requires that all registered political parties must be given "reasonable opportunity" to broadcast election material. This does not mean that air time must be given free: rather, it prevents a broadcaster refusing to run an advertisement at normal rates merely because it dislikes the political party which made it. There is also a "blackout" period in which political advertising cannot be aired, from midnight on the Wednesday preceding the election until the polls close on Saturday. The Act also requires some undemanding record keeping.

Under the *Commonwealth Electoral Act*, it is a criminal offence to publish electoral material which does not carry a proper attribution (the "written and authorised by . . ." tag), and it also requires broadcasters to keep records of who requests the broadcast of election material.

The 1997 report of the Federal Parliament's Joint Standing Committee investigating the conduct of the 1996 election was critical of electoral advertising and recommended a ban on "inaccurate and misleading" statements of purported fact. There is already such a ban in the *South Australian Electoral Act* 1985.

While political advertising has been held by courts not to be subject to s52 of the *Trade Practices Act*, which prohibits "false or misleading" advertising, all television advertisements, including political ones, must be approved by the Commercial Acceptance Division of FACTS. This means the advertisements must conform to the Media Council of Australia's advertising code, which includes a requirement that advertisements "shall be truthful and shall not be misleading or deceptive".

Several print advertisements also caused controversy:

- The Victorian Labor party complained to the state Auditor-general about newspaper advertisements placed by the Victorian State Government which boasted of increases in government spending on health services.

- Channel Nine personality Ray Martin complained when a Queensland Liberal Party print advertisement used a quote from his television show, in which he spoke well of the GST, without his permission.

- Full page newspaper advertisements announcing a \$100 million assistance package to people affected by Victoria's gas crisis, published on the morning of the election, were strongly criticised by the Opposition. The Prime Minister, John Howard, assured the electorate that the timing of the announcements was "pure coincidence".

The bitterness shown by the ALP about many of these decisions is not surprising: no one likes it when the free kicks go to the other team. But one area which does seem hopelessly confused is the question of what is, or is not "political matter" under the Broadcasting Services Act.

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The Act itself achieves a breathtaking standard in unhelpful drafting, saying: "Political matter means any political matter, including the policy launch of a political party".

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In August the Australian Broadcasting Authority published guidelines which were intended to explain this mysterious statement. These said that political matter was a broadcast which "must be capable of being properly characterised as participation in the political process or an attempt to influence or comment upon that process [or the] administration of government". Any material which advocates "a certain point of view" on such matters would count as political, but "matter which is simply promoting a product or service would not fall within the definition...simply because it refers to something which is political."

If you find that simply confusing, try this advice about governments and government agencies wanting to broadcast "such things as the introduction of new legislation or changes to existing legislation". Such broadcasts "will only constitute political matter if it goes beyond merely informing the viewer or listener...A distinction can be drawn between an advertisement which only informs and one which is likely, directly or indirectly, to influence the viewer or listener".

Working in the hothouse atmosphere of an election campaign, politicians and journalists tend to imagine that their excitement or anger over political advertising is more widely shared than is really the case.

It is not too harsh to describe this as a nonsense statement. All advertising is intended to influence opinion or behaviour or both: that is the whole point of advertising. Perhaps the intent is to warn governments and their agencies to exercise restraint when advertising at public expense.

But while it is easy to understand the angst of the ALP about the other decisions which went against them, from a public policy

view the problem seems less acute.

Reflecting on the U.K. general election of 1997, Geoffrey Goodman, the editor of the *British Journalism Review*, wrote: "It is pretty clear that the majority of readers, and probably quite a few viewers simply turned away from most of the material being offered in print or on screen - except for the election night itself...So people read, or did not read, their newspapers; watched, or did not watch, their television screens, and switched on their (mostly) car radios and, no doubt, reflected that journalists were still not quite grasping the point: which was that the apparent apathy which seemed to many of us so palpable was in fact a disguise for an electorate that had, for the most part, already made up its mind."

That seems a fair assessment, too, of the "boring" Australian elections of recent years.

Working in the hothouse atmosphere of an election campaign, politicians and journalists tend to imagine that their excitement or anger over political advertising is more widely shared than is really the case. As American academic Stephen Bates has written: "There is nothing magical about political advertising, positive or negative . . . It does not overwhelm the viewer's natural scepticism or subvert his rational faculties. It provides information that some voters accept, some reject, some ignore, and some misunderstand...Some of the best-known political consultants admit that their Hollywood reputation (as featured in films such as *The Candidate* and *Power*) is vastly overblown."

Given that we have avoided the vile negative advertising which Bates is apologising for, the Australian regulatory system seems to work pretty well. ❧

* For a full account of the incident, see Pamela Williams' book *The Victory, Allen & Unwin, 1997, pp 281-4.*

Richard Evans