

The Auditor-General
Audit Report No.24 2008–09
Performance Audit

The Administration of Contracting Arrangements in relation to Government Advertising to November 2007

Department of the Prime Minister and Cabinet

Department of Finance and Deregulation

**Department of Education, Employment and Workplace
Relations**

Department of Health and Ageing

Attorney-General's Department

Australian National Audit Office

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Canberra ACT
5 March 2009

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit in the *Department of the Prime Minister and Cabinet, the Department of Finance and Deregulation, the Department of Education, Employment and Workplace Relations, the Department of Health and Ageing and the Attorney-General's Department* in accordance with the authority contained in the *Auditor-General Act 1997*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit and the accompanying brochure. The report is titled *The Administration of Contracting Arrangements in relation to Government Advertising to November 2007*.

Following its tabling in Parliament, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely



Ian McPhee
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

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Abbreviations

AGD	Attorney-General's Department
AGS	The Australian Government Solicitor
ANAO	Australian National Audit Office
BMF	Brown Melhuish Fishlock
CASA	Campaign Advertising Special Account
CAS	Central Advertising System
CEIs	Chief Executive Instructions issues in accordance with S. 52 of the FMA Act 1997
CMGPCP	Consultative Ministerial Group on Public Communications Programs
CP	Cultural Partners
CPGs	Commonwealth Procurement Guidelines
CPM	Cost per thousand (model for calculating advertising cost)
DEEWR	Department of Education, Employment and Workplace Relations (or, prior to 15 January 2008, its predecessor the Department of Employment and Workplace Relations)
FD	Finance Direction
Finance	Department of Finance and Deregulation (or, prior to 15 January 2008, its predecessor the Department of Finance and Administration)
FMA Act	Financial Management and Accountability Act 1997
FMA Regulations	Financial Management and Accountability Regulations 1997

GCU	Government Communications Unit
Health	Department of Health and Ageing
HMA	hma Blaze
JCPAA	Joint Committee of Public Accounts and Audit
JWM	Jackson Wells Morris Pty Limited
LHC	Lifetime Health Cover
MCGC	Ministerial Committee on Government Communications
MCSA	Media Commissions Special Account
NESB	Non-English speaking background
OGIA	Office of Government Information and Advertising
PM&C	Department of the Prime Minister and Cabinet
PMO	Prime Minister's Office
Quay	Quay Connection
SMOS	Special Minister of State
TARPs	Target Audience Rating Points
UM	Universal McCann
WDM	Worthington Di Marzio

Glossary

CPM Cost Per Thousand. The cost of advertising to reach 1000 people within the target audience. The 'M' is the Roman numeral for one thousand.

Using print as an example, CPM is calculated by dividing the advertising cost (cost per insertion) by a publication's circulation or readership (in thousands), i.e.:

$$\text{CPM} = (\text{Advertising Cost} / \text{Readership}) * 1000$$

Example: A magazine reaches 820 000 persons aged 14+. The cost of a full page colour advertisement in this magazine is \$14 550, therefore:

$$\text{CPM} = (14\,550 / 820\,000) * 1000 = \$17.74$$

GRPs (Gross Rating Points) The sum of individual TARP (see below) percentages for a television commercial campaign. GRPs indicate the total weight of a schedule or gross audience (ie including duplications). Example:

# of Spots	Program	Prog. Rtg.
1	CSI	13
1	Neighbours	16
2	Law & Order	9
1	Simpsons	15
3	Mon-Fri News	12
2	Lost	22

The above television schedule accumulates 142 Gross Rating Points. Gross Rating Points could also be referred to as Total TARPS.

TARPs (Target Audience Rating Points)	<p>Measures a specific demographic audience of a station for a specified point of period in time, expressed as a percentage of the potential audience.</p> <p>For example.</p> <p>If a program has a Women 18-39 TARP of 15, this means that an average of 15per cent of all Women 18-39 have watched that program.</p> <p>The formula:</p> <p>$\text{TARP} = \frac{\text{number of the target audience watching the program}}{\text{total population of the target audience}}$</p>
Tear Sheet	A copy of a print advertisement torn directly from the publication in which it appeared (for verification purposes)

Summary and Recommendations

Summary

Introduction

1. Advertising is a legitimate element of government communication and information strategies. It provides a mechanism for governments to connect directly with citizens, informing them about new and existing government programs, providing advice about rights and responsibilities and conveying important information.
2. The strategies that guide government communications, including advertising, are often formulated as a part of the policy development and delivery process. Departments employ a wide variety of delivery channels to advertise, ranging from the publication of mandatory notices in the press and Government gazette to building a presence on *YouTube*. While many Government departments maintain a substantive internal communications capacity, the demands of modern media techniques and markets results in more sophisticated advertising campaigns drawing heavily on the expertise of private sector service providers. Accordingly, in delivering both day-to-day and more substantive campaign advertising, departments develop and rely upon an array of contracts with market researchers, advertising agencies, public relations consultants, media buyers, and content production and delivery firms.
3. Between July 1995, when the ANAO reported to Parliament on the general administration of government information and advertising¹, and November 2007, when the governance framework for the administration of Government information and advertising campaigns was significantly revised, more than \$1.8 billion was expended on government advertising.² Nearly half of these outlays occurred in the last four years.

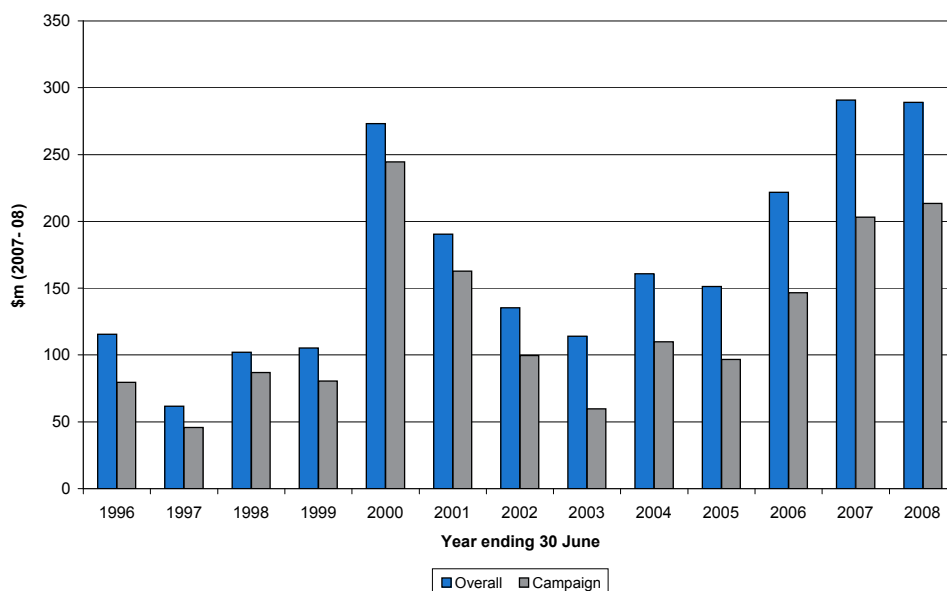
¹ ANAO Audit Report No.30 1994–95, *Commonwealth Government Information and Advertising*, June 1995.

² Reporting arrangements in place over this period have made it difficult to be certain of the extent of Federal Government outlays on either individual campaigns or on advertising generally. The most widely available time series data has been the consolidated Central Advertising System expenditure figures, published by the Department of the Prime Minister and Cabinet in its annual reports and, from time to time, reported to Parliament. As discussed at paragraph 1.13, this omits certain elements of government expenditure on advertising while, at the same time, including elements of non-discretionary advertising expenditure and advertising expenditure by certain non-Commonwealth bodies (paragraph 1.15).

4. The annual cost of advertising rose in real terms from \$116 million (2007–08 prices) in 1995–96 to \$289 million in 2007–08, an increase of 150 per cent (see Figure 1).³ Advertising for the 2007 calendar year totalled \$368 million. This growth saw government advertising outlays overtake those of major commercial interests such as the Coles Group and Telstra.⁴ In 2007, the Commonwealth was Australia’s largest advertiser.

Figure 1

Expenditure on advertising from July 1995 (\$m, 2007–08 prices)



Source: ANAO analysis of PM&C and Finance documents, PM&C Annual Reports, Senate Hansard, Parliamentary Research Note No 62, 21 June 2004, ABS 6401.0 September 2008.

5. The extent of government advertising activity and the potential benefit such advertising might provide to incumbent governments has been the subject of ongoing debate and inquiry. The ANAO examined aspects of taxation reform advertising in Report 12 of 1998–99⁵ and recommended that the Government adopt guidelines to govern the development, content and

³ In nominal terms (that is, not adjusted for changes in prices), advertising outlays rose by 240 per cent over this period, from \$85 million in 1995–96 to \$289 million in 2007–08.

⁴ Adnews, Special Report Australia's Top Advertisers, March 2008.

⁵ ANAO Audit Report No.12 1998–99, *Taxation Reform - Community Education and Information Programme*, October 1998.

presentation of government advertising. In September 2000 the Joint Committee of Public Accounts and Audit (JCPAA), after examining Report 12 of 1998–99, also recommended the Government adopt guidelines for advertising, similar to those proposed earlier by the ANAO. The recommendations of the JCPAA were not taken up by the Government of the day.⁶

6. In 2004 and 2005, the Senate Finance and Public Administration References Committee undertook an inquiry into Government advertising and accountability, with the non-government majority report of December 2005 making a number of recommendations aimed at improving administrative processes and overall governance, including the adoption of guidelines based on those previously suggested by the ANAO and the JCPAA. A minority report from then Government Senators did not concur with the findings and recommendations of the majority. The then Government tabled an interim response in the Senate on 7 December 2006, noting that “the government response is being considered and will be tabled in due course”.⁷ No final response to the Committee’s report had been tabled in the Parliament at 26 June 2008.⁸

7. Also in 2005, the then Government’s advertising in support of proposed workplace relations reform legislation was challenged in the High Court of Australia.⁹ The plaintiffs¹⁰ contended that expenditure of public money on advertising to provide information about, and promote, the Government’s workplace relations reform package was unlawful because there was no “appropriation made by law” which would authorise the drawing of money from the Treasury of the Commonwealth to pay for that advertising and the *Appropriation Act (No 1) 2005–2006* (the Appropriation Act), from which the advertising campaign was being funded, did not cover such drawings. The Court, in a majority verdict, found the expenditure was

⁶ On 2 July 2008, the Rudd Government announced guidelines to govern the development, content and presentation of Government advertising. The new guidelines are broadly consistent with those recommended by the JCPAA in September 2000 and, in Report 12 of 1998–99, by the ANAO.

⁷ Senate Hansard 7 December 2006 p. 115.

⁸ Senate Hansard 26 June 2008 p. 3565.

⁹ *Combet v Commonwealth* [2005] HCA 61; 224 CLR 494; 80 ALJR 247; 221 ALR 621 (21 October 2005)

¹⁰ Mr Greg Combet, who was at the time secretary of the Australian Council of Trade Unions, and Ms Nicola Roxon, a member of the House of Representatives and (then) Shadow Attorney-General.

authorised by the Appropriation Act and declined to issue the declarations or injunction sought by the plaintiffs.

The administrative framework prior to November 2007

8. Prior to the November 2007 Federal Election, the Government's information activities were coordinated by the Special Minister of State (SMOS). The Minister chaired the Ministerial Committee on Government Communications (MCGC), which took key decisions relating to major and sensitive information campaigns (including advertising campaigns) undertaken by Australian Government departments and agencies.¹¹ Support for the MCGC was provided by the Government Communications Unit (GCU), located in the Department of the Prime Minister and Cabinet (PM&C).¹²

9. Although responsibility for the initiation and administration of advertising and related procurement activities lay primarily with Portfolio Ministers and departmental Chief Executives, in practice the administration of advertising involved three main parties:

- departments, who had responsibility for the financial and operational management of campaigns, including the preparation of research and communications strategies and briefs, the conduct of tender processes and the short-listing of consultants for MCGC consideration, the general authorisation of campaign expenditure¹³, the entering into and administration of contracts, the placement of advertising and the conduct of campaign evaluations;
- the MCGC, which took key decisions relating to major or sensitive information activities including approving strategies and briefs, the selection of certain consultants (generally based on shortlists prepared

¹¹ As at 1 November 2007, the membership of the MCGC consisted of the Hon Gary Nairn MP (chair, Special Minister of State), Mr Petro Georgiou MP, the Hon Ms Sussan Ley MP, the Hon Mr Andrew Robb MP, the Hon Mr Tony Smith MP and Mr Tony Nutt (PMO). The Minister responsible for the matter under consideration by the MCGC (or their representative) was invited to join the MCGC as a member for the duration of that consideration.

¹² On 21 October 1998, responsibility for the coordination of Government communications and advertising, including the provision of support to the MCGC, was moved from the then Department of Finance and Administration to the Department of the Prime Minister and Cabinet. Responsibility for information coordination and services within Australia, including advertising, was transferred to the then new Department of Finance and Administration on 9 October 1997 following the abolition of the Department of Administrative Services <<http://www.naa.gov.au/records-management/publications/AAOs.aspx>> [accessed 11 December 2008].

¹³ Senate Finance and Public Administration References Committee, *Government advertising and accountability*, December 2005, pp. 61-62.

by the department and the GCU), and the approval of final creative materials and media plans;¹⁴ and

- the GCU, which provided secretariat support and advice to the MCGC, advised departments on campaign development, administration and delivery (including the development of briefs, strategies and plans), maintained a register of consultants, assisted departments to develop lists of potential consultants for MCGC consideration and administered the Central Advertising System (CAS).¹⁵

10. The (then) Government's general administrative requirements in relation to the management of information campaigns were set out in *Guidelines for Australian Government Information Activities - Principles and Procedures, February 1995* (Appendix 1). These arrangements required that all major and/or sensitive¹⁶ information activities be approved first by the responsible Minister and then brought before the MCGC for approval and sought to ensure that departmental information programs met the Government's priorities and objectives, and used appropriate techniques of communication.¹⁷

11. Under this model, the MCGC, which had specialist experience in government campaign advertising, exercised considerable discretion as to the extent of its involvement in particular campaigns. At a minimum, the MCGC provided formal approvals and clearances at key points of campaign development and delivery. At times, the MCGC took decisions that completely reshaped campaign strategy and timing, extensively edited creative materials, and set requirements for the frequency of advertising.

12. Following the 24 November 2007 Federal Election, the Government abolished the GCU and did not re-establish the MCGC. Responsibility for the

¹⁴ Senate Finance and Public Administration References Committee, *Government advertising and accountability*, December 2005, p. 61.

¹⁵ The CAS is a centrally administered procurement arrangement to consolidate government advertising expenditure, with a view to securing optimal media discounts on Commonwealth-wide negotiated media rates. Under the CAS, the Commonwealth maintains contracts with two media specialists who assist in media planning, placement and rates negotiations with media outlets. At the time of the audit, Universal McCann handled all campaign media planning and placement, and hma Blaze placed all non-campaign advertisements, such as job vacancies, tenders and public notices.

¹⁶ The Guidelines defined "Sensitive" as including issues which might offend sections of the community or may produce negative reactions from the community group being addressed or its opponents.

¹⁷ Approval was required to be sought for all information activities for which it was proposed to engage the services of outside consultants, and was required regardless of whether or not the proposed activity included paid advertising.

administration of the CAS was transferred from PM&C to the Department of Finance and Deregulation (Finance) on 3 December 2007.¹⁸ A revised management framework, incorporating new guidelines for Commonwealth Government campaign advertising, was announced by the Government on 2 July 2008.

Audit scope and objective

13. The objective of the audit was to assess the effectiveness of the procurement and contracting associated with:

- the design, development and delivery of government advertising campaigns by Commonwealth departments; and
- the operation of the Central Advertising System (CAS).

14. The audit examined PM&C's role in relation to the development and delivery of advertising campaigns and the administration of the CAS. The audit also examined three completed advertising campaigns including:

- the second phase of the National Security Campaign, administered by the Attorney-General's Department (AGD) between 2003 and 2006;
- the Private Health Insurance Campaign, administered by the Department of Health and Ageing (Health) in 2007; and
- Workplace Relations Reform campaigns in 2005 and 2007, administered by the (then) Department of Employment and Workplace Relations (now the Department of Education, Employment and Workplace Relations (DEEWR)).¹⁹

¹⁸ The Department of Finance and Administration was renamed the Department of Finance and Deregulation by the Administrative Arrangements Order issued following the November 2007 Federal election. The Department is referred to as Finance throughout this report.

¹⁹ The Department of Education, Employment and Workplace Relations was established by the Administrative Arrangements Order issued following the November 2007 Federal election. It replaced the former Department of Education, and of Employment and Workplace Relations. The Department is referred to as the Department of Education, Employment and Workplace Relations (or DEEWR) throughout this report.

Table 1**Campaigns included in the Audit – Summary of Contract Expenditure**

Campaign	Department	Expenditure
National Security 2003–06	AGD	\$18 738 030
Private Health Insurance 2007	Health	\$17 929 982
Workplace Relations Reform 2005	DEEWR	\$49 270 620
Workplace Relations Reform 2007	DEEWR	\$63 967 321
TOTAL		\$149 905 953

Source: ANAO analysis of departmental records

15. The campaigns and administrative actions examined in the course of this audit were undertaken within the context of the administrative regime that applied prior to the 24 November 2007 Federal election. The audit has not examined the effectiveness of subsequent revisions to administrative arrangements and governance frameworks for government advertising, although the recommendations provided by the report are framed in the context of the new arrangements.²⁰

16. Further, the audit did not examine the content of the advertising campaigns as the former government had not accepted the recommendations of the ANAO or the JCPAA to adopt guidelines governing the development, content and presentation of government advertising (see paragraph 5).

Conclusion

17. Governments of all persuasions have used advertising as a means of communicating directly with the public on matters of importance. While the scale of activity has risen and fallen over time, the cost to taxpayers and the perception that the government may gain a benefit from running substantial advertising campaigns has ensured ongoing parliamentary scrutiny and public debate. In such an environment, it is important that the administrative arrangements in respect of government advertising provide assurance that both statutory and government policy requirements are satisfied.

²⁰ Information on the new arrangements is provided by the Department of Finance and Deregulation at <<http://www.finance.gov.au/Advertising/index.html>> [accessed 24 February 2009].

18. Overall, the audit found that departments faced significant challenges in effectively managing the procurement and contracting associated with government advertising campaigns under arrangements applying up until November 2007. The overall decision making framework for advertising campaigns, which was largely settled in the 1980s, was not well aligned with the requirements of the current financial framework.²¹ In particular it has become apparent that the responsibility for key decisions relating to advertising campaigns was fragmented between the MCGC and departments, creating uncertainty in clearly identifying the responsibilities and the limits of authority of participants in the decision making processes.

19. Decisions to approve the expenditure of public monies attract specific accountability obligations, including statutory requirements. In particular, the financial framework requires that the spending of public money not be approved unless reasonable inquiries have been undertaken that demonstrate that the proposed expenditure will make efficient and effective use of public money, and complies with any relevant Government policies. Departmental officials, in approving the expenditure of public monies, have a responsibility to ensure that they understand the full extent of the statutory obligations attached to such approvals.

20. In relation to those campaigns examined as part of this audit, departmental officials generally acted to approve the spending of public monies on campaigns, but did so in accordance with any decisions taken by the MCGC in relation to those campaigns. In practice, for the three campaigns reviewed, the MCGC made decisions concerning the appointment of consultants and in some other instances took decisions concerning the conduct

²¹ Including the *Financial Management and Accountability (FMA) Act 1997* and associated regulations and guidelines - such as the Commonwealth Procurement Guidelines. Of particular relevance to the operation of the MCGC, under the new framework (which came into effect on 1 January 1998):

- the FMA Regulations were drafted so that they explicitly govern all decisions of the Executive Government to spend public money, whether these decisions are made by a Minister, Ministers collectively (such as in Cabinet), officials acting under the authority of a Minister or other persons authorised by legislation to make such decisions (**approver** is defined by *FMA Regulation 3*);
- *FMA Regulation 11* states that officials are unable to approve a proposal to spend public money unless they have been authorised by a Minister or Chief Executive, or by or under an Act, to approve the proposal; and
- Ministers are no longer empowered to issue a direction that prevents the Commonwealth from obtaining better value for the expenditure in all the circumstances (as was possible under former Finance Regulation 44B(c)(ii)). Instead, *FMA Regulation 9* requires that no spending proposal may be approved unless the approver (including a Minister or Ministers acting collectively) is, after making reasonable inquiries, satisfied that the proposed expenditure represents efficient and effective use of public money.

of the campaigns. On the basis of the explanatory guidance materials generally available to departments at the time, and the record of the MCGC decisions relating to the campaigns examined, as set down in committee minutes, departmental officials regarded the MCGC decisions and directions to be binding on them, in some instances effectively removing their discretion to independently decide on spending proposals put before them.²² The AGS has advised the ANAO that in circumstances where prior ministerial consideration removes the necessary discretion from the departmental decision maker “the appropriate course would be for the Minister or ministerial committee to approve the spending proposal for the purpose of FMA Regulation 9.” Consequently on those occasions where the MCGC made decisions on aspects of the campaign that effectively limited the discretion of departmental officials, the AGS has advised that the MCGC could and should have been the recognised statutory decision maker concerning the expenditure of public money. In such circumstances, departments have a role in providing advice to the Minister or ministerial committee of statutory obligations associated with their decisions. In other cases, departments have a responsibility to understand their obligations where departmental delegates are approving the expenditure of public money.

²² For example, the following key documents examined as part of this audit indicate that the MCGC was the final decision maker in relation to many key aspects of campaign advertising procurement:

- The formal advice to departments by PM&C outlining the MCGC and its processes stated that for campaigns within the MCGC’s jurisdiction “The MCGC makes the key decisions relating to major and/or sensitive information activities”, “The MCGC selects the successful consultant” and “Finally, the MCGC approves the creative material and the media plan before it is placed in the media” <www.gcu.gov.au/code/about/index.html> [accessed 26 June 2007].
- The *Guidelines for Australian Government Information Activities – Principles and Procedures – February 1995* issued by the Australian Government stated that “all major and / or sensitive information activities ... are to be approved first by the responsible Minister and then ... brought before the MCGC for approval”;
- The submission of PM&C to the Senate Finance and Public Administration References Committee in 2005, notes that “The MCGC makes the key decisions relating to major and/or sensitive information activities”; and
- DEEWR advised the ANAO on 10 September 2008 that, in respect of the Workplace Relations Reform Campaigns, “there was no real scope for the department to do anything other than directly implement MCGC decisions on the key aspects of both campaigns.”

It is clear, in some instances, the decisions of the MCGC accorded with detailed advice and recommendations provided by agencies and, accordingly, subsequent decisions of officials aligned with the initial departmental assessment of the efficiency and effectiveness of resource usage. However, even in such instances, the decision of the MCGC was communicated to the department as a final and authoritative decision.

21. The AGS has advised that when the MCGC should have been the approver under the financial framework for certain decisions relating to the expenditure of funds on advertising campaigns, this would have required the MCGC to have “considered and determined that the expenditure which would result from the decision it made would be in accordance with government policy and would make efficient and effective use of public money”. The limited documentation detailing the MCGC proceedings makes it difficult to be definitive regarding the extent of the committee’s deliberations; however the evidence available to the ANAO suggests that the MCGC, in considering the campaigns within the scope of this audit, did not generally have regard to the full range of matters required to enable it to carry out the obligations and statutory requirements associated with approving the spending of public money. The AGS has advised the ANAO that, in such instances, it is unclear as to who the actual approver of expenditure for the purposes of FMA Regulation 9 was.²³

22. Some former MCGC members have submitted to the ANAO²⁴ that the MCGC was an advisory body, rather than an executive body, whose decisions had no formal binding or legal status. This contrasts with the description of the decision making role of the MCGC included in the majority report of 2005 Senate Finance and Public Administration References Committee inquiry into government advertising,²⁵ which aligns closely with the views expressed by the departments included in this audit and is also consistent with key documentation examined by the ANAO (refer to footnote 22). The divergence of views between these former committee members and the audited departments (as explained in paragraph 20) is consistent with the audit finding

²³ The AGS advised the ANAO on 8 July 2008 that:

It seems that the former MCGC could and should have been the approver for the purposes of FMA regulation 9, of at least some of the decisions, particularly ... where the MCGC appears to have selected the successful tenderer and the Department had no discretion whether to conclude a contract.

However, the MCGC could only have been regarded as approving the spending proposal under FMA regulation 9 if it had considered and determined that the expenditure which would result from the decisions it made would be in accordance with government policy and would make efficient and effective use of public money.

²⁴ The Hon Gary Nairn and Senator the Hon Eric Abetz (both former chairs of the MCGC) and Mr Petro Georgiou MP (former member of the MCGC) provided the ANAO with comments and views on 16 December 2008. The Hon Gary Nairn provided a formal response to the draft report on 10 February 2009.

²⁵ See paragraphs 2.3 and 2.4 for further information relating to the Committee’s views on the MCGC’s decision making role.

that uncertainty existed in regard to the relative responsibilities and authority of participants in the review and decision making processes.

23. The uncertainty relating to the relative responsibilities of the parties under the financial framework existed over an extended period due to the failure by PM&C and individual departments to inform themselves and advise ministers, and more specifically the MCGC, on the decision making practices in relation to government advertising. Irrespective of the responsibility the MCGC may have had to inform itself of any implications for its role of changes in the financial framework, PM&C (through the GCU) had primary responsibility for providing support and advice to the committee and, accordingly, carried the responsibility for advising the MCGC on the impact of the financial framework on its operations as and when appropriate.²⁶

24. More broadly, there was a failure on the part of departments to ensure that procurement decisions were taken in a timely manner and were properly documented, resulting in an inability on their part to demonstrate that all of the requirements of the financial framework had been observed. Further, in some instances, departments did not follow processes required by its Chief Executive Instructions.

25. Departments also did not observe sound practices in entering into and varying contracts, leading to significant delays in finalising contracts for major elements of campaign development and creating unnecessary risks for the Commonwealth. The audit found that, of the twelve primary contracts executed in relation to the campaigns within the scope of this audit, none were executed prior to the consultant commencing work. The average delay in executing a contract was 81 days (nearly three months), with a minimum delay of 5 days and a maximum of 185 days (over six months); the value of work conducted prior to contract execution approached \$11 million.

26. PM&C's administration of the tender processes leading to the appointment of the current Central Advertising System (CAS) master media placement firms was generally sound, although PM&C increased the financial and operational risks to the Commonwealth by not adequately consulting with client departments in developing its contracting plans, by not conducting timely and comprehensive due diligence of potential contractors and by not

²⁶ The ANAO notes that responsibility for the provision of advice and support to the MCGC was transferred from the (then) Department of Finance and Administration to the Department of the Prime Minister and Cabinet on 21 October 1998.

undertaking comprehensive transitional planning. The subsequent CAS contracts were not well implemented and were poorly managed by PM&C, particularly in regard to the contractual provisions relating to performance and remuneration, and the amendment and extension of the contracts.

27. This audit draws attention to some key messages for agencies in their administration of government programs. Firstly, it is critical that departments provide timely advice to government in relation to the operation of the financial framework where this has a bearing on decisions being taken – this issue has featured in other audit reports in recent years.²⁷ Secondly, it is important that key decisions, particularly those that lead to the expenditure of public money, are appropriately documented in the interests of transparency and accountability. Finally, to protect the interests of the Australian Government (and taxpayers), departments need to ensure that contracts are executed in a timely manner, include appropriate safeguards to secure performance, and are actively administered. None of these matters are new but this audit highlights that agencies need to continually reinforce good practice in relation to government procurement.

Key findings by chapter

Chapter 2 - Campaign Advertising

The governance framework for campaign advertising created challenges for departments

28. The governance framework for campaign advertising was characterised by the MCGC taking key strategic and operational decisions in relation to advertising campaigns and taking decisions that were viewed by departments as binding in relation to associated procurement and contracting activity.²⁸ The MCGC, which was established in 1996,²⁹ generally continued the pattern of operation developed by the previous government's Ministerial Committee on Government Information and Advertising, which was formed in May 1983. As such, the operational arrangements for the MCGC were largely established

²⁷ ANAO Audit Report No. 14 2007–08 *Performance Audit of the Regional Partnerships Programme*, ANAO Audit Report No. 39 2006–07 *Distribution of Funding for Community Grant Programs*.

²⁸ The MCGC's practice of documenting only the decisions of its meetings, and not the proceedings, means that, the basis for decisions which were inconsistent with or not supported by departmental advice is not apparent.

²⁹ Department of the Prime Minister and Cabinet, *Annual Report 1998–99*, p. 72.

under the framework provided by the *Audit Act 1901* (Audit Act) and its subordinate legislation (including the Finance Regulations and the Finance Directions) which were in effect until 31 December 1997. The major changes to the financial framework from 1 January 1998 should have resulted in a review of this model of operation.

29. From 1 January 1998, the framework for the management of public money and public property was provided by the *Financial Management and Accountability Act 1997* (the FMA Act) and associated regulations (FMA Regulations), and the *Finance Minister's Orders*. The changes from the framework that applied under the previous Audit Act included that Ministers were no longer empowered to issue a direction that prevented the Commonwealth from obtaining better value for the expenditure in all the circumstances.³⁰ Instead, no spending proposals could be approved unless the approver (including a Minister or Ministers acting collectively) was, after making reasonable inquiries, satisfied that the proposed expenditure represented efficient and effective use of public money.³¹

30. The changes made to the financial framework should have been a signal to review the respective roles of the MCGC and departments in relation to the approval of spending for government advertising campaigns. However, relevant departments³² did not provide advice to the MCGC on changes arising from the new framework; in particular that the committee would need to acknowledge limitations on their capacity to make decisions which were binding on officials and departments in relation to spending matters, or alternatively to recognise its responsibilities as an approver under the new arrangements. It would also have been open to the committee to have sought advice on the impact that such significant changes in the operating

³⁰ Specifically, the FMA Regulations omitted any provision in the nature of the earlier Finance Regulation 44B(c)(ii) which allowed a person to enter into a commitment to spend public money that did not obtain the best value for money for the Commonwealth in circumstances where they were complying with a direction by a Minister (although in such circumstances officials were required to certify that they had obtained the best value that was possible while complying with that direction). Instead, all spending proposal approvals under the FMA Regulations must both be in accordance with the policies of the Commonwealth and make efficient and effective use of public money.

³¹ ANAO Audit Report No. 14 2007–08, *Performance Audit of the Regional Partnerships Programme: Volume 2 – Main Report*, p. 51.

³² Primary responsibility for providing support and advice to the MCGC was moved from the Department of Finance and Administration to the Department of the Prime Minister and Cabinet on 21 October 1998. However, departments engaging with the MCGC in relation to the administration of campaigns also had an obligation to provide advice to the MCGC if the decision making model impacted on the ability of those departments to effectively discharge their responsibilities under the prevailing financial framework.

environment may have had on the ongoing operations of the committee, but there is no evidence to suggest that this occurred.

31. Accordingly, no changes were made to the operational model employed by the MCGC. Departments continued to operate on the basis that departmental delegates were approving all aspects of spending proposals in accordance with the requirements of the FMA regulations but without the discretion to approve or not approve those key elements of the spending proposal that the MCGC had already considered. Similarly, the MCGC continued to decide on key aspects of campaign advertising, effectively removing in some instances the discretion required by officials to properly approve expenditure, but not, in those instances, making the changes to its considerations and processes required for it to meet the obligations of an “approver” under the new framework.

32. There have been opposing perspectives put to the ANAO in relation to the role of the MCGC in making decisions in relation to the administration of campaigns (including the selection of consultants). Former members of the MCGC have emphasised the committee was only advisory but one whose specialisation in this area earned it due consideration from officials; and it is incorrect to suggest that the MCGC directed officials to undertake actions which they were not party to, and / or which they were reluctant to pursue. Further, reference was made to the participation by relevant Ministers (or their advisers)³³ and their effective power of veto over campaigns before the committee. On the other hand, as noted in paragraph 20 above, departmental advice to the ANAO emphasises that they considered the MCGC took the final decision on many key aspects of campaign administration, with departments responsible for implementation. The manner in which MCGC decisions were recorded and conveyed to departments,³⁴ along with the advice available to departments from PM&C, is consistent with this interpretation. The ANAO also considers that the attendance of the relevant Minister (or their

³³ As part of its analysis, the ANAO examined the complete records of 63 of the 66 MCGC meetings held in respect of the campaigns that were part of this audit and extracts of the records of the remaining three meetings. The ANAO found no evidence that portfolio Ministers attended MCGC meetings. While the three record extracts did not contain information on attendance, for 62 of the remaining 63, the portfolio Minister was represented by an advisor. For one meeting, neither the ministerial advisor nor the departmental representatives were present when campaign decisions were made.

³⁴ The ANAO's review of the MCGC meeting Minutes noted that decisions were always recorded in a standard format, eg Decision: The Committee selected XYZ (PR) and ABC (advertising) – 31 March 2004, or Decision: The Committee considered the proposals and selected XYZ (creative agency) – 9 August 2005.

representative) at MCGC meetings would not, of itself, address the requirements of the financial framework.

33. Finance now advises departments that a failure to consolidate the power to approve key elements of a spending proposal can lead to problems in clearly identifying the decision makers in particular instances. This in turn leads to difficulties in ensuring that decision makers are fully aware of their responsibilities and the limits of their authority. In such circumstances, departments should seek to adjust and consolidate the decision-making process.³⁵

34. The lack of clear accountability and transparency inherent in the arrangements for administering government advertising prior to November 2007 reinforces the need for departments to ensure that, where officials rather than Ministers, are approving spending proposals, officials are aware of the statutory obligations associated with their decisions. In addition, while it is open to Ministers to take on the role of spending approver in relation to particular matters, departments should ensure that Ministers and others who are not approving spending in relation to those matters appreciate the statutory responsibilities placed upon the spending approver.

There was considerable scope for departments to have better managed contracting and procurement in support of campaign advertising

35. The lack of clear accountability and transparency in the framework for administering government advertising created significant challenges for departments. The approach to decision making, certainly in relation to the particular campaigns reviewed in the audit, constrained the ability of departments to effectively discharge their FMA responsibilities in relation to the approval of spending. The implementation and administration of contracts with service providers was also complicated by the MCGC (and at times the GCU) conveying selection and operational decisions directly to the service providers, sometimes in advance of departmental approval processes. Neither the MCGC nor PM&C were party to the contracts which were generally between the line department responsible for the campaign and the particular service provider.³⁶ Departments often faced a tension between the need for a timely response to the priorities and decisions of the MCGC and the need to ensure that the department's procurement actions and associated contract

³⁵ Finance Circular No. 2008/06, paragraph 39.

³⁶ Other than contracts relating to the CAS, which were held by PM&C on behalf of the Commonwealth.

management were consistent with the legislative framework and government procurement policy.

36. Notwithstanding the challenges inherent in the administrative framework, there was considerable scope for departments to have better managed the administration of contracts and associated procurement processes.

37. Departmental decision making in relation to the approval of spending was poorly documented. Departments did not generally maintain contemporaneous records of the considerations of the departmental decision maker, including the extent of reliance on the direction of the MCGC, in approving expenditure and were often unable to demonstrate compliance with the requirements of the financial framework. In many cases it is not clear, on the basis of records maintained by departments, that the requirements of the financial framework have been met. Some departments have relied upon records within their financial management system, or documents that form part of contracts, as the record of the terms of the approval of the spending proposal. These documents did not evidence the considerations taken into account by officials in regard to particular decisions nor demonstrate that approval was provided in a timely manner, prior to the Commonwealth entering into agreements under which public money was, or would become, payable.

38. In addition, departments frequently engaged contractors by informal agreement but delayed executing contracts until such time as the overall scope of work had been clarified. Given the dynamic nature of campaign development, particularly with the involvement of the MCGC, this practice saw significant delays in departments executing contracts and contract amendments. Of the twelve primary contracts executed in relation to the campaigns within the scope of this audit, none were executed prior to the consultant commencing work. The average delay in executing a contract was 81 days (nearly three months), with a minimum delay of five days and a maximum of 185 days (over six months). Some contracts were not settled until after all work had been completed and many contract variations related to work underway or completed at the time the variations were executed. At times, these delays saw significant payments made to contractors prior to the terms of the contract being formally agreed.

39. Moving to contracting models which allow the early settlement of broad contract terms and conditions but provide flexibility in terms of the

commissioning of work would reduce delays in contract execution. It would also reduce the risks for the Commonwealth associated with the extensive work undertaken without either the Commonwealth or the contractor having the protection of a properly documented agreement. It would also reduce the high risk practice of making significant payments to contractors without formal contracts in place and provide an improved framework for subcontracting.³⁷

Planning and reporting by departments were not well managed

40. Departments generally did not undertake effective procurement planning, with only one of the three campaigns examined being supported by a comprehensive procurement plan. A thorough planning process, which incorporated consideration of the risks, may have assisted departments to identify and address the risks to timeliness posed by traditional contracting models and to more effectively manage financial framework compliance where there was an urgent need for services to be provided.

41. While departments made extensive use of developmental research and concept testing in campaign development and tracking research in day to day campaign management, evaluation was generally not extended to broader matters such as whether the campaign's strategy effectively supported related policy goals or whether the targeted levels of community awareness were appropriate. While the broad governance framework gave the MCGC a defined role³⁸ in considering campaign evaluations, in practice, when evaluations were undertaken by departments,³⁹ they were not scrutinised by the MCGC. This is consistent with the advice from some former MCGC members⁴⁰ that campaign evaluation was considered by the MCGC to be solely a departmental responsibility (although the MCGC might make informal evaluations of individual contractor performance).

42. Departmental reporting of advertising performance was generally limited to the mandatory reporting of contracts and payments in the financial appendices of annual reports. Given the level of public and parliamentary

³⁷ At times, subcontractors were engaged, provided their services and were paid, in advance of the primary contract, which defined the circumstances under which subcontracting was permissible, being executed.

³⁸ The 1995 Guidelines on Advertising state that "*The MCGC will also scrutinise the formal evaluation of each campaign.*" (Appendix 1 paragraph 3.3.2)

³⁹ The ANAO notes that not all campaigns examined in the audit were subject to a comprehensive departmental evaluation.

⁴⁰ Paragraph 22 refers.

interest, the significant public funds expended and the moves, at a whole of government level, to greater transparency in relation to government advertising, it would be appropriate for departments to consider opportunities for improving reporting on the level of activity and outcomes of advertising strategies and for ensuring that greater priority is given to accurate and timely reporting, including of the expenditure on individual campaigns.⁴¹

Chapter 3 – The Central Advertising System

PM&C's administration of the tender process was generally sound

43. PM&C's initial administration of procurement processes leading to the appointment of the current CAS master media placement firms was generally sound. However, PM&C did not effectively consult with client departments in the early definition of the business requirement or the tender planning, but did engage representatives of client departments to assist with the administration and oversight of the tender process. PM&C invested considerable effort in undertaking a generally thorough assessment of competing tenders although it did not include provision in its planning for due diligence checking of tenderers. Following adverse press speculation regarding the situation of one of the preferred tenderers, PM&C conducted limited checks in relation to that tenderer. No due diligence checking of other tenderers, including the successful tenderer for the non-campaign master media contract, was undertaken. In addition, PM&C undertook minimal transitional planning, placing a heavy reliance on the successful tenderer to develop appropriate strategies and secure Commonwealth interests.

CAS contracts were not well implemented and were poorly managed

44. PM&C's implementation and administration of the CAS contracts was poorly managed. In particular, PM&C included complex and onerous performance management arrangements in the contracts which it did not effectively implement or properly administer over time. PM&C did not, in a timely manner, develop and implement options to effectively address poor customer satisfaction, which declined steadily following early improvements

⁴¹ Two of the three select tender processes undertaken in support of the 2005 workplace relations advertising campaign were reported in departmental annual reports as being open tenders. PM&C advised the Senate Finance and Public Affairs Legislation Committee in October 2005 that the short listing of public relations and advertising consultants was undertaken by PM&C and DEEWR, whereas departmental records and advice from DEEWR confirms that no short listing was undertaken for the public relations consultant selection and, for the advertising consultant, the MCGC effectively undertook this role.

and was consistently below agreed targets. The administration of performance-based payments was not well documented, with a failure to clearly agree performance targets in a timely manner. In addition, a number of performance payments were made without the level of performance assurance required by the contract being met and, in at least one instance, when the verified performance clearly fell short of the agreed standard.

45. PM&C did not adequately document the 2004 variation to the terms and conditions of the campaign master media placement agency contract. There was no clear and consolidated specification of the terms of the agreement between the parties, nor is the consideration of the efficiency and effectiveness of the proposed contract variations documented. The absence of properly documented terms complicated subsequent contract administration and made it difficult for PM&C to demonstrate compliance with either internal policy or the requirements of the financial framework.

46. The 2006 extensions to both CAS contracts were not supported by a thorough assessment of the costs and benefits of the proposed approach. PM&C's analysis concentrated largely on the costs of going to market rather than considering the potential benefits to the Commonwealth in the face of declining customer satisfaction with contractor performance. The delegate was not given sufficient notice for effective decision making – the department did not allow sufficient time for a thorough tender process to be conducted had the delegate chosen not to extend the existing contracts. The extensions also failed to address key exposures, such as ongoing performance payment arrangements for the campaign master media placement agency.

47. Ongoing defects in administration were recognised by PM&C in late 2007 but were not comprehensively addressed until early 2008, after responsibility for contract administration was transferred to Finance.

New arrangements

48. Following the November 2007 Federal election, considerable changes were made to the administration of government advertising. The incoming Government did not re-establish the MCGC or any other equivalent ministerial body to oversee campaign advertising, and the GCU was abolished with responsibility for the ongoing administration of the CAS transferred to Finance. New guidelines and arrangements were announced by the Government in July 2008 for the development and conduct of government advertising and information campaigns. The introduction and impact of the

new arrangements was outside of the scope of this audit but will be considered in the context of the ANAO's forward performance audit work program.

49. Having regard to the new administrative arrangements the ANAO made four recommendations aimed at improving the administration of Government advertising.

Summary of responses

50. Formal responses to the draft audit report and its recommendations were provided by the Attorney-General's Department, the Departments of the Prime Minister and Cabinet, Finance and Deregulation, Employment, Education and Workplace Relations, and Health and Ageing and the Hon Gary Nairn, former Chairman of the MCGC from 2006 to 2007. These responses are set out hereunder.

PM&C response

PM&C notes the four proposed recommendations.

The Department considers that the proposed report is a timely reminder of the importance to all government agencies of robust, transparent and sound procedures for the procurement, management and evaluation of government contracts, particularly in the area of government advertising. Specific comments on the content of the report follow.

PM&C notes that, since November 2007, strengthened governance arrangements have been put in place to ensure that the issues identified in the report in relation to PM&C are not repeated in the future. PM&C further notes that following the revised administrative arrangements orders of 3 December 2007, the contract management responsibilities of the former GCU (which was abolished on that date) were moved to the Department of Finance and Deregulation (Finance). Finance also has responsibility for Commonwealth procurement policy and the move was expected to improve overall governance of the aggregate media buying contracts.

The report also notes that there may be benefit in PM&C taking steps to assure itself that existing controls operate to ensure that contract variations are being appropriately considered, approved and documented; and, where relevant, performance management and payment provisions are effectively administered (paragraph 3.98 refers). PM&C accepts this advice and notes that a number of internal audits are being undertaken for the 2008–09 financial year in the areas of procurement and knowledge management, which will examine

and provide assurance on aspects of the department's contract management processes.

Health response

The Department considers that the report provides numerous insights into measures that may be taken at the central agency, departmental and program management levels to improve the efficiency of contract management. The Department notes that it already has in place control mechanisms and processes to address many of the issues raised in the audit report.

Since the conduct of the audit there have been fundamental changes in the Government's guidelines on campaign advertising including the involvement of the ANAO in examining agencies' compliance with the new guidelines. These changes address many of the challenges faced by agencies in meeting accountability requirements under the previous framework.

DEEWR response

The Department of Education, Employment and Workplace Relations (DEEWR) appreciates the opportunity to participate in the performance audit on the administration of contracting arrangements in relation to Government advertising to November 2007.

DEEWR welcomes the ANAO's findings that departments faced significant challenges in effectively managing the procurement and contracting associated with Government advertising campaigns. As noted in the report, DEEWR's capacity to effectively discharge its FMA responsibilities was significantly constrained by the decision making model overseen by the Ministerial Committee on Government Communication (MCGC) and Government Communications Unit (GCU). For instance, the ANAO's report recognises that whilst DEEWR had a comprehensive plan for the proposed advertising campaign that would have enabled the department to discharge its FMA responsibilities, the MCGC took decisions that completely reshaped the campaign strategy and timing, edited creative material and set the requirements for advertising frequency for both the 2005 and 2007 workplace relations campaign.

DEEWR endorses all of the ANAO recommendations.

The department considers that the recommendations will ensure a more transparent approach to future advertising campaigns and also serve to reinforce the legislative obligations, and requirements for the administration of contracting arrangements for future Government advertising. To that end, DEEWR would highlight that since the department was formed in December 2007 it has integrated its purchasing and procurement systems and as a result

has a strengthened system in place to ensure compliance with FMA Regulations. This system provides clear records of delegates' decision making.

In respect of the individual recommendations, DEEWR agrees with the ANAO recommendation on the need to improve the timeliness of settling contracts. The department notes the ANAO reference to its guide, *Developing and Managing Contracts*, in paragraph 74 of Appendix 5 that in some circumstances it may be necessary for a contractor to be engaged and for work to commence prior to having signed a written contract. DEEWR agrees with the ANAO that this is not the preferred approach and welcomes the ANAO's recognition of the significant practical difficulties the department faced in promptly executing contracts due to the rapid pace and the extent to which the MCGC oversaw the direction of both workplace relations communication campaigns and the engagement of consultants.

DEEWR agrees with the ANAO recommendation regarding the need for the department to evaluate any advertising campaigns. The department will follow the guidance which is expected to be shortly issued by the Department of Finance and Deregulation in its *Business Planning Processes for Campaign Information and Advertising Activities*. In regard to the need for the department to strengthen its reporting of campaign advertising in Annual Reports, DEEWR agrees, noting that biannual reporting will be required under the new Guidelines and that this will provide a suitable means for the department to report on campaign expenditure.

Finance response

The Department of Finance and Deregulation (Finance) supports Recommendation 4 and makes the following comments with regard to that recommendation.

Finance is presently involved in a tender process relating to the Master Media agencies for campaign and non-campaign advertising. The current tender processes have gone through a comprehensive and consultative strategic planning process, including consultations undertaken with various government agencies.

A contract management plan is also being developed to assist with contract administration in accordance with the principles contained in Recommendation 4.

Inconsistencies in the operation of the special accounts have been addressed such that receipts and disbursements are properly aligned.

Response from the Hon Gary Nairn

The Hon Gary Nairn, former Chairman of the MCGC, in correspondence with the ANAO expressed the view that the ANAO had refused to accept the evidence that the MCGC was not a decision-making body, at least in relation to any FMA Act obligations; and emphasised that the MCGC had not directed officials to undertake actions which they either were not a party to, and/or which they were reluctant to pursue.

Mr Nairn noted that, when a department brought forward a proposed campaign, the relevant Minister (or their representative) was a fully participating member of the MCGC. He advised that the MCGC operated on a consensus model, meaning that the department's Minister effectively had a veto power over campaigns brought before the Committee and noted three instances where a project was suspended because of a failure to reach unanimity on the MCGC.

Mr Nairn further advised that the decisions of the MCGC were not binding. It was an advisory committee, but one whose specialisation in this area earned it due consideration from officials. Departmental officials, who were unhappy with any aspect about the decision of the Committee, could have advised their Minister accordingly and the Minister, if he concurred with his officials, could simply have opposed the majority view of the Committee or, if a decision had already been made, sought a re-committal of the decision at a subsequent meeting. Mr Nairn was not aware of this having happened and advised that the reason for this was that departments were always amenable to the final decisions of the MCGC because they had input at all stages of the process.

Mr Nairn concluded that the final decision was always made by the department or their relevant Minister. It was they who were appropriated the money and they who were ultimately responsible for the success or failure of the campaign. He reiterated that departmental officials were under no obligation to pursue any aspect of any campaign if they objected to the recommendation of the MCGC. Moreover, because it was their money and, ultimately, their decision to proceed with the campaign, it was up to them to evaluate the effectiveness and value for money of the campaign.

Mr Nairn expressed concern that the report made no attempt to determine if departmental officials believed that the contribution of the MCGC added value to the process of their communications campaigns. He considered this one of the most important questions to be dealt with in any inquiry into the MCGC process and noted that a failure to give this matter serious consideration would be a serious omission.

ANAO comment

The ANAO has reflected Mr Nairn's comments in the final report to the extent considered appropriate. This resulted in revisions in the report with regard to, for example, the quantum of Government advertising expenditure (paragraph 1.12) and the potential impact of budgets and elections on the level of advertising expenditure (paragraphs 1.21 and 1.22). However, as explained in the report, in regard to the role of the MCGC in making decisions relating to the administration of campaigns (including the selection of consultants) there were opposing perspectives put to the ANAO. Mr Nairn's views reflect the perspective that the MCGC role was only advisory. As noted at paragraph 20, the explanatory material dealing with the role of the MCGC which was generally available to departments at the time, the minutes of the Committee's meetings, and advice from some departments reflects a different perspective, namely that the decisions of the MCGC were binding on departments. What is clear is that there was uncertainty relating to the relative responsibilities of the parties in terms of the financial framework under the arrangements that existed for campaign advertising to November 2007.

In response to the proposal that Ministers held a right of veto over MCGC campaign decisions, the ANAO has sought to distinguish the role of Ministers from that of their advisors, especially with respect to their responsibilities under the financial framework and their involvement in the MCGC process (paragraph 2.10).

As explained more fully in Chapter 2 of the report, it is the role of departments to ensure Ministers and committees such as the MCGC are appropriately informed of the operation of the financial framework where this has a bearing on decisions being taken.

Recommendations

Recommendation No. 1

Para 2.61

The ANAO recommends that the Attorney-General's Department, the Department of Health and Ageing and the Department of Education, Employment and Workplace Relations:

- (a) examine internal procedures so that, in compliance with the FMA Regulations, spending approvals for major procurement exercises are made prior to officials entering into agreements with contractors under which public money is or may become payable; and
- (b) improve the documentation of major spending approvals to provide an accurate record of the key reasons for the decision, the timing of the decisions and the matters before the delegate in the making of the decision.

The Attorney-General's Department, the Department of Health and Ageing and the Department of Education, Employment and Workplace Relations agreed with the recommendation.

**Recommendation
No. 2**

Para 2.100

The ANAO recommends that the Attorney-General's Department, the Department of Health and Ageing and the Department of Education, Employment and Workplace Relations:

- (a) examine means to improve the timeliness of executing contracts, particularly where they serve to formalise oral agreements in respect of which work is already underway; and
- (b) where it is determined that an imperative exists which requires work to commence urgently prior to having signed a contract, document the urgency and agree in writing with the contractor the key terms prior to work commencing.

The Attorney-General's Department, the Department of Health and Ageing and the Department of Education, Employment and Workplace Relations agreed with the recommendation.

**Recommendation
No. 3**

Para 2.117

The ANAO recommends that the Attorney-General's Department, the Department of Health and Ageing and the Department of Education, Employment and Workplace Relations:

- (a) in planning advertising campaigns, make provision for post-campaign evaluations which address the overall efficiency and effectiveness of the campaign in the context of its contribution to departmental outcomes; and
- (b) examine options for strengthening the reporting of campaign advertising activity and outcomes in Annual Reports.

The Attorney-General's Department, the Department of Health and Ageing and the Department of Education, Employment and Workplace Relations agreed with the recommendation.

**Recommendation
No. 4**

Para 3.100

The ANAO recommends that Finance, in developing the arrangements for the operation of the CAS beyond the expiration of current contracts:

- (a) include a performance management framework that addresses the risks associated with the contract administration and assists the Commonwealth to secure the delivery of contracted services;
- (b) simplify the financial arrangements associated with the contracts, including rationalising the use of special accounts, and improve the transparency of intra-governmental charging; and
- (c) provide, in future tender processes, for appropriate consultation with clients, the conduct of timely due diligence in relation to preferred tenderers and appropriate transition planning.

The Department of Finance and Deregulation agreed with the recommendation.

The Department of Education, Employment and Workplace Relations noted the recommendation.

Audit Findings and Conclusions

1. Introduction

This chapter provides an overview of the management of Government advertising and outlines the audit objectives and scope.

Background

1.1 Advertising is a legitimate element of government communication and information strategies. It provides a mechanism for governments to connect directly with citizens, informing them about new and existing government programs, providing advice about rights and responsibilities and conveying other important information.

1.2 The strategies that guide government communications, including advertising, are often formulated as a part of the policy development and delivery process. Departments employ a wide variety of delivery channels to advertise, ranging from the publication of mandatory notices in the press and Government gazette to building a presence on *YouTube*.

1.3 While many Government departments maintain a substantive internal communications capacity, the demands of modern media techniques and markets results in more sophisticated advertising campaigns drawing heavily on the expertise of private sector service providers. Accordingly, in delivering both day-to-day and more substantive campaign advertising, departments develop and rely upon an array of contracts with market researchers, advertising agencies, public relations consultants, media buyers, and content production and delivery firms.

1.4 Between July 1995, when the ANAO reported to Parliament on the general administration of government information and advertising⁴², and November 2007, when the governance framework for the administration of Government information and advertising campaigns was significantly revised, more than \$1.8 billion was expended on government advertising. Nearly half of these outlays occurred in the last four years.

⁴² ANAO Audit Report No.30 1994–95, *Commonwealth Government Information and Advertising*, June 1995.

The legal and administrative framework

1.5 Prior to the November 2007 Federal Election, the Government's information activities were coordinated by the Special Minister of State (SMOS). The Minister chaired the Ministerial Committee on Government Communications (MCGC), which took key decisions relating to major and sensitive information campaigns (including advertising campaigns) undertaken by Australian Government departments.⁴³ Support for the MCGC was provided by the Government Communications Unit (GCU), located in the Department of the Prime Minister and Cabinet (PM&C).

1.6 Although responsibility for the initiation and administration of advertising and related procurement activities lay primarily with Portfolio Ministers and departmental Chief Executives, in practice the administration of advertising involved three main parties:

- departments, who had responsibility for the financial and operational management of campaigns, including the preparation of research and communications strategies and briefs, the conduct of tender processes, the general authorisation of campaign expenditure⁴⁴, the entering into and administration of contracts, the placement of advertising and the conduct of campaign evaluations;
- the MCGC, which took key decisions relating to major or sensitive information activities including approving strategies and briefs, the selection of certain consultants, and the approval of final creative materials and media plans;⁴⁵ and
- the GCU, which provided secretariat support and advice to the MCGC, advised departments on campaign development, administration and delivery (including the development of briefs, strategies and plans), maintained a register of consultants, assisted departments to develop

⁴³ As at 1 November 2007, the membership of the MCGC consisted of the Hon Gary Nairn MP (chair, Special Minister of State), Mr Petro Georgiou MP, the Hon Ms Susan Ley MP, the Hon Mr Andrew Robb MP, the Hon Mr Tony Smith MP and Mr Tony Nutt (PMO). The Minister responsible for the matter under consideration by the MCGC (or their representative) was invited to join the MCGC as a member for the duration of that consideration.

⁴⁴ Senate Finance and Public Administration References Committee, *Government advertising and accountability*, December 2005, pp. 61-62.

⁴⁵ Senate Finance and Public Administration References Committee, *Government advertising and accountability*, December 2005, p. 61.

lists of potential consultants for MCGC consideration and administered the Central Advertising System (CAS).⁴⁶

1.7 The (then) Government's general administrative requirements in relation to the management of information campaigns were set out in *Guidelines for Australian Government Information Activities - Principles and Procedures, February 1995* (Appendix 1). These arrangements required that all major and/or sensitive⁴⁷ information activities be approved first by the responsible Minister and then brought before the MCGC for approval⁴⁸ and sought to ensure that departmental information programs met the Government's priorities and objectives, and used appropriate techniques of communication.

1.8 Under this model, the MCGC, which had specialist experience in government campaign advertising, exercised considerable discretion as to the extent of its involvement in particular campaigns. At a minimum, the MCGC provided formal approvals and clearances at key points of campaign development and delivery. At a practical level, the involvement of the MCGC allowed it to provide advice on communications activities, to intervene to resolve any tension between the parties, and if necessary, to reshape the timing and weighting of campaigns to avoid inefficiencies or saturation from competing messages. However at times, as noted in relation to aspects of the campaigns examined as part of this audit, the MCGC took decisions that completely reshaped campaign strategy and timing, extensively edited creative materials and set requirements for the frequency of advertising.

1.9 Following the 24 November 2007 Federal Election, the Government abolished the GCU and did not re-establish the MCGC. Responsibility for the administration of the CAS was transferred to the Department of Finance and Deregulation (Finance). A revised management framework, incorporating

⁴⁶ The CAS is a centrally administered procurement arrangement to consolidate government advertising expenditure, with a view to securing optimal media discounts on Commonwealth-wide negotiated media rates. Under the CAS, the Commonwealth maintains contracts with two media specialists who assist in media planning, placement and rates negotiations with media outlets. At the time of the audit, Universal McCann handled all campaign media planning and placement, and hma Blaze placed all non-campaign advertisements, such as job vacancies, tenders and public notices.

⁴⁷ The Guidelines defined "Sensitive" as including issues which might offend sections of the community or may produce negative reactions from the community group being addressed or its opponents.

⁴⁸ Approval was required to be sought for all information activities for which it is proposed to engage the services of outside consultants, and was required regardless of whether or not the proposed activity included paid advertising.

new guidelines for Commonwealth Government campaign advertising, was announced by the Government on 2 July 2008.

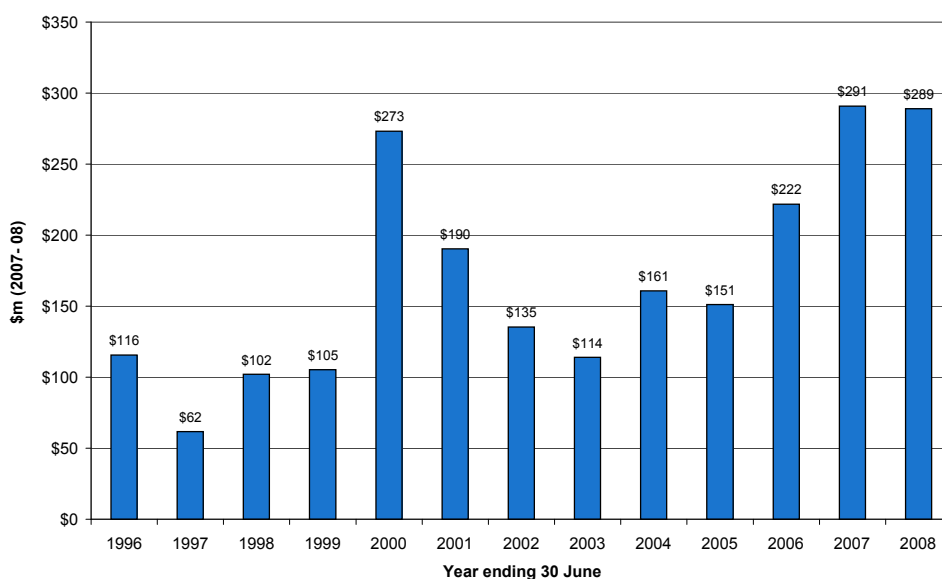
Recent trends in advertising expenditure

Expenditure

1.10 Reporting arrangements in place in recent years have made it difficult to be certain of the extent of Federal Government outlays on either individual campaigns or on advertising generally. The only available time series data has been the “head line” consolidated CAS expenditure figures published by PM&C in its annual reports and, from time to time, reported to Parliament. While the limitations of this data are discussed further below, it provides the only available insight into aggregated advertising expenditure and is used in this section of the report.

Figure 1.1

Expenditure through the CAS - 1 July 1995 to 30 June 2008 (\$m, 2007–08 prices)



Source: PM&C Annual Reports, Senate Hansard, Parliamentary Research Note No 62, 21 June 2004, ABS 6401.0 September 2008.

1.11 Aggregate CAS data suggests that, between 1 July 1995 and 30 June 2008, the Commonwealth Government spent more than \$2.2 billion⁴⁹ on government advertising (2007–08 prices - see Figure 1.1). Annual expenditure rose by 150 per cent, from \$116 million in 1995–96 to more than \$289 million in 2007–08. Advertising for the 6 month period from 1 July to 31 December 2007 was \$204 million, resulting in expenditure in the 2007 calendar year totalling \$368 million.

1.12 This growth has seen government advertising outlays overtake those of major commercial interests such as the Coles Group and Telstra. In 2007, the Commonwealth was Australia's largest advertiser (see Table 1.1). Commonwealth government advertising expenditure constituted 53 per cent of all government advertising expenditure.⁵⁰

Table 1.1

Australia's Top 10 Advertisers 2007 (Calendar Year)

Rank 07	Rank 06	Advertiser Group / Advertiser	Spend 06–07 (\$m)	Key Brands / Departments	Year on Year (%)
1	2	Commonwealth Government	215-220	Employment & Work Relations, Defence, Health & Ageing, Electoral Commission	51.8
2	1	Coles Group	170-175	Coles Supermarkets, Kmart, Target, Officeworks, Liquorland	3.6
3	3	Telstra Corp	130-135	Telstra, Trading Post Group, Universal Publishers	6.9
4	4	Harvey Holdings	125-130	Harvey Norman, Domayne, Rebel Sports Warehouse	7.2
5	6	Woolworths	110-115	Woolworths Supermarkets, Big W, Dick Smith Electronics, Tandy, Foodland	24.4

⁴⁹ In nominal terms (that is, not adjusted for changes in prices), advertising outlays rose by 240 per cent over this period, from \$85 million in 1995–96 to \$289 million in 2007–08. Expenditure totalled \$1.9 billion in nominal terms.

⁵⁰ Compared to the federal government, State governments constituted 39 per cent of total government advertising expenditure, local government 7 per cent and government associates and other making up 1 per cent. The report also notes that eight of the top 10 government advertisers were federal government departments (Adnews, Special Report Australia's Top Advertisers, March 2008).

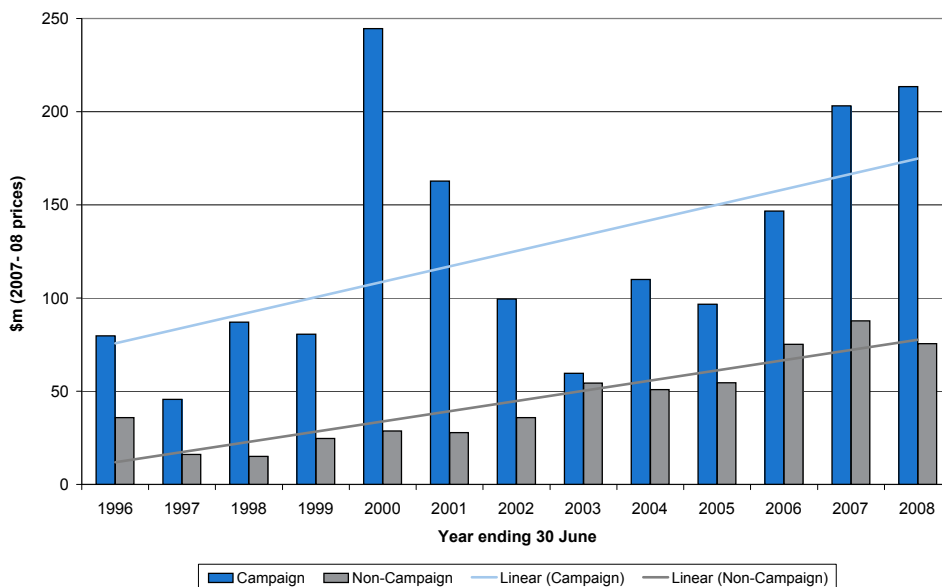
Rank 07	Rank 06	Advertiser Group / Advertiser	Spend 06–07 (\$m)	Key Brands / Departments	Year on Year (%)
6	5	Nestlé Australia/L'Oreal	110-115	Nestlé, L'Oreal, Uncle Toby's, Redken Laboratories	8.3
7	8	NSW Government	90-95	State Lotteries, Cancer Institute, Roads & Traffic, Dept of Health, NSW Tourism	19.6
8	7	Victorian Government	75-80	Transport Accident Commission, Depts of Infrastructure / Human Services	-3.9
9	11	Village Time Warner Group	70-75	Roadshow, Warner Village Theme Park, Village Cinemas, Triple M Radio Network	8.8
10	22	General Motors Holden	70-75	Holden, Hummer, Isuzu General Motors	46.8

Source: *Special Report Australia's Top Advertisers*, AdNews, March 2008

Limitations on expenditure data

1.13 As noted above, reporting arrangements in place in recent years have made it difficult to ascertain the actual extent of Australian Government outlays on either individual campaigns or on advertising generally. The “head line” consolidated expenditure figures, generally published by PM&C in annual reports, included only the cost of media placement through the CAS. As such, it did not include a range of other advertising related expenditures such as:

- developmental, tracking and evaluative research;
- the development of creative content, including creative and production costs and the payment of royalties;
- concurrent public relations efforts; and
- the translation, printing and distribution of materials.

Figure 1.2**Trends in campaign and non-campaign expenditure – 1996 to 2008**

Source: ANAO analysis of PM&C records, ABS 6401.0 September 2008

1.14 Reported aggregate expenditure data has included both campaign and non-campaign expenditure,⁵¹ although the breakdown between campaign and non-campaign advertising expenditure has generally not been reported. Both categories have increased over time, although at different rates.

- Figure 1.2 shows that, in real terms (2007–08 prices), non-campaign advertising rose from \$36 million in 1995–96 to \$76 million in 2007–08, an increase of 110 per cent. The annual average for the last 4 years of the period was \$73 million, more than 220 per cent higher than the average of \$23 million over the first four years.

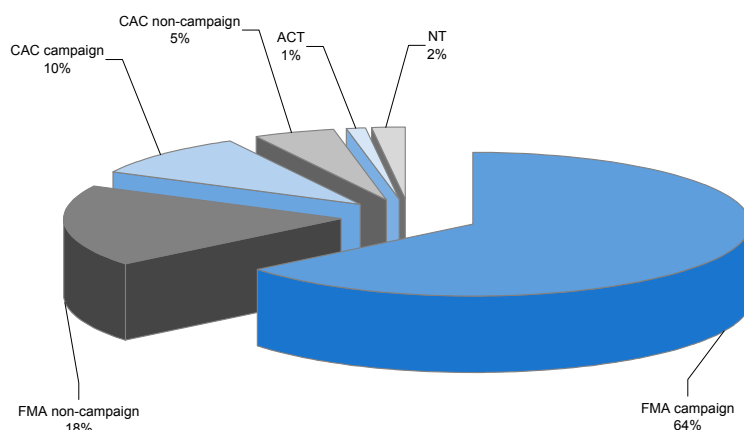
⁵¹ PM&C have defined non-campaign advertising as simple, no-frills advertising that generally appears once or twice, contains factual statements not intended to promote or advise on policies or programs of the government. Campaign advertising is defined as all advertising other than non-campaign advertising, and may include campaigns that inform the community of their rights, entitlements and obligations, encourage consideration of issues and promote ongoing business activities of Government. <www.gcu.gov.au/code/cas/index.html> [accessed 26 June 2007].

- Campaign advertising expenditure over the period rose (in 2007–08 prices) from \$80 million to more than \$213 million, an increase of 168 per cent.

1.15 In addition, the aggregate reported figures have included campaign expenditure by a range of non-FMA organisations⁵² and non-campaign expenditure by CAC Act agencies and others with access to CAS pricing and placement services.⁵³ In 2007–08, campaign advertising expenditure by FMA agencies accounted for around 64 per cent of the total CAS expenditure (see Figure 1.3 below), with FMA agency non-campaign expenditure accounting for 18 per cent, CAC agency expenditure for 15 per cent and ACT and NT Government expenditure for a total of 3 per cent. This level of disaggregation has not generally been made publicly available in previous years.

Figure 1.3

Breakdown of 2007–08 CAS Expenditure



Source: Department of Finance and Deregulation Annual Report 2007–08, p. 52

1.16 For FMA agencies, including departments, much of the additional expenditure is available from annual reports where, under section 311A of the *Commonwealth Electoral Act 1918*, all payments to advertising agencies, market

⁵² For example, in 2007, CAC Act bodies such as Australia Post and the Australian National University and *Corporations Act 2001* bodies such as Pork Australia Ltd and Meat & Livestock Australia.

⁵³ This has included the ACT Government and, since February 2005, the Northern Territory Government.

research organisations, polling organisations, direct mail organisations and media advertising organisations must be disclosed. The presentation of this information is not consistent across departments and it is not always apparent whether the declared expenditure relates to a particular advertising campaign, non-campaign advertising or ongoing departmental operations.

1.17 Nonetheless, for the reasons discussed at paragraph 1.13, the amount spent on individual advertising campaigns can substantially exceed the amount spent through the CAS. This is consistent with Table 1.2 which shows, for departments, that total expenditure declared under section 311A of the Electoral Act was consistently higher than expenditure through the CAS over the same period.

Table 1.2

Departments of State: S311A Expenditure and CAS Expenditure 2006–07

Department	S311A Expenditure ⁵⁴	CAS Expenditure	Ratio
Department of Defence	\$34 929 539	\$25 631 688	36%
Department of Health and Ageing	\$34 599 459	\$25 105 405	38%
Department of Finance and Administration	\$27 203 707	\$20 661 923	32%
Department of Employment and Workplace Relations	\$25 759 335	\$17 779 750	45%
Department of Education, Science and Training	\$19 535 118	\$15 581 218	25%
Department of Families, Community Services and Indigenous Affairs	\$14 664 301	\$12 452 085	18%
Department of the Treasury	\$12 889 696	\$11 800 422	9%
Attorney-General's Department	\$11 704 593	\$10 294 223	14%
Department of Human Services	\$17 537 612	\$9 303 242	89%
Department of Industry, Tourism and Resources	\$7 563 546	\$5 556 143	36%
Department of Environment and Heritage	\$5 585 988	\$4 894 547	14%
Department of Immigration and Citizenship	\$8 529 111	\$4 004 321	113%
Department of Foreign Affairs and Trade	\$4 783 791	\$3 961 019	21%
Department of Agriculture, Fisheries and Forestry	\$5 245 584	\$3 285 601	60%
Department of Transport and Regional Services	\$2 279 474	\$1 639 735	39%
Department of Communications, Information Technology and the Arts	\$6 330 575	\$982 817	544%

⁵⁴ Includes expenditure under the CAS.

Department	S311A Expenditure ⁵⁴	CAS Expenditure	Ratio
Department of the Prime Minister and Cabinet	\$345 993	\$265 247	30%
Department of Veteran's Affairs	\$581 002	\$197 270	195%
TOTAL	\$240 068 424	\$173 396 655	38%

Source: Departmental Annual Reports 2006–07

1.18 It is not possible to rely on section 311A declarations for a clear picture of departmental or overall advertising expenditure as it is based on the nature of the recipient rather than the purpose of the expenditure and does not consistently identify the campaign with which the expenditure is associated (if it is campaign related). Therefore, while confirming substantive advertising expenditure in addition to that through the CAS, the section 311A declarations provide little additional clarity as to the total sum spent on government advertising or the full cost of individual advertising campaigns.

Campaign Advertising – Month by Month

1.19 In addition to growing over time, it has been suggested that Government advertising peaks in the lead up to elections.⁵⁵ Figure 1.4 shows the monthly expenditure on campaign advertising through the CAS (in real terms) from June 1989 to December 2007.

1.20 An examination of campaign expenditure in the lead up to the last six elections demonstrates that for each election (excepting the November 2001 election), monthly average expenditure in the nine months leading up to the election exceeded, by between 14 and 86 per cent (in real terms), the monthly average for the entire period between elections (Table 1.3).

Table 1.3

Increases in monthly campaign expenditure in the lead up to elections (December 2007 values)

Election	(1) Monthly average between elections	(2) Monthly average for nine months prior to election	Real Increase
March 1993	\$5 153 659	\$5 900 359	14%
March 1996	\$5 694 981	\$7 460 831	31%
October 1998	\$6 693 784	\$8 885 009	33%

⁵⁵ Grant, Richard, 2003–04, 'Research Notes No 62 2003–04: Federal Government Advertising', Canberra, Parliamentary Library, Parliament of Australia; ANAO Audit Report No.12 1998–99, *Taxation Reform – Community Education and Information Programme*, p. 28.

Election	(1) Monthly average between elections	(2) Monthly average for nine months prior to election	Real Increase
November 2001	\$13 203 157	\$12 461 170	-6%
October 2004	\$6 844 329	\$9 665 484	41%
November 2007	\$15 675 546	\$29 111 663	86%

Source: ANAO analysis of PM&C data, ABS 6401.0 - Consumer Price Index, Australia, Dec 2007 has been used to adjust prices to December 2007 levels. Column (1) gives the average monthly spend on campaign advertising over the entire intra-election period leading up to the nominated election. Column (2) describes the average monthly spending on campaign advertising in the nine months immediately prior to the nominated election.

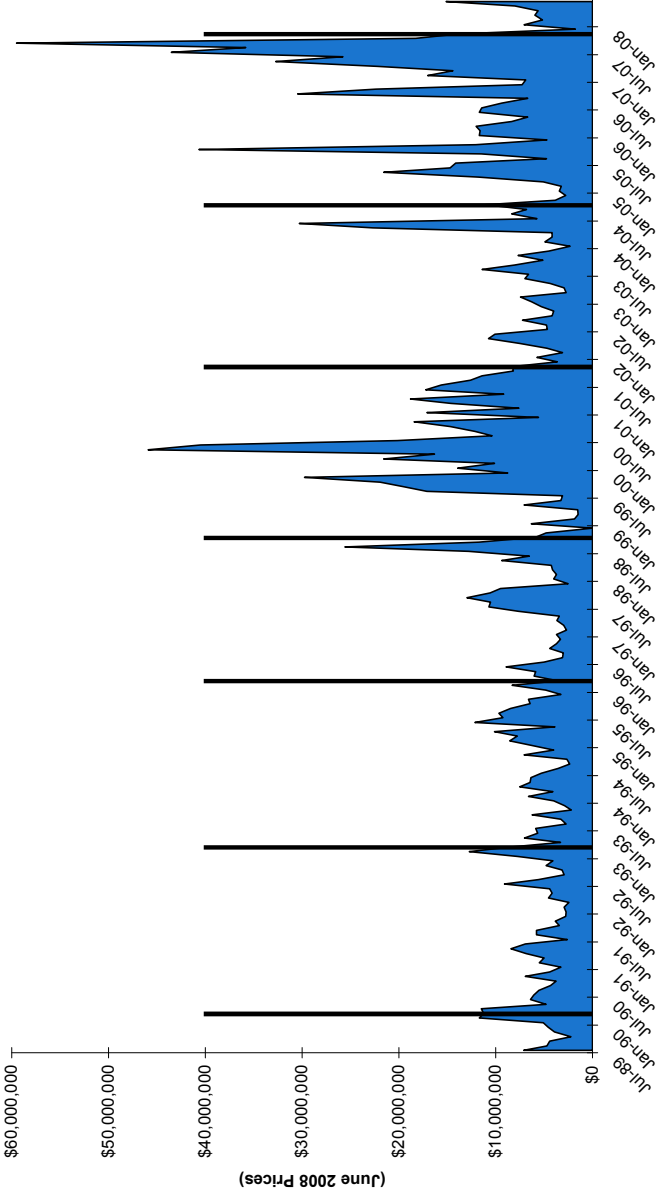
1.21 It has also been suggested that the budget cycle of Government announcements followed by their implementation has, since the introduction of May budgets in 1994, lead to a spike in advertising expenditure in the middle and later parts of the calendar year.⁵⁶ With elections having been held in the later part of the year in 1998, 2001, 2004 and 2007, this may give the appearance of a pre-election expenditure spike.

1.22 The ANAO examined monthly campaign expenditure from August 1989 to November 2007 and found that expenditure in the months following the government's budget announcements (allowing a short period for planning prior to implementation) was only marginally higher than would have been expected if advertising expenditure had been evenly distributed throughout the year. This analysis provided little evidence that the budget had a significant influence on the timing of peak advertising expenditure.

1.23 It was beyond the scope of this audit to assess the reasons for the accelerated expenditure in the pre-election periods.

⁵⁶ This proposition was explained in detail in the Government's submission to the Senate inquiry into advertising – refer to *Additional Submission to the Australian Senate Finance and Public Administration References Committee* by Senator the Hon. Eric Abetz, 9 August 2005, pg 3 <http://www.aph.gov.au/Senate/committee/fapa_ctte/completed_inquiries/2004-07/govtadvertising/submissions/sub09a.pdf> [accessed 29 January 2009].

Figure 1.4
Monthly Campaign Expenditure through the CAS – July 89 to June 2008 (June 2008 prices)



Source: PM&C records, ABS 6401.0 September 2008. December 1998 expenditure is not available due to the change over in contractors
 Note: Federal Budgets were handed down in May of each year, except 1989 to 1993 and 1996, when the Budgets were delivered in August.

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Past reviews

1.24 The extent of government advertising activity and the potential benefit such advertising might provide to incumbent governments has been the subject of ongoing debate and inquiry.

1.25 The ANAO conducted an audit of Commonwealth Government information and advertising in 1994–95.⁵⁷ The objective of the audit was to assess the economy, efficiency and administrative effectiveness of government information and advertising activities. The audit focused on planning, implementation, coordination and evaluation of information and advertising, including particularly, but not exclusively:

- the decision making process; and
- the use of consultants and advertising agencies.

1.26 The audit made twenty-five recommendations covering all aspects of the administration of government advertising. These recommendations were generally agreed.

1.27 The ANAO further examined aspects of the administration of government advertising in Report 12 of 1998–99.⁵⁸ The objective of this audit was to consider issues raised by the Leader of the Opposition in the Senate in respect of the Government's community education and information program in support of new taxation arrangements. The audit made a number of suggestions to Government regarding campaign administration, including that the Government consider adopting principles and guidelines for the development, content and presentation of government advertising. In its September 2000 report (No 377) *Guidelines for Government Advertising* the Joint Committee of Public Accounts and Audit (JCPAA) also recommended the Government adopt guidelines for advertising, similar to those proposed earlier by the ANAO. The Committee did not produce a minority report but notes:

Mr Georgiou dissented from components of the guidelines entitled *Material should not be liable to misrepresentation as party political* on the following grounds:

⁵⁷ ANAO Audit Report No.30 1994–95, *Commonwealth Government Information and Advertising*.

⁵⁸ ANAO Audit Report No.12 1998–99, *Taxation Reform – Community Education and Information Programme*.

- in a highly combative political system, materials which are totally nonpartisan are open to misrepresentation as party political; and
- the ... factors which are used to determine whether material can be perceived as 'party political' in this report do not provide a sufficiently clear and objective basis for assessing whether or not such a perception is valid.

1.28 The recommendations of the JCPAA were not taken up by the Government of the day. In responding to the chair of the JCPAA on 11 August 2004, the (then) Special Minister of State and Chair of the MCGC wrote:

I note from the Chairman's Foreword to Report 377 that the Committee wished to produce draft guidelines for the government to consider. I also note that these draft guidelines were the subject of a strong and cogent dissenting statement from the only member of your Committee with extensive current experience in the area of Government communications activities. I can advise that the government has considered this matter and decided not to adopt those draft guidelines.

1.29 In 2004 and 2005, the Senate Finance and Public Administration References Committee undertook an inquiry into Government advertising and accountability, with the non-government majority report of December 2005 making a number of recommendations aimed at improving administrative processes and overall governance, including:

- that the Government adopt guidelines for Government advertising based on those previously recommended by the Auditor-General and the JCPAA;
- that the Auditor-General assess and report on the compliance with the guidelines of all campaigns valued at more than \$250 000;
- that the 1995 *Guidelines on Australian Government Information Activities* be urgently updated; and
- that the evaluation of campaigns and the reporting of advertising expenditure be improved, including through the publication of an annual report on Government advertising.

1.30 A minority report from then Government Senators did not concur with the findings and recommendations of the majority. The Government tabled an interim response in the Senate on 7 December 2006, noting that "the government response is being considered and will be tabled in due course".

No final Government response to the Committee's report had been tabled in the Parliament at 26 June 2008.

1.31 Also in 2005, the Government's advertising in support of proposed workplace relations reform legislation was challenged in the High Court of Australia. The plaintiffs contended that expenditure of public money on advertising to provide information about, and promote, the Government's workplace relations reform package was unlawful because there was no "appropriation made by law" which would authorise the drawing of money from the Treasury of the Commonwealth to pay for that advertising and the *Appropriation Act (No 1) 2005–2006* (the Appropriation Act), from which the advertising campaign was being funded, did not cover such drawings. The Court, in a majority verdict, found the expenditure was authorised by the Appropriation Act and declined to issue the declarations or injunction sought by the plaintiffs.

1.32 Government advertising has also been considered by audits undertaken in the United Kingdom, New Zealand and Canada. The UK, New Zealand and Canadian audits, while examining administrative frameworks and circumstances not directly comparable to those operating at a federal level in Australia, all made a range of suggestions to improve administration and transparency.

Audit objective and methodology

1.33 The objective of the audit was to assess the effectiveness of the procurement and contracting associated with:

- the design, development and delivery of government advertising campaigns by Commonwealth departments; and
- the operation of the Central Advertising System (CAS).

1.34 The audit examined PM&C's role in relation to the development and delivery of advertising campaigns and the administration of the CAS. The audit also examined three completed advertising campaigns including:

- the second phase of the National Security Campaign, administered by the Attorney-General's Department (AGD) between 2003 and 2006;
- the Private Health Insurance Campaign, administered by the Department of Health and Ageing (Health) in 2007; and

- Workplace Relations Reform campaigns in 2005 and 2007, administered by the (then) Department of Employment and Workplace Relations (now the Department of Education, Employment and Workplace Relations (DEEWR)).⁵⁹

Table 1.4

Campaigns included in the Audit – Summary of Contract Expenditure

Campaign	Department	Expenditure
National Security 2003-2006	Attorney-General's Department	\$18 738 030
Private Health Insurance 2007	Health and Ageing	\$17 929 982
Workplace Relations Reform 2005	Employment & Workplace Relations	\$49 270 620
Workplace Relations Reform 2007	Employment & Workplace Relations	\$64 967 321
TOTAL		\$150 905 953

Source: ANAO analysis of departmental records

1.35 In the preparation of this report, the Hon Gary Nairn and Senator the Hon Eric Abetz (both former chairs of the MCGC) and Mr Petro Georgiou MP, the Hon Andrew Robb MP, the Hon Sussan Ley MP, the Hon Tony Smith MP, and Mr Tony Nutt (former members of the MCGC) were given the opportunity to provide the ANAO with comments. The proposed report and its recommendations were also provided to the Attorney-General's Department and the Departments of the Prime Minister and Cabinet, Finance and Deregulation, Employment, Education and Workplace Relations, and Health and Ageing for comment. A further fifteen parties named in the report were provided with limited extracts from the report and given the opportunity to provide the ANAO with comment. Where comments were provided, they were taken into account in finalising the report.

1.36 The campaigns and administrative actions examined in the course of this audit were undertaken within the context of the administrative regime that applied prior to the 24 November 2007 Federal election. The audit has not examined the effectiveness of subsequent revisions to administrative arrangements and governance frameworks for government advertising

⁵⁹ The former Department of Employment and Workplace Relations was, following the November 2007 Federal election, replaced by the new Department of Education, Employment and Workplace Relations. This department is referred to as Department of Education, Employment and Workplace Relations (or DEEWR) throughout this report.

although the recommendations provided by the report are framed in the context of the new arrangements.

1.37 Further, the audit did not examine the content of the advertising campaigns as the former government had not accepted the recommendations of the ANAO or the JCPAA to adopt guidelines governing the development, content and presentation of government advertising (see paragraph 1.27 and 1.28).

1.38 The audit was conducted in accordance with ANAO Auditing Standards, at a cost of \$343 590.

2. Campaign Advertising

This chapter examines the framework under which decisions on government campaign advertising have been made, including the role of the Ministerial Committee on Government Communications, and the administration of the procurement and contracting in support of government campaign advertising. The administration of the individual campaigns is examined in case studies at Appendices 3 to 5.

Background

2.1 Prior to the November 2007 General Election, there were three main Commonwealth bodies involved in the development and delivery of government advertising (the roles of the bodies are described in more detail at paragraph 1.6):

- departments, which had responsibility for the financial and operational management of campaigns;
- the MCGC, which took key decisions relating to major or sensitive information activities; and
- the GCU, which provided support and advice to the MCGC, and advised departments, and administered the Central Advertising System (CAS).

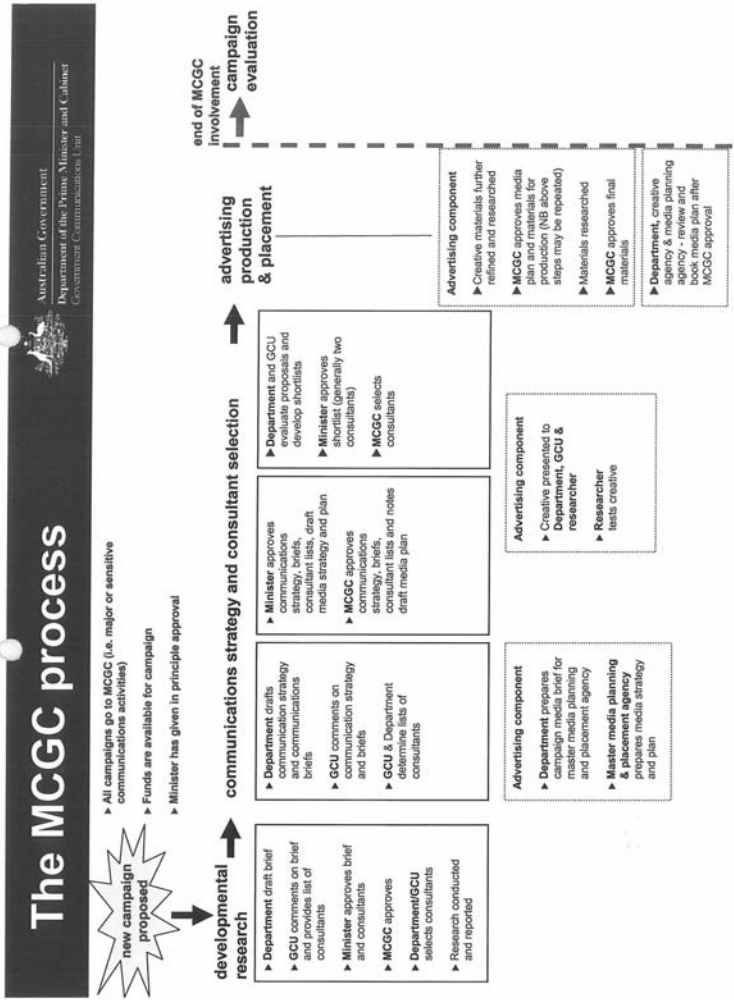
2.2 Figure 2.1 is a flowchart of the processes involved in decision making on government advertising that was provided by PM&C to the Senate Standing Committee on Finance and Public Administration during its 2005 Inquiry into Government Advertising and Accountability.

2.3 In its report, the Senate Standing Committee on Finance and Public Administration noted the complexity and interconnectedness of the decision making process, describing it as comprised of “iterative processes involving the responsible department, its minister, the GCU and the MCGC”, with each participant “responsible for making particular decisions along the way”.⁶⁰ However, the Committee noted that the MCGC:

⁶⁰ Senate Finance and Public Administration References Committee, *Government advertising and accountability*, December 2005, p. 60.

Figure 2.1

Process Flowchart for Decision Making on Government Advertising



... is the *prime* decision making body for government advertising campaigns. The MCGC makes the final decision at each phase of the process and is responsible for making the following key decisions:

- first, it must approve all the associated materials, including, but not limited to, briefs and lists of possible consultants;
- second, it must (i) approve the communications strategy and (ii) select the successful consultant; and
- third, it must (i) approve the final creative concept and final creative materials and (ii) the media placement plan.⁶¹

2.4 Some former MCGC members have submitted to the ANAO⁶² that the view expressed in the majority report is incorrect and that the MCGC was an advisory body, rather than an executive body, whose decisions had no formal binding or legal status. The description of the decision making role of the MCGC included in the majority report aligns closely with that of the departments included in this audit and is also consistent with key documentation examined by the ANAO. The divergence between the view of these former committee members and the audited departments is consistent with the audit finding that uncertainty existed in regard to the relative responsibilities and authority of participants in the review and decision making processes.

Establishment of the MCGC

2.5 From early 1982 until November 2007, Governments have utilised Ministerial committees to oversee the communication and information activities conducted by departments.

2.6 These committees have included:

- the Consultative Ministerial Group on Public Communications Programs (CMGPCP) established in early 1982 by the Fraser Government;

⁶¹ Senate Finance and Public Administration References Committee, *Government advertising and accountability*, December 2005, p. 61.

⁶² The Hon Gary Nairn and Senator the Hon Eric Abetz (both former chairs of the MCGC) and Mr Petro Georgiou MP (former member of the MCGC) provided the ANAO with comments and views on the draft audit report on 16 December 2008.

- the Ministerial Committee on Government Information and Advertising (MCGIA), established in May 1983 by Cabinet decision under the incoming Hawke Government; and
- the MCGC⁶³, established in 1996 by the incoming Howard Government to replace the MCGIA.

2.7 While the CMGPCP comprised senior Ministers and was also tasked with considering the need for particular campaigns, the MCGIA and the MCGC shared numerous common features in regard to both membership and responsibility. Both committees were chaired by Ministers but comprised mainly parliamentary secretaries. While neither committee had formal responsibility for the budgets of individual campaigns or Government advertising generally (these matters being primarily the responsibility of individual agencies), both had significant capacity to direct activity and influence expenditure through:

- conducting oversight of all government information activities to ensure that they were justified and well directed;
- considering and approving the strategies for all major campaigns;
- approving the briefs for and the appointment of creative agencies, public relations and marketing consultants; and
- reviewing all advertising material before its placement in the media.

2.8 In the first two years following the election of the Howard Government in 1996, a number of efforts were made to revise the guidelines for the conduct of Government information campaigns.⁶⁴ However, new guidelines were not issued and the new committee continued to operate under the guidelines issued by the previous Government in 1995.⁶⁵ Aside from the MCGC's initial

⁶³ The (then) Department of Administrative Services had responsibility for providing support and advice to the newly established MCGC. Responsibility was transferred to the newly established Department of Finance and Administration on 9 October 1997, and, on 21 October 1998, to the Department of the Prime Minister and Cabinet.

⁶⁴ Updated operational guidelines were first prepared in August 1996 and, with the agreement of the then Minister, distributed in draft form to the new MCGC members. Revised guidelines were again put to the Special Minister of State in October 1997, in the context of discussions between the Minister and the Minister for Finance over the future of the MCGC. A revised handbook was also included by the Office of Government Information and Advertising (OGIA) in a draft cabinet submission in July 1998. None of the proposed updates to the guidelines were approved by Government.

⁶⁵ The guidelines were updated to reflect changes in names and titles and supporting administrative arrangements continued to evolve, including, significantly, the devolution of responsibility for contracting and expenditure to departments.

role in delivering on the then new Government's commitment to reducing government advertising expenditure, the MCGC largely continued the pattern of operations established by its predecessor, the MCGIA.

2.9 For the purposes of financial management and accountability, the important characteristics of these arrangements were that the MCGC took decisions that were treated by departmental officials as binding in respect of procurement actions taken in relation to government advertising. Departments retained responsibility for ongoing financial and operational management of campaigns, although within the framework created by the decisions of the Committee.⁶⁶ The MCGC exercised considerable discretion as to the extent of its involvement in particular campaigns. At a minimum, the MCGC provided formal approvals and clearances at key points of campaign development and delivery but, at times, the MCGC took decisions that completely reshaped campaign strategy and timing, including extensively editing creative materials, setting requirements for the frequency of advertising and providing directions on approaches to campaign evaluation.

2.10 Notwithstanding that the relevant Minister (or their representative) was considered to be a fully participating member of the MCGC during relevant campaigns, the ANAO considers that the attendance at MCGC meetings, of itself, would not address the requirements of the financial framework. In those cases where the committee made a decision on a campaign, the participating Minister would have had to clearly confirm that he/she had sufficient detailed understanding regarding the procurement to comply with the requirements relating to the decision to approve the expenditure. Moreover the ANAO notes that, for the campaigns examined as part of this report, Ministers did not attend any MCGC meetings – they were always represented. Whilst decisions made at meetings may have been subsequently supported by the relevant Minister, they were taken and conveyed (to department officials) without the Minister being present.

The financial framework

2.11 The administration of government advertising includes a series of decisions to spend public money on the engagement of public relations consultants, market research and advertising agencies and the production and

⁶⁶ Senate Finance and Public Administration References Committee, *Government advertising and accountability*, December 2005, p. 62.

placement of advertisements, audio-visual material and printed material such as pamphlets.

2.12 The MCGC, although established in 1996⁶⁷, continued a pattern of operation that had been developed by preceding committees over a number of years. As such, the operational arrangements for the MCGC were largely established under the framework provided by the *Audit Act 1901* (Audit Act)⁶⁸ and subordinate legislation (including the Finance Regulations and the Finance Directions).

2.13 The FMA Act commenced operation on 1 January 1998 and provided a revised framework for the management of public money and public property. Many of the rules about how public money and property are to be dealt with are in the *Financial Management and Accountability Regulations 1997* (FMA Regulations⁶⁹) and the *Finance Minister's Orders*.⁷⁰ Compared to the previous Audit Act arrangements, the new framework changed the treatment of decisions taken by Ministers. In particular:

- the FMA Regulations are drafted so that they explicitly govern all decisions of the Executive Government to spend public money, whether these decisions are made by a Minister, Ministers collectively (such as in Cabinet), officials acting under the authority of a Minister or other persons authorised by legislation to make such decisions;
- the FMA Regulations state that officials are unable to approve a proposal to spend public money unless they have been authorised by a Minister or Chief Executive, or by or under an Act, to approve the proposal; and
- Ministers are no longer empowered to issue directions that prevent the Commonwealth from obtaining better value for the expenditure in all

⁶⁷ Department of the Prime Minister and Cabinet, *Annual Report 1998–99*, p. 72.

⁶⁸ Department of Finance, *Commonwealth Financial Management Handbook*, December 1991, p. 2.

⁶⁹ Section 65 of the FMA Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

⁷⁰ The Orders are made by the Finance Minister under Section 63 of the FMA Act.

the circumstances.⁷¹ Instead, under the new financial framework, no spending proposals could be approved unless the approver (including a Minister or Ministers acting collectively) is, after making reasonable inquiries, satisfied that the proposed expenditure is in accordance with the policies of the Government and represents efficient and effective use of public money.⁷²

2.14 The changes made to the financial framework should have been a signal to review the respective roles of the MCGC and departments in relation to the approval of spending for government advertising campaigns. However, relevant departments⁷³ did not provide advice to the MCGC as it became apparent that changes arising from the new framework required the MCGC to be advised of their impact; in particular that the committee would need to accept limitations on their capacity to make decisions which were binding on officials and departments in relation to spending matters, or alternatively to assume the responsibility of an approver under the new arrangements. Consequently no changes to the model of operation were made.

2.15 In particular, departments continued to approach the process on the basis that the new framework did not change the decision making model for the administration of advertising. Departmental documents show departments approving spending proposals, but doing so in compliance with the decisions of the MCGC rather than on the basis of their own independent consideration of the matters provided for in the FMA Regulations.

2.16 In circumstances where a departmental official purports to approve spending in accordance with FMA Regulation 9 but is in practice bound to implement the decision of a third party in respect of a key element of the spending proposal (for example, a direction to employ a particular contractor),

⁷¹ Specifically, the FMA Regulations omitted any provision in the nature of the earlier Finance Regulation 44B(c)(ii) which allowed a person to enter into a commitment to spend public money that did not obtain the best value for money for the Commonwealth in circumstances where they were complying with a direction by a Minister (although in such circumstances officials were required to certify that they had obtained the best value that was possible while complying with that direction). Instead, all spending proposal approvals under the FMA Regulations must both be in accordance with the policies of the Commonwealth and make efficient and effective use of public money.

⁷² ANAO Audit Report No.14 2007–08, *Performance Audit of the Regional Partnerships Programme: Volume 2 – Main Report*, pp. 51-52.

⁷³ Primary responsibility for providing support and advice to the MCGC was moved from the Department of Finance and Administration to the Department of the Prime Minister and Cabinet on 21 October 1998. However, departments engaging with the MCGC in relation to the administration of campaigns also had an obligation to provide advice to the MCGC if the decision making model impacted on the ability of those departments to effectively discharge their responsibilities under the prevailing financial framework.

the official may lack the necessary discretion to effectively approve an expenditure proposal in accordance with the provisions of the FMA Act and Regulations. AGS advised the ANAO on 8 July 2008 that:

... it may be clear that although an official is purporting to approve expenditure for the purposes of FMA regulation 9, prior ministerial consideration means that the official has effectively no discretion whether to approve the substance of the agreement...

2.17 Finance also advises agencies now that it is not sufficient that a person claim to be an approver for the purposes of FMA Regulation 9. It was important that the actual approver:

... has genuine discretion to approve or not approve the key elements of a specific spending proposal.⁷⁴

2.18 The AGS has noted that, for the purposes of FMA Regulation 9, the approver:

should be the person, or group of persons, who determine ultimately all the substantial matters that need to be determined to assess whether a proposal will make effective and efficient use of public money.

2.19 The AGS advised the ANAO in relation to the decisions taken by the MCGC and departments in relation to the campaigns within the scope of the audit that:

It seems that the former MCGC could and should have been the approver, for the purposes of FMA regulation 9, of at least some of the decisions, particularly in relation to Step 2 where the MCGC appears to have selected the successful tenderer and the Department had no discretion whether to conclude a contract.

However, in such circumstances, the MCGC could only have been regarded as approving the spending proposal under FMA regulation 9 if it had considered and determined that the expenditure which would result from the decisions it made would be in accordance with government policy and would make efficient and effective use of public money.

2.20 In respect of the campaigns considered in the course of this audit, it is not clear that any one person, or group of persons, “determined ultimately all of the substantial matters that needed to be determined” (see paragraph 2.18). Instead, this responsibility was effectively split between the MCGC and

⁷⁴ Finance Circular 2008/06 paragraph 39.

departmental officials (the distribution of responsibilities between the MCGC and the department in relation to an individual campaign was effectively determined by the MCGC on a case by case basis). The limited documentation detailing the MCGC proceedings makes it difficult to be definitive regarding the extent of the committee's deliberations; however the evidence available to the ANAO suggests that the MCGC, in considering the campaigns within the scope of this audit, did not generally have regard to the full range of matters identified by the AGS. In such instances, it is unclear as to who the actual approver of expenditure for the purposes of FMA Regulation 9 was.

2.21 The difficulty posed by a fragmented decision making model is now recognised in Finance Circular No. 2008.06 which advises that:

... if the power to approve key elements of a spending proposal is distributed between different levels of decision making, it may be necessary to adjust and consolidate the decision-making process to ensure that the approver can be clearly identified.

2.22 The iterative processes described at paragraph 2.3 provided significant opportunity for parties to the administration of the campaign to influence outcomes. In particular, both departmental officials and the GCU were actively involved in advising the MCGC in relation to campaigns, including (in most cases) assessing consultant proposals and short listing candidates for MCGC consideration. However, it was apparent that the final decision on a range of key matters, including consultant selection and the release of creative materials, was taken by the MCGC. It is not clear from either the documentary evidence or the actions of parties that these decisions were advisory in nature, rather than executive.

2.23 As noted at paragraph 2.13, it would have been appropriate, following the introduction of the new financial framework, for the decision making arrangements to have been reviewed and for relevant departments to have advised the MCGC on the changes that the new framework required. Should the MCGC have determined, in the light of advice, that the statutory role of 'approver' should be undertaken by departmental officials, the MCGC would have needed to review its decision making to ensure that departmental officials had sufficient effective discretion to make necessary decisions in relation to spending matters including, for example, the final decisions in relation to consultant selection.

2.24 On the other hand, if the MCGC considered it necessary and appropriate for it to be the 'approver' for the purposes of the FMA financial

framework,⁷⁵ changes may have been required to be made to the operations of the MCGC so as to demonstrably ensure compliance with the financial framework. In particular:

- the MCGC in approving a consultant appointment or campaign materials, would need to undertake reasonable inquiries so as to be satisfied that the expenditure will be in accordance with the policies of the Commonwealth and make efficient and effective use of the public money (FMA Regulation 9 refers). This is of particular relevance where the MCGC might wish to select a consultant and/or a campaign that officials did not recommend, as has occurred. Where there was no documentary evidence of the advice being provided by officials on which the MCGC could rely to demonstrate the reasons for making its decision, or where the decision of the committee was contrary to the documented advice (although perhaps consistent with subsequent oral advice), sound practice would be for the decision maker to ensure the reasons for the decision were documented; and
- record keeping would need to have been improved (FMA Regulation 12 refers). In many instances, the GCU record of the MCGC meeting at which decisions have been taken in relation to the selection of consultants or the approval of campaign materials and plans included only a brief, and sometimes vague, decision on each item. In these circumstances, portfolio departments relied on advice from GCU to establish the key terms of what had been decided by the MCGC and to provide a basis for giving effect to the decision of the MCGC when entering into contracts.

2.25 The ANAO has been advised by AGS that there were no constitutional or legal considerations which prevented a committee such as the MCGC from performing the role of approver as defined by FMA Regulation 3. Ministers and Parliamentary Secretaries were capable of being approvers for the

⁷⁵ For the purposes of the FMA Regulations, the non-Ministerial members of the MCGC would have been allocated to an agency by virtue of FMA Regulation 4. Specifically this Regulation enables a person employed under the *Members of Parliament (Staff) Act 1984*, on the staff of an office-holder or a Senator or Member, to be allocated to the Department of State to which the money out of which the person's remuneration is paid, and for a person (other than a person engaged under the *Public Service Act 1999* or under the *Members of Parliament (Staff) Act 1984*) who performs a financial task (which is defined to include a task or procedure relating to the commitment or spending of public money) for a Department of State to be allocated to that Department.

purposes of FMA Regulation 9. In relation to the other members of the MCGC, the ANAO was advised that:

The ministerial staffers on the MCGC were 'officials' (see FMA regulation 4(1)(c)), and were capable of being authorised to be approvers by a Minister (see FMA regulation 3 definition of 'approver', and FMA regulation 11). However, the parliamentary members of the MCGC who were not Ministers, could only have become approvers by becoming an official through being 'allocated' to a department, and being authorised to be an approver. Both of these can occur through a complex interplay of provisions in the FMA Act and regulations. However, in the present case, there does not appear to be any suggestion that these provisions were being relied on to make the parliamentarians officials and approvers for the purposes of the FMA framework.

2.26 Where a Minister, or a ministerial committee, is exercising the role of an approver, departments have a role in providing advice to the Minister or ministerial committee of any statutory obligations associated with their decisions. In these circumstances, it would have been appropriate for the MCGC to have been advised that the new framework required the committee to either accept limitations on its capacity to take decisions which bound officials and departments in relation to spending matters, or to assume the responsibility of an approver under the new arrangements. However, departments also had a responsibility, inherent in their ongoing financial and operational management of campaigns and their general authorisation of campaign expenditure, to identify the tensions that the arrangements caused for their ability to comply with the provisions of the FMA Act and Regulations and to have advised Ministers, and the MCGC, accordingly. It would also have been open to the committee to have sought advice on the impact that such significant changes in the operating environment may have had on the ongoing operations of the committee.

2.27 The MCGC was, in early 1998, briefed by Finance on the potential impact of the new financial framework on particular aspects of the operation of the advertising arrangements, namely the requirement for departments to use the CAS. However, there is no evidence to suggest that the MCGC was advised on the extent to which the (then) current decision making model was sustainable under the new financial framework and the adjustment to arrangements that would have been required to improve alignment with the new requirements.

2.28 The lack of clear accountability and transparency inherent in the arrangements for administering government advertising reinforces the need for departments to ensure that, where officials rather than Ministers, are approving spending proposals, officials understand or are given timely and appropriate advice on the statutory obligations associated with their decisions. In addition, while Ministers (individually or acting collectively) are entitled to retain the role of spending approver in relation to particular matters, departments should ensure that Ministers who are not approving spending in relation to those matters are advised of the statutory responsibilities placed upon the spending approver and the implications this has for the role of the Minister in relation to that particular spending decision.

Consultant selection and contracting

2.29 The audit examined the decision making processes that led to the awarding of contracts in relation to:

- the second phase of the National Security Campaign (from 2003 to 2006) administered by the Attorney-General's Department;
- the Private Health Insurance campaign (2007) administered by the Department of Health and Ageing; and
- the Workplace Relations Reform campaigns (in both 2005 and 2007) administered by the (then) Department of Employment and Workplace Relations (now the Department of Education, Employment and Workplace Relations, or DEEWR).

2.30 The names of all consulting companies considered for engagement in the campaigns were drawn from the Consultant Register, maintained by the GCU. While use of this register was discontinued following the November 2007 Federal election, matters relating to the administration of the register are discussed at Appendix 2.

2.31 In examining consultant selection and contracting, the ANAO requested that departments identify the spending approval associated with each contract or contract variation. In each instance, the responsible department provided the ANAO with either:

- a document described by the department as an approval, in accordance with *FMA Regulation 9*, of a spending proposal; or

- a document (either a purchase order or correspondence with a contractor) which, although not itself a spending approval, is described by the department as evidence that an appropriate departmental official has approved the expenditure.

2.32 As noted above, the purported exercise of authority by departmental officials to approve expenditure, particularly in relation to consultant engagements, was frequently constrained by a decision of the MCGC relating to consultant selection. Nonetheless, departments had a critical role in establishing many of the key parameters that determined whether public money was spent efficiently and effectively, including the identification and definition of deliverables and the settling of overall expenditure. Having accepted responsibility for approving expenditure, it was incumbent upon departments to ensure that such approvals were given in a timely manner and were appropriately documented.

2.33 The ANAO found that the majority of decisions to enter into or vary contracts examined in the course of this audit were poorly documented. Generally, departments have not maintained records of when expenditure proposals were approved, the reasons for the approval or what enquiries the approver had made to satisfy themselves of key matters in accordance with the provisions of FMA Regulation 9. Accordingly, on the basis of records maintained by departments, it is not apparent that the requirements of the financial framework have been met. Further, the ANAO found that in many cases departments entered into agreements with contractors prior to departmental officials approving the expenditure. It is not clear, from departmental records, the extent to which this was due to departments seeking to comply with operational timeframes imposed by MCGC decisions.

2.34 The performance of departments in relation to particular campaigns is discussed below.

The National Security Campaign

2.35 PM&C were responsible for administering the early phases of the National Security Campaign in early 2003. In support of this activity, PM&C entered into contracts:

- with Worthington Di Marzio (WDM) for research on 20 December 2002 for 12 months;

- with Brown Melhuish Fishlock (BMF) for advertising on 16 January 2003 for the period 28 November 2002 to 10 February 2003; and
- with Cultural Partners Australia (NSW) Pty Ltd (CPA) for services relating to media for persons of non-English speaking background on 16 December for 12 months.

2.36 PM&C's administration of the early phases of the campaign, including the administration of these contracts, is beyond the scope of this audit.

2.37 From late 2003, when AGD took over responsibility for the administration of the campaign, until mid-2006, when AGD let new contracts to support a new phase in the National Security Campaign, AGD administered the existing contracts through a series of thirty five variations to scope and duration.

2.38 None of the contract variations were supported by documented assessments of the merits of the variation, including whether the expenditure of funds constituted value for money. There was no separate and contemporaneous documentation of the spending proposal, nor evidence of when the spending proposal was approved, the reasons for its approval or the nature of any enquiries the approver may have made to satisfy the requirements of FMA Regulation 9.

2.39 Approvers of spending proposals are required to record the terms of their approval (FMA Regulation 12 refers). While there is no requirement under FMA Regulations for approvers to record the basis of their decisions, Finance advise agencies that "(i)n determining the document form and 'terms of the approval' to be recorded, approvers should be satisfied that they provide appropriate evidence of compliance with FMA Regulation 9."⁷⁶ Recording the basis for spending decisions enables decision makers to demonstrate that the approval has been given in accordance with their obligations under the FMA Regulations, and allows departments to demonstrate publicly that the requirements of the Commonwealth's procurement framework have been met and all tenderers treated equitably and fairly.

2.40 The ANAO also found that 21 of the 35 contract variations related to work that was in train or completed before the variation was offered to the

⁷⁶ Finance Circular No. 2008/06, paragraph 49.

contractor. Under these circumstances, it is not evident that the requirement of the financial framework for spending to be approved before entering into a contract, agreement or arrangement under which public money is or becomes payable has been met. However, it does suggest that work was commenced on the basis of an oral, rather than written, agreement. There are considerable risks to the Commonwealth associated with entering into an oral agreement on uncertain terms, which can arise where a department instructs a contractor to proceed with work or delivery before a contract is signed,⁷⁷ although, in this instance, there was no evidence that these risks gave rise to any detriment.

2.41 AGD Chief Executive Instructions, in force at the time the contract variations were progressed, required decisions for contracting for goods and services to have prior approval through a submission to the relevant Division Head addressing a range of considerations relating to the services to be provided. This process was not followed. Adherence to these procedures would have greatly enhanced transparency and accountability. On 19 December 2007, AGD advised:

That the contract variations were approved is evidenced by the signed variation letters to the contractors.

The Public Affairs Branch has since implemented a process whereby approvals for contract variations are documented in writing prior to contract variation letters being issued.

The Private Health Insurance Campaign

2.42 Health let four contracts in support of the 2007 PHI campaign (Table 2.1). All four selections were informed by a documented assessment by officials, including consideration of whether the proposal offered value for money.

2.43 The delegate, in approving spending relating to the engagement of Open Mind, was provided with a comparative assessment of the tenderers against approved criteria, including the benefit to the Commonwealth.

2.44 In relation to the decisions concerning Whybin and Cultural Perspectives (respectively the creative and NESB consultants), the delegate was advised that the MCGC had approved the engagement, consistent with advice from the departmental evaluation committee. The question of value for money

⁷⁷ *ANAO Better Practice Guide – Developing and Managing Contracts February 2007*, p. 51.

is not specifically addressed in the submission to the delegate and the findings of the evaluation committee (which included consideration of value for money) do not form part of the submission.

Table 2.1

Consultant Selection – PHI Campaign

Contracted Party	Date Signed	Is there a documented assessment of proposals supporting decision?	Are the reasons for approving the spending proposal documented?	Was approval of the spending proposal provided in writing?	Did the work commence prior to spending approval?
Open Mind	23/10/06	Yes	Yes	Yes	Yes
Whybin / TBWA	28/3/07	Yes	Yes	Yes	Yes
Quay Connection	13/8/07	No	No	Yes	Yes
Cultural Perspectives	20/6/07	Yes	Yes	Yes	Yes

Source: ANAO analysis of Health documentation

2.45 The MCGC’s decision to select Quay as the public relations consultant was not consistent with the department’s assessment. Although Quay was considered suitable by the department, Quay was not the department’s preferred or recommended tenderer. The proposal from Quay was assessed by the department to offer good value for money, in contrast to the proposal from the preferred tenderer which was assessed as offering excellent value for money. While it was open to the MCGC, given its responsibility for the selection of consultants (Figure 2.1) to select other than the department’s preferred tenderer (whether on the basis of information unavailable to the department at the time it had made its original recommendation, or due to giving different weighting to known considerations), the reasons for the decision of the MCGC were not documented. Similarly, the approval to expend funds on the engagement of Quay documents no reasons for departing from the recommendation of the departmental Evaluation Committee other than “the MCGC instructed the Department to engage Quay”.⁷⁸

⁷⁸ This selection process highlights the divergence of views between some former MCGC members that the MCGC was an advisory body (see paragraph 2.4) on one hand, and the views of departments and key documentation examined by the ANAO that indicates the MCGC made decisions regarded by departments as being binding.

2.46 The departmental delegate was advised that Quay had commenced work on the campaign six months prior to the submission to the delegate and that work was generally complete but was not advised as to whether the expenditure represented “efficient and effective use of the public money”.

2.47 In relation to all four primary contracts, records indicate work had commenced, indicating an agreement had been entered into between Health and the contractor, prior to the earliest documented expenditure approval.

2.48 Health made five adjustments to their contract with Open Mind, to accommodate emerging requirements for additional market research and tracking. Each of the variations was supported by an assessment of the work to be undertaken and a documented approval of a proposal to spend money exists to support each of the three variations that resulted in additional expenditure. In relation to at least two of these variations (made on 14 March and 18 May 2007), the new work was commenced prior to the approval of the expenditure proposal and prior to the execution of the contract variation.

2.49 Two variations were made in relation to the contract with Cultural Perspectives, although the variations concerned timing of deliverables rather than scope and did not affect the overall level of expenditure or the structure of key deliverables.

The Workplace Relations Reform Campaigns

2.50 Table 2.2 summarises key elements of DEEWR’s documentation of selection decisions in relation to the contracts administered in support of the Workplace Relations Reform advertising campaigns.

Table 2.2

Consultant Selection – Workplace Relations Reform Campaigns

Contracted Party	Contract Signed	Selection Method	Is there a documented assessment of proposals?	Was approval of the spending proposal provided in writing?	Did the work commence prior to spending approval?
Colmar Brunton	6/10/05	Select tender	Yes	Yes	No
• variation 1	4/11/05		No	No	not known
• variation 2	29/3/06		No	No	not known
Jackson Wells Morris	25/7/05	Select tender	No	Yes	See Note 1

Contracted Party	Contract Signed	Selection Method	Is there a documented assessment of proposals?	Was approval of the spending proposal provided in writing?	Did the work commence prior to spending approval?
• variation 1	16/12/05		No	No	not known
• variation 2	27/4/06		No	No	not known
Dewey & Horton	30/11/05	Select tender	No	Yes	See Note 1
• variation 1	9/2/06		No	No	not known
Open Mind	21/8/07	Sole source	No	Yes	Yes
• variation 1	19/9/07		No	No	not known
Gavin Anderson	26/6/07	Select tender	No	No	Yes
Whybin / TBWA	4/9/07	Select tender	No	Yes	No
Eardrum	12/9/07	Sole source	No	Yes	Yes
Cultural Partners	27/9/07	Sole source	No	Yes	Yes
• variation 1 ⁷⁹	17/12/07		No	Yes	not known

Source: ANAO analysis of DEEWR documentation.

Note 1: Where DEEWR have identified a purchase order as evidence of spending approval having been granted, the date of the purchase order is used.

2.51 DEEWR let eight contracts in support of the 2005 and 2007 Workplace Relations Reform campaigns (three in 2005 and five in 2007).⁸⁰ Five of the eight

⁷⁹ Although this variation reduced the scope of the original contract, it nonetheless warranted consideration of whether the revised scope of deliverables was appropriate for the revised expenditure.

⁸⁰ DEEWR also entered into a number of other commercial arrangements in delivering this campaign including:

- an undocumented direct arrangement with Brandmark Consulting for work undertaken in July 2005 (the engagement of Brandmark is discussed more fully at paragraph 2.84);
- subcontracting arrangements whereby Dewey and Horton engaged Brandmark Consulting from August to October 2005 and iPrint (Wellcom) in October 2005 but in regard to which no written authorisation of the engagement was provided by DEEWR (the engagement of Brandmark and iPrint is discussed more fully at paragraphs 2.85 to 2.93, in relation to subcontracting);
- arrangements with JS McMillan (printing) and Salmat (distribution) under existing period contracts; and
- minor direct sourcing without competitive quotation.

contracts were let as a consequence of select tender processes while three were sole sourcing decisions.

2.52 Only one of the five select tender processes (the selection of Colmar Brunton as research consultant by DEEWR) was supported by a documented assessment of the merits of the competing proposals.⁸¹ The remaining four select tender processes are summarised below.

- The 13 July 2005 selection of a public relations consultant was made by the MCGC after it approved the public relations consultant list of four firms on 7 July 2005 and considered pitches from two firms (the other firms did not submit proposals) on 12 July 2005. There was no documented prior assessment of proposals by officials.⁸²
- The 9 August 2005 selection of an advertising consultant was made by the MCGC after it approved the consultant list of four firms on 14 July 2005, heard initial pitches from all four firms on 28 July 2005 and selected two firms to give final pitches on 8 August 2005. Again, there was no documented assessment of the proposals by officials.⁸³
- The 9 May 2007 advertising and public relations consultant selections were made by the MCGC after it approved consultant lists on 7 May 2007 (including two advertising firms and three public relations firms)

⁸¹ The selection of Colmar Brunton followed a select tender process. DEEWR, in its 2005–06 Annual Report (p. 337), incorrectly reported that the Colmar Brunton research consultancy contract had been awarded following open tender processes. On 10 September 2008, DEEWR advised the ANAO that this was a result of a processing error which has since been addressed by the department.

⁸² The MCGC Minutes of the meeting show 'Decision: The Committee selected Jackson Wells Morris', which reflected a select tender process. DEEWR, in its 2005–06 Annual Report (p. 337), incorrectly reported that the Jackson Wells Morris consultancy contract had been awarded following open tender processes. On 10 September 2008, DEEWR advised the ANAO that this was a result of a processing error which has since been addressed by the department.

⁸³ On 31 October 2005, the Senate Finance and Public Affairs Committee asked PM&C a number of questions in relation to the selection processes adopted for the public relations and advertising consultants employed on the Workplace Relations Reform campaign (Official Committee Hansard, Senate Finance and Public Administration Legislation Committee, 31 October 2005, pp. 91-94). Specifically, the Committee were advised that:

- the public relations brief was sent to four firms, and that based on responses to the brief, the number of consultants was narrowed to two by DEEWR officials and PM&C officials, and the two remaining firms then pitched to the MCGC who, on 13 July 2005, selected the preferred tenderer;
- the advertising brief was provided to four firms, short-listing was done by officials, two agencies presented to the MCGC and a selection was made on 9 August.

and heard submissions from tenderers on 9 May 2007. DEEWR, in conjunction with the GCU, conducted question and answer sessions for the potential tenderers on 7 May 2007 but did not prepare a documented assessment of the proposals.

2.53 Only one of the three single select decisions, that to appoint Open Mind, is documented. However, while the details of the proposed activity were set out and put to the delegate, this was not done until nine days after the consultant had commenced work.

2.54 On 10 September 2008, DEEWR advised the ANAO that:

... the pace at which the 2005 Workplace Relations Reform campaign evolved needs to be acknowledged with MCGC consistently requesting consultants to undertake further or additional work. This is particularly true in respect of the market research undertaken by Colmar Brunton and the creative advertising work undertaken by Dewey & Horton and Brandmark.

2.55 Departmental records clearly indicate that in 2005, DEEWR's proposed schedule for contracting and campaign production and delivery was significantly accelerated following the MCGC's initial consideration of the campaign on 5 July 2005. DEEWR, with Ministerial agreement, had planned a substantive campaign commencing in early 2006, allowing sufficient time for standard tendering and assessment processes to be followed. Following consideration by the MCGC, the campaign was accelerated with initial advertising in July 2005 and a major multimedia campaign in October 2005.

2.56 While DEEWR confirmed the ANAO's understanding of the tender assessment processes described at paragraph 2.51, they also noted that, in each case:

- officials from the department and the GCU conducted Q&A sessions with the firms and were present during MCGC deliberations; but
- the timing of the final presentations to MCGC did not provide any scope for a documented assessment of the proposal by officials.

2.57 Of the eight primary contracts administered by DEEWR in support of these campaigns, seven are supported by a documented approval of the proposal to spend money (either an email or a document endorsed by an appropriately delegated official, or a record within the financial management

system recording the terms of the approval).⁸⁴ However, only one of seven documented spending proposals was clearly provided before the contractor had commenced work, indicating an informal agreement had been entered into between the department and the contractor, prior to the expenditure being approved.

2.58 DEEWR advised the ANAO on 10 September 2008 that it understood the actions of the MCGC and GCU gave rise to contractual arrangements, before the department had the opportunity to consider and approve expenditure. DEEWR noted that:

... where decisions were made by MCGC to engage consultants, the successful consultants were advised immediately by the Committee or alternatively by the GCU shortly after. In reality, this practice resulted in the creation of a contractual arrangement between the department and the successful consultant.

2.59 In addition to the primary contracts, DEEWR executed a total of seven contract variations. It is not evident, from departmental records, that a documented assessment of the merits of the proposed extensions (including consideration of financial and policy drivers and the achievement of value for money) formed part of the approval process for any of the variations. The reasons for the associated FMA Regulation 9 approvals are not documented and in only one instance is there a written, dated approval of the proposed contract variation.⁸⁵ Accordingly, on the basis of departmental records, it is not apparent that requirements of the FMA legislation were met.

2.60 The ANAO found that four of the seven contract variations specified target dates for new or amended deliverables. In three out of four cases, the deliverables were due before the contracts were executed, suggesting work was already underway prior to DEEWR entering into a written agreement with the contractor. On 10 September 2008, DEEWR advised the ANAO that:

⁸⁴ DEEWR confirmed on 10 September 2008 that there was no written approval of the spending proposal relating to the engagement of public relations consultant for the 2007 campaign.

⁸⁵ On 10 September 2008, DEEWR advised the ANAO that an approval dated 28 July 2005 to spend up to \$5 million on workplace relations advertising, constituted, among other things, a written record of the approval for the Dewey & Horton contract variation signed on 9 February 2006. The ANAO notes that this approval makes no reference to Dewey & Horton (who had not been identified as the preferred creative consultant at that time), and makes no specific reference to the matters identified in the contract variation.

...the contracted timelines and processes imposed by the MCGC and administered by the GCU meant the department was often required to execute contracts after work instructions had been given at MCGC meetings.

Recommendation No.1

2.61 The ANAO recommends that the Attorney-General's Department, the Department of Health and Ageing and the Department of Education, Employment and Workplace Relations:

- (a) examine internal procedures so that, in compliance with the FMA Regulations, spending approvals for major procurement exercises are made prior to officials entering into agreements with contractors under which public money is or may become payable; and
- (b) improve the documentation of major spending approvals to provide an accurate record of the key reasons for the decision, the timing of the decisions and the matters before the delegate in the making of the decision.

Attorney-General's Department response

2.62 The Attorney-General's Department agreed with the recommendation and commented as follows:

Part (a) – The Department agrees with the recommendation. It has examined internal procedures and improved the administration of procurement operations for phase three of the national security campaign.

Part (b) - The Department agrees with the recommendation. It has implemented processes to improve the documentation of factors considered by a delegate when making a procurement decision for the national security campaign.

Department of Health and Ageing's response

2.63 The Department of Health and Ageing agreed with the recommendation and commented as follows:

The Department has a control framework and regular compliance reporting in place to address the issues reflected in the ANAO report.

Department of Education, Employment and Workplace Relations' response:

2.64 DEEWR agreed with the recommendation and commented as follows:

DEEWR would highlight that since the department was formed in December 2007, it has integrated its purchasing and procurement systems and

as such has a strengthened system in place to ensure compliance with FMA Regulations. This system provides clear records of delegates' decision making.

Entering into and administering contracts

Work undertaken prior to contract execution

2.65 Both Finance and the ANAO have previously provided guidance to departments highlighting the key role that effective contract development and implementation plays in securing effective and efficient outcomes.⁸⁶ Importantly, a properly developed and documented contract provides the basis for a shared understanding of key elements of the procurement including:

- the identification and management of risks;
- the management of relationships and clarification of performance expectation;
- the management of resources;
- the specifying of responsibilities and outcomes;
- the requirements for ethical behaviour and the maintenance of records.

2.66 The joint Australian National Audit Office / Department of Finance and Administration Better Practice Guide *Developing and Managing Contracts* encourages departments to exercise care to avoid creating a contract orally or by the exchange of non contract documents or letters, and to ensure that contracts are not formed or amended by informal means. The Guide identifies the risks associated with unknowingly entering into a contract or entering into an oral agreement on uncertain terms, which can occur where a department instructs a contractor to proceed with work or delivery before a contract is signed:

This places the acquiring entity at a potential disadvantage because the contractual terms may not have been fully developed or formally recorded and it poses risks to getting the goods and services required. Such oral contracts are uncertain in terms of their operation and precise obligations of the parties are difficult to prove in the event of a dispute.⁸⁷

⁸⁶ ANAO Better Practice Guide – *Developing and Managing Contracts*, February 2007.

⁸⁷ *ibid.*, p. 51.

Table 2.3**Delays in executing contracts**

Contractor	Department	Commenced Work	Contract Executed	Delay (days)
Open Mind	Health	21/09/2006	23/10/2006	32
Whybin	Health	14/02/2007	28/03/2007	42
Quay Connection	Health	9/02/2007	13/08/2007	185
Cultural Perspectives	Health	14/02/2007	20/06/2007	126
Colmar Brunton	DEEWR	1/08/05	6/10/05	66
JWM	DEEWR	20/07/05	25/07/05	5
Dewey & Horton	DEEWR	15/08/05	30/11/05	107
Open Mind	DEEWR	4/04/07	21/08/07	139
Gavin Anderson	DEEWR	9/05/07	28/06/07	50
Whybin / TBWA	DEEWR	10/05/07	4/09/07	117
Eardrum	DEEWR	22/06/07	12/09/07	82
Cultural Partners	DEEWR	6/09/07	27/09/07	21

Source: ANAO analysis of departmental records

2.67 The audit found that, of the twelve primary contracts executed in relation to the campaigns within the scope of this audit, none were executed prior to the consultant commencing work (see Table 2.3). The average delay in executing a contract was 81 days (nearly three months), with a minimum delay of 5 days and a maximum of 185 days (over six months).

2.68 The exposures that arise from working without a contract increase as the amount of work executed outside of clearly agreed contractual parameters increases. Table 2.4 below shows that the value of work conducted prior to contract execution approached \$11 million and contrasts the expenditure in regard to particular contracts with the total value of work provided for in the contract (the ANAO has used the value of work invoiced up to, and including, the date of contract execution as an indicator of the value of work undertaken prior to signing a contract).

Table 2.4**Work undertaken prior to contract execution**

Contractor	Department	Fee cap in contract	Value of Invoices (inc GST)	Percentage
Open Mind	Health	\$528 530.55	\$39 567.00	7%
Whybin	Health	\$2 069 287.00	\$827 714.80	40%
Quay Connection	Health	\$73 161.84	\$0.00	0%
Cultural Perspectives	Health	\$198 642.00	\$79 456.80	40%
Colmar Brunton	DEEWR	\$1 361 499.00	\$1 072 442.32	79%
JWM	DEEWR	\$250 000.00	\$0.00	0%
Dewey & Horton	DEEWR	\$2 612 942.00	\$2 964 749.01	113%
Open Mind	DEEWR	\$387 647.00	\$902 312.04	233%
Gavin Anderson	DEEWR	\$440 000.00	\$112 009.84	25%
Whybin / TBWA	DEEWR	\$4 052 090.00	\$4 445 779.25	110%
Eardrum	DEEWR	\$869 137.00	\$374 336.64	43%
Cultural Partners	DEEWR	\$292 006.00	\$87 601.80	30%
TOTAL		\$13 134 942.39	\$10 804 013.30	

Source: Source: ANAO analysis of departmental records. Value of invoices refers to the value, including GST, of invoices issued for work undertaken prior to the formal execution of the related contract (that is, signature by both parties).

2.69 The Better Practice Guide *Developing and Managing Contracts*⁸⁸ acknowledges that:

... in some circumstances (for example, responding to a natural disaster or similar emergency) it may be necessary for a contractor to be engaged and for work to commence urgently prior to having signed a written contract.

2.70 There was no clear demonstration of the overriding need for urgency in respect of the contracts examined, other than the usual expectation of the timely implementation of a government decision. Particularly in relation to the Private Health Insurance Campaign, where the department had a planning horizon of nearly twelve months (knowing from April 2006 that it would need to implement a campaign in April 2007), it is not clear why the department was unable to either secure spending approval or enter into contracts before instructing consultants to commence work.

⁸⁸ ANAO Better Practice Guide – *Developing and Managing Contracts*, p. 52.

2.71 The Guide suggests that, where an appropriate imperative requires work to commence in advance of contracts being concluded, that key terms be agreed in writing prior to work commencing:

In such cases it is important to document key terms in writing and have these acknowledged prior to actual work or delivery commencing.⁸⁹

2.72 The ANAO found no evidence of such measure being pursued in relation to the administration of the campaigns within the scope of the audit.

2.73 The performance of individual departments in relation to the contracts examined in the course of this audit is summarised hereunder.

The National Security Campaign

2.74 As discussed earlier, although the AGD let no additional contracts in the administration of this particular phase of the National Security Campaign, the department agreed to a total of 35 variations to three ongoing contracts (see Table 2.5).

Table 2.5

AGD contract variations – status of work covered by variation

Contractor	Contact Variations	Changes to scope	Work in train or complete at execution	
			Number	% of variations
WDM	11	8	7	88%
BMF	14	11	11	100%
Cultural Partners	10	8	3	38% ⁹⁰
	35	27	21	78%

Source: ANAO analysis of AGD documents

2.75 Eight of the variations involved no additional expenditure, but merely extended the overall period of the contract. However, of the 27 of the variations that entailed new activities, at least 21 related to work that had been commenced prior to the variation being formally executed, including eight where the work had been completed prior to the variation being executed.

⁸⁹ *ibid.*

⁹⁰ Of the 10 variations, two involved no change to scope (variations to timing only), four provided no start date and one related to ongoing regular activities but did not provide an explicit start date. The remaining three contract variations related to work clearly in train or complete at the time the variation was offered.

The Private Health Insurance Campaign

2.76 The contracts developed by Health for the Private Health Insurance Campaign provided for the invoicing of agreed amounts at particular contract milestones, rather than invoicing on the basis of work completed. Accordingly, it is not possible on the basis of departmental records to accurately quantify the amount of work undertaken without the coverage of formal contracts. However, all consultants commenced work prior to executing contracts and the three invoiced Health prior to, or on, the date of contract execution. The average delay from commencing work in executing these three contracts exceeded 60 days.

2.77 Quay had completed all work prior to the execution of its contract with Health, although it did not invoice Health until after the contract had been signed. Quay commenced work on the public relations elements of the PHI campaign shortly after their selection by the MCGC on 8 February 2007 but did not execute a contract with Health for more than six months. Delays resulted from difficulty in Health and Quay reaching agreement over the scope and nature of the work to be undertaken.

2.78 It is relevant in this regard that, as discussed earlier, the selection of Quay was not recommended by Health. Further complexity arose when the MCGC advised Quay, after their selection, to review their strategy and reach agreement with Health over actual services to be delivered.⁹¹

2.79 Although Quay proceeded to work on agreed tasks, Quay and Health were unable to reach agreement on an overall proposal and budget until early May. By early June, with the majority of promotional activity complete, Health had begun to doubt the value of moving ahead with the agreed project plan. The departmental delegate, when asked to approve spending on the activity, asked:

... is there any way we can measure the 'impact' of these PR activities in the PHI campaign – my sense is the wrong strategy too little, too late and we shouldn't be paying them \$233 000. Could we just pay them for the work already completed?

⁹¹ Health documents note that the "MCGC were not convinced that some of the strategies outlined in Quay's proposal were appropriate for the campaign and instructed Quay to revise their approach and negotiate an acceptable proposal with the Department" but suggest that, in practice, Quay were reluctant to abandon elements of their original proposal. The MCGC recorded decisions in the broadest terms, so there is no official record of the nature of the advice from the MCGC in relation to the services to be delivered upon which Health could rely to clarify their discussions with Quay.

2.80 On 15 June 2007, Health and Quay agreed that Quay would not undertake any new work on the Private Health Insurance Campaign.

2.81 Health proceeded to work with Quay to identify the work undertaken to date and agree the amount of payment for the completed work. A formal contract was executed on 13 August 2007, although payment was not made until late November 2007.

2.82 Health's difficulties in negotiating a suitable arrangement with Quay may have been lessened had the decisions of the MCGC been recorded in greater detail and communicated by the GCU Secretariat to Health in a more timely manner or if Health had requested further clarification of the MCGC's expectations. On 28 February 2008, PM&C advised the ANAO that the decisions of the MCGC in respect of the PHI campaign between September 2006 and April 2007 were not communicated in writing to the department until 3 October 2007, more than a year after the first of the decisions were taken.

2.83 Table 2.6 shows that while substantial delays were not uncommon, those in relation to the PHI campaign were unusual.

Table 2.6

Delays (in days) in formally communicating MCGC decisions

	Average	Maximum	Minimum
2003	38	149	7
2004	46	137	9
2005	58	146	9
Private Health Insurance Campaign	252	392	168
Workplace Relations Reform Campaigns	60	177	16
National Security Campaign	48	101	10

Source: ANAO analysis of PM&C records. General delays for 2006 and 2007 were not able to be calculated from the same sources.

The Workplace Relations Reform Campaigns

2.84 In the case of the Workplace Relations Reform campaigns, all eight contracts were executed after the contractor had commenced work with the department. The value of work undertaken without contracts approached \$10 million, or 75 per cent of the total value of work undertaken under those contracts. Three of the eight contracts, involving work valued in excess of

\$7 million dollars, were effectively completed prior to signing. A further contract was around 80 per cent complete prior to contract signing.

2.85 DEEWR advised ANAO on 10 September that the 2005 High Court challenge to the conduct of the Workplace Relations Reform campaign “contributed significantly to the delays in finalising written contractual arrangements”. Tables 2.3 and 2.4 show that DEEWR experienced greater delays in 2007 than in 2005 in finalising written contracts for research, public relations and advertising, and also saw more work undertaken prior to contracts being executed, both in dollar terms and as a proportion of the contractual fee cap.

2.86 The ANAO also found that in some cases the value of the DEEWR contracts (as indicated by the maximum level of fees payable described in the contract) substantially exceeded the value of the spending approvals in place at the time the contracts were entered into (see Table 2.7). Under FMA Regulation 13, expenditure approvals for the proposed contract to spend public money must be in place prior to a person entering into that contract. While sufficient approvals were later provided by officials, departmental records do not demonstrate that the relevant approvals were in place prior to DEEWR entering into those contracts.

Table 2.7

DEEWR contractual fee cap and related financial approvals

	Financial Approval ⁹²	Contractual Fee Cap	Fees exceed approval by
Colmar Brunton	\$994 360	\$1 661 499	67%
JWM	nil	\$250 000	-
Dewey & Horton	\$2 592 891	\$2 612 942	1%
Open Mind	\$1 650 000	\$387 647	n/a
Gavin Anderson	\$175 000	\$440 000	151%
Whybin / TBWA	\$2 210 000	\$4 052 090	83%
Eardrum	\$869 137	\$869 137	0
Cultural Partners	\$284 526	\$292 006	3%

Source: ANAO analysis of DEEWR records

⁹² The level of the financial approval is taken to be the highest value expenditure approval given **prior to the date of contract execution** for which the ANAO have documentary evidence.

2.87 DEEWR made extensive payments to contractors that did not hold written contracts with the Commonwealth. As discussed above, for the Commonwealth to direct a company to commence work in advance of entering into a written contract gives rise to significant risks for the Commonwealth. The extent of work undertaken without the protection or benefit of a formal contract is usually limited by the extent of work the contractor is willing or able to undertake without payment, as departments are generally reluctant to make substantive payments under arrangements which have not been documented.

2.88 Table 2.8 describes the extent of payments made by DEEWR, the contractors involved and status of eventual contractual finalisation.

Table 2.8

Payments approved prior to contract execution - DEEWR

	Amount Paid	% of Contract Fee Cap	Comment
Dewey & Horton	\$2 592 891.71	99%	Contract signed 30/11/05
Open Mind	\$850 586.54	219%	Contract signed 21/08/07
Whybin	\$1 472 952.80	36%	Contract signed 4/09/07
Eardrum	\$374 336.64	43%	Contract signed 12/09/07
Cultural Partners	\$87 601.80	30%	Contract signed 27/09/07
Brandmark (direct)	\$46 320.00	n/a	No contract or documented agreement
Brandmark (subcontract)	\$189 179.69	n/a	No documented approval of subcontracting arrangement – primary contract (Dewey & Horton) signed 30/11/05
iPrint (subcontract)	\$1 668 055.77	n/a	

Source: ANAO analysis of DEEWR records

2.89 Making substantial payments without the benefit of a written contract creates significant risks for the Commonwealth. In such situations, the protections normally available to the Commonwealth, such as requiring specific performance by the contractor or applying sanctions, may be unavailable. It is not evident that the circumstances were such that the urgency of securing delivery of services warranted the payments of millions of dollars to contractors in advance of formalising contractual arrangements.

2.90 Departmental records showed no contract or agreement was in place between DEEWR and Brandmark to support the direct payment of \$46 320 described in Table 2.8. DEEWR advised the ANAO on 10 September 2008 that:

The work undertaken by Brandmark related to a series of newspaper and radio ads run in July 2005 regarding the then Government's proposed workplace relations reforms. The department had no role in the development of the ads other than checking the content for technical accuracy the day before they first appeared in the print media. The department was not aware that Brandmark had worked on these ads until it received an invoice from Brandmark, which was forwarded to the department in September 2005 by the office of the then Minister for Employment and Workplace Relations. Upon receiving the invoice, the department initially contacted Brandmark and subsequently the GCU to discuss the invoice... it was only after the GCU provided written confirmation and internal legal advice that the Commonwealth was liable for the payment that the department paid the invoice.

The administration of sub-contracting

2.91 The primary contracts examined in the course of the audit defined the situations in which work undertaken could be sub-contracted and established procedures to be observed should the primary contractor wish to engage a sub-contractor. However, the significant delays in formalising the primary contracts in relation to the Workplace Relations Reform campaign in 2005 created an uncertain environment for the administration of sub-contracting.

2.92 On 29 March 2008, DEEWR advised the ANAO that iPrint had been engaged by Dewey & Horton as a sub-contractor for design and print management work including the production of the WorkChoices booklet (although iPrint invoiced the department directly for printing cost associated with the Work Choices booklet). DEEWR advised the ANAO on 10 September 2008 that the decision to engage iPrint resulted from "a directive from the MCGC to print more books", a requirement that was unable to be met by the department's existing print supplier.

2.93 Agreement over the cost of the printing was reached directly between DEEWR and iPrint on 7 October 2005 and DEEWR paid iPrint \$1 668 055 for printing services on 28 November 2005. However, the overarching contract between DEEWR and Dewey & Horton, which included provisions governing the use of subcontractors, was not executed until 30 November 2005.

2.94 As the contract with Dewey & Horton was not finalised until after the completion of all major elements of the campaign, the contract manager could not have been certain of the requirements of the sub-contracting regime that would be included in that contract. The arrangements between the department and the primary contractor in relation to sub-contracting did not comply with

the requirements for the engagement of sub-contractors that were finally included in the primary contract with Dewey & Horton at execution.

2.95 Dewey & Horton also engaged Brandmark Consulting as a sub-contractor for the Workplace Relations Reform campaign. PM&C records indicate that the GCU was advised on 11 August 2005 that Dewey & Horton were proceeding to appoint Brandmark Consulting Group to act as consultants to the agency on the Workplace Relations Reform Campaign and that the GCU advised Dewey & Horton that this met with the GCU's approval. The GCU also advised Dewey & Horton that any costs from Brandmark should be treated as a production cost.

2.96 DEEWR had no record that DEEWR approval was sought or provided for this arrangement, although on 10 September 2008 DEEWR advised the ANAO that:

Handwritten notes of discussions involving department officials and GCU officials dated early August clearly indicate that the very clear expectation of both the GCU and MCGC was that Brandmark would work closely with the department on the campaign and would be subcontracted to the creative agency, Dewey & Horton. In short, the department had no role in the decision that Brandmark would be subcontracted to Dewey & Horton.

2.97 DEEWR subsequently paid invoices submitted by Dewey & Horton clearly identifying the pass through of consulting fees and expenses relating to Brandmark totalling \$333 542 (\$189 180 in November 2005 and \$144 362 in February 2006).

2.98 JWM also subcontracted work in the course of the 2005 Workplace Relations Reform (totalling \$131 869). In this case, the principal contract (between DEEWR and JWM) was in place prior to subcontracting occurring. DEEWR advised the ANAO on 10 September 2008 that the department had been aware of the proposed arrangements: they had participated in the selection of the firms to be engaged as subcontractors and, in one instance, varied the principal contract to accommodate the particular activity to be undertaken. However, DEEWR did not ensure that the formal contractual requirements for the engagement of subcontractors were observed.

2.99 DEEWR's administration of subcontracting was generally not in accordance with the provisions of the contracts between DEEWR and its principal contractors. While the ANAO acknowledges that, in some instances, administration was complicated by the delays in finalising the principal

contract and the involvement of third parties in selection decisions, greater compliance with the terms of the relevant contractual provisions would have better protected the government's rights under those contracts.

Recommendation No.2

2.100 The ANAO recommends that the Attorney-General's Department, the Department of Health and Ageing and the Department of Education, Employment and Workplace Relations:

- (a) examine means to improve the timeliness of executing contracts, particularly where they serve to formalise oral agreements in respect of which work is already underway; and
- (b) where it is determined that an imperative exists which requires work to commence urgently prior to having signed a contract, document the urgency and agree in writing with the contractor the key terms prior to work commencing.

Attorney-General's Department response

2.101 The Attorney-General's Department agreed with the recommendation and commented as follows:

The Department agrees with the recommendation. It has examined and adjusted internal procedures in relation to improving the timeliness of executing consultant contracts, in particular for phase three of the national security campaign.

Department of Health and Ageing's response

2.102 The Department of Health and Ageing agreed with the recommendation.

Department of Education, Employment and Workplace Relations' response:

2.103 DEEWR agreed with the recommendation and commented as follows:

DEEWR agrees with the recommendation and welcomes the ANAO's recognition of the significant practical difficulties the department faced in promptly executing contracts due to the rapid pace at which the MCGC oversaw the direction of both workplace relations communications campaigns and the engagement of consultants.

Evaluation and reporting

2.104 Procurement activities, such as the purchasing of specialist services to assist in the development and delivery of an advertising campaign, should be evaluated both in terms of the operation of the contract and in terms of the outcomes of the process that the procurement is intended to support. The extent of the evaluation should have regard to both the risk profile of the activity and the level of departmental resources involved.

2.105 Contract evaluation can improve contract management in departments, including providing assurance to Chief Executives of the effectiveness of internal policies and process controls, improve future contractor performance and assist in future stakeholder decision making.⁹³

2.106 The outcomes of contract evaluation can also be a valuable input into the overall assessment of the performance of the campaign post-implementation. The joint Australian National Audit Office - Department of the Prime Minister and Cabinet Better Practice Guide *Implementation of Programme and Policy Initiatives – Making Implementation Matter* notes the contribution that post-implementation review can make to understanding whether policy objectives have been achieved, noting that evaluations can contribute to:

- improving future policy design and implementation, and related decision making;
- helping resource allocation;
- enhancing accountability; and
- promoting organisational learning and good practice.

2.107 The structure of the communication strategies prepared by departments for MCGC consideration acknowledges the importance of evaluation, with each department being required to specifically address matters of research and evaluation. In addition, the broad governance framework stated that the MCGC would “scrutinise the formal evaluation of each campaign”.⁹⁴

⁹³ ANAO Better Practice Guide – *Developing and Managing Contracts*, February 2007, p. 104–105.

⁹⁴ The 1995 Guidelines on Advertising paragraph 3.3.2 (see Appendix 1).

2.108 However, the ANAO found that documented campaign evaluation strategies were largely restricted to consideration of the market testing of creative concepts, to assist with the development of alternative approaches to the campaign, and the commissioning of often extensive tracking research to measure the public reaction to a campaign and to assist in tactical planning while a campaign is live. The communication strategy for the National Security Campaign, although brief, reflects the approach generally adopted by departments:⁹⁵

RESEARCH AND EVALUATION

Market research will be used to refine the advertising concepts and public relations materials, and inform the media plan.

Bi-monthly tracking research will monitor the impact of the strategy on community attitudes, trends in community confidence and emerging issues. This will be supported by media monitoring and analysis.

2.109 Neither initial market testing nor ongoing tracking research address the broader issues relating to campaign design and the linkages between the campaign design and the policy or operational imperative that the campaign is designed to support. A more comprehensive evaluation strategy would allow for consideration of whether the campaign messages are the right messages; whether the balance of advertising and design of the campaign was appropriate for the policy objectives; and whether initial decisions regarding the frequency and scope of advertising activities yielded the desired policy results.

2.110 Campaign evaluation should support not only the tactical administration of the current campaign but should also support ongoing improvement in the efficiency and effectiveness of departments' administration of campaign advertising.

2.111 Neither DEEWR nor AGD have undertaken evaluation activities in relation to their respective campaigns outside of the initial concept testing and the subsequent tracking research. While Health has launched a broader evaluation of the Private Health Insurance Campaign following its completion, the evaluation was not provided for in the initial communication strategy and no terms of reference were available for the evaluation.

⁹⁵ Extract from the *National Security Communications Strategy May 2003–04 to June 2004–05*, prepared by the Attorney-General's Department, May 2004.

2.112 The *Guidelines for Australian Government Information Activities* provided a formal role for the MCGC in considering departmental evaluations of campaigns, stating that:

3.3.2 The MCGC will also scrutinise the formal evaluation of each information campaign.

2.113 However, an examination of MCGC agenda between 24 February 1997 and 25 July 2007 did not identify any instances where the MCGC was asked to consider post-campaign evaluations. The submission by some former members of the MCGC (refer to paragraph 2.4) stated that “any formal assessment is the responsibility for the Department which is procuring the services and disbursing the funds” and that “by long-standing convention it was not the role of the MCGC to do so.”

Aggregate Expenditure

2.114 In the conduct of this audit, the ANAO encountered significant difficulties in gathering accurate and complete data on Commonwealth expenditure on advertising, both at an aggregate level and in regard to individual campaigns. The limitations of available data sources are discussed more fully in Chapter 1.

2.115 The revised approach to the biannual reporting of campaign advertising expenditures (announced on 2 July 2008), including campaign development as well as media placement costs, will provide greater transparency.

2.116 An examination of annual reports published by Health in relation to 2006–07, by DEEWR in relation to 2005–06 and 2006–07 and by AGD in 2004–05 and 2005–06 reveals general references to the conduct of information campaigns but no consolidated reporting in relation to performance. While whole of government reporting may address concerns regarding the availability of aggregate expenditure data, indicators of efficiency and effectiveness will continue to be a matter for individual agencies. Accordingly, the ANAO recommends that agencies examine options to strengthen the reporting of advertising activity and performance in annual reports.

Recommendation No.3

2.117 The ANAO recommends that Attorney-General's Department, the Department of Health and Ageing and the Department of Education, Employment and Workplace Relations:

- (a) in planning advertising campaigns, make provision for post-campaign evaluations which address the overall efficiency and effectiveness of the campaign in the context of its contribution to departmental outcomes; and
- (b) examine options for strengthening the reporting of campaign advertising activity and outcomes in Annual Reports.

Attorney-General's Department response

2.118 The Attorney-General's Department agreed with the recommendation and commented as follows:

Part (a) – The Department agrees with the recommendation. The Department is examining a means of incorporating a more comprehensive post-campaign valuation into campaigns, including the current phase of the national security campaign. However it believes that the tracking research undertaken for the national security campaign is comprehensive and is consistent with the industry standard for gauging effectiveness of campaigns. The Department believes that if a methodology for a more comprehensive post-campaign evaluation is needed, would be better if it were adopted for application uniformly across all government campaigns.

Part (b) - The Department agrees with the recommendation. The Department will examine its approach to reporting on campaign when preparing future annual reports.

Department of Health and Ageing's response

2.119 The Department of Health and Ageing agreed with the recommendation.

Department of Education, Employment and Workplace Relations' response:

2.120 The Department of Education, Employment and Workplace Relations agreed with the recommendation and commented as follows:

The department notes that recommendation 3(b) is intended to address reporting on campaign advertising as part of the body of annual reports rather than a change to the financial reporting appendices.

3. The Central Advertising System

This chapter examines the Department of the Prime Minister and Cabinet's development and administration of the contracts that support the Central Advertising System, including the 2002 tender process which led to the awarding of the current contracts and the decision by PM&C in 2006 to extend those contracts until June 2008.

Background

3.1 To leverage Government purchasing power, the Australian Government operates the Central Advertising System (CAS) as a centralised purchaser of advertising space for departments and agencies.⁹⁶ Prior to the revised Administrative Arrangements Order of 3 December 2007, responsibility for the administration of the CAS lay with PM&C where it had been managed by the former GCU.⁹⁷

3.2 Services to departments under the CAS are provided by two specialist media buying firms – one that deals with campaign advertising and the other dealing with non-campaign advertising.⁹⁸

3.3 The former GCU advised departments that, for the purposes of the operation of the CAS, non-campaign advertising was simple, no-frills advertising that generally appeared once or twice, contained factual statements not intended to promote or advise on policies or programs of the government and did not generally require the special skills associated with campaign advertising (eg copywriting, art direction and photography). Campaign advertising was defined as all Commonwealth advertising other than non-campaign advertising, and may have included campaigns that inform the community of their rights, entitlements and obligations, encouraged consideration of issues or promoted ongoing business activities of Government.

⁹⁶ The CAS was established in 1984 following a review of the Information Coordination Branch (a precursor to OGIA) of the (then) Department of Sport, Recreation and Tourism (ANAO Audit Report No.20 1994–95, *Commonwealth Government Information and Advertising*, p. 17).

⁹⁷ The revised Administrative Arrangements Order of 3 December 2007 transferred responsibility for the CAS to the new Department of Finance and Deregulation (Finance).

⁹⁸ <www.gcu.gov.au/code/cas/index.html> [accessed 26 June 2007].

3.4 In November 2002, following an open tender process, the Commonwealth appointed HMA Blaze Pty Limited (HMA) as the non-campaign master media placement agency and Universal McCann (UM), a division of McCann Worldgroup Pty Limited as the campaign master media placement agency. In 2006, PM&C extended the contracts until 30 June 2008.⁹⁹

3.5 Government policy over this period has been that “All Australian government departments and agencies that are subject to the *FMA Act* are required to place their advertising through the CAS”¹⁰⁰ although the basis for this requirement has not always been articulated. Prior to the introduction of the *FMA Act* on 1 January 1998, Finance Direction (FD) 25D placed a clear responsibility upon departments to use the CAS by stating that:

Media advertising must be arranged through the centralised advertising system in accordance with the arrangements notified by the Office of Government Information and Advertising.

3.6 The MCGC was advised by Finance on 14 January 1998 that FD 25D would lapse upon the introduction of the *FMA Act*. At that time, the MCGC were advised that a similar provision was to be included in the new Commonwealth Procurement Guidelines although such provisions would not be binding on departments.

3.7 On 29 June 2008, the Government agreed that all *FMA Act* agencies must place all their advertising requirements (both campaign and non-campaign) through the CAS, “in order to maintain the Government’s prices and negotiating benefits when bulk media buying and to harness procurement and management efficiencies”.

The 2002 tender process

3.8 The timeline for the PM&C tender selection process is described in Table 3.1.

⁹⁹ In early 2008, following the transfer of responsibility for the CAS to Finance, the contracts were extended for a further six months to December 2008 to allow Finance to assess ongoing requirements and establish policies and frameworks for the continued provision of advertising placement services to agencies, including the conduct of a thorough open tender process for the provision of services beyond 2008. At the same time, a number of structural issues, including the basis of performance related payments and the inclusion of transition provisions were addressed. The ANAO has not examined these actions as they are outside of the scope of this audit.

¹⁰⁰ For example, the GCU website <www.gcu.gov.au/code/cas/index.html> [accessed 26 June 2007] *Central Advertising System*.

Table 3.1**Timeline for Master Media Placement Tender Process (including both campaign and non-campaign placement contracts)**

Activity	Date
Secretary of PM&C briefed on proposed tender process	9 April 2002 (B)
Delegate approves engagement of procurement consultant, legal adviser and probity adviser	7 June 2002 (B)
Risk analysis approved	8 July 2002 (B)
Evaluation panel convened	2 July 2002 (C), 3 July 2002 (NC)
Steering committee convened	July 2002 (B)
Tenders advertised and RFT made available to industry	12-15 July 2002 (B)
Industry briefing	22 July 2002 (B)
Evaluation methodologies approved	8 August 2002 (B)
Tenders close	23 August 2002 (B)
Parallel negotiations approved	29 October 2002 (C)
Approval to enter into contract negotiations	13 November 2002 (C), 23 October 2002 (NC)
Due diligence checking initiated	18 November 2002 (C)
Approval to enter into contracts	28 November 2002 (C), 19 November 2002 (NC)
Contracts executed	28 November 2002 (C), 21 November 2002 (NC)
New contractors required to commence service provision	1 December 2002 (B)

Note: (C) denotes the timing of campaign advertising tender events, while (NC) denotes non-campaign advertising tender events. (B) indicates that the event relates to both tenders.

Source: ANAO analysis of PM&C records

3.9 The need to retender for the provision of services under the CAS provided PM&C with a clear planning horizon and the opportunity to plan thoroughly, consult broadly and implement, in a timely manner, a tender process which would ensure effective and efficient use of resources in the provision of services to departments.

3.10 The process instituted by PM&C was sufficiently robust to have resulted in the identification of the most competitive bids. In particular, the effective integration of external technical assistance and probity oversight, the

early establishment of representative tender evaluation panels and a steering group, the modelling of a wide range of policy scenarios and the thorough assessment of broad tenderer capability all contributed positively to the final outcome.

3.11 However, the ANAO also identified elements of the tender process which could have been better managed. In particular:

- There was no evidence of any formal scoping study or documentation of the business case that supported the proposed procurement, which are important elements of current departmental requirements.¹⁰¹
- Formal consultation with CAS clients or other key stakeholders was limited¹⁰², and there is no evidence that the tender process was informed by any structured evaluation of the previous performance of the CAS or of previous tender processes.
- The selection and engagement of external advisers to support the procurement process fell short of best practice.¹⁰³
- A risk assessment (now required under PM&C Chief Executive Instructions (CEIs) to be conducted as part of the initial business case) was not completed until 8 July 2002, when the tender process was well underway.
- Requests for tender were released and industry briefed before the evaluation methodology was agreed by the delegate.

¹⁰¹ The planning processes appear predicated on the basis that there would be a continuation of business as usual, with no need to substantively consult users to assess performance. This is reflected in PM&C's risk analysis, dated 5 July 2002, where it is noted that "These are not new requirements. The current contracts are working satisfactorily."

¹⁰² PM&C undertook a brief telephone survey of agency administrative staff in respect of non-campaign advertising. This did not occur until June 2002. There is no record of any broad consultation in relation to campaign advertising requirements.

¹⁰³ For example,

- consultants commenced work prior to contracts being executed;
- no specific action was taken to initiate a procurement process for a probity auditor – instead, the position of probity auditor was offered to the firm that was ranked second for the legal services tender; and
- the requirement for an IT adviser was clearly identified early in the tender process yet the consultant was nonetheless single sourced at short notice when the tender assessment was advanced.

- There is no evidence that the conduct of due diligence was included in planning and it appears that only limited due diligence checking was conducted.¹⁰⁴
- Time available for transition was severely constrained due to the lateness of contract signing and there is no evidence that PM&C undertook any documented transition planning.

3.12 Original planning by PM&C provided for a tender process of some twelve months, commencing in November 2001 and including provision for consultation with clients and industry and the development of a detailed project plan. The department was not able to advise why the original planning framework was not implemented. The processes eventually adopted by PM&C saw contracts executed only days before the contractors were required to commence the provision of services, with limited transitional planning undertaken by PM&C and the adoption of complex and uncertain charging arrangements in both contracts. These models, and the risks posed and realised, are discussed further below.

3.13 CEIs are an important and legally binding component of the Commonwealth's financial management framework that support the discharge of a Chief Executive's responsibility for the proper use of the Commonwealth resources for which that Chief Executive is responsible. PM&C CEIs in force at November 2002 in relation to more complex procurements (those exceeding \$50 000) require, as necessary steps in arranging a procurement action:

- an analysis of requirements;
- the preparation of a business case;
- the identification, analysis, assessment, treatment and monitoring of risk in the procurement process; and
- arrangements to appropriately test the market.¹⁰⁵

¹⁰⁴ Limited due diligence was conducted in respect of Universal McCann on 18 November 2002 only after, and apparently in response to, the publication of a newspaper article raising doubts about the financial soundness of the parent firm. There is no evidence of due diligence being conducted in respect of non-campaign tenderers.

¹⁰⁵ Department of the Prime Minister and Cabinet *Chief Executive Instructions and Guidelines* Chief Executive Instruction No. 5.3 p. 6.

Contract structure

3.14 The contracts entered into are broadly consistent with standard long-form contracts used widely throughout the APS at that time and were, in the main, the subject of extensive legal consultation during the tender period. However, the contract schedules, which specify deliverables and provide for payment and performance, were settled late in the tender process and contain a number of unique features that have presented challenges for effective contract administration. The contract schedules also provide for both UM and HMA to return to the Commonwealth (PM&C) a portion of the amount charged to departments and agencies administering advertising, to contribute to the cost of administering the CAS.¹⁰⁶

Campaign Advertising – Fees

3.15 As noted above, UM is responsible for campaign advertising media placements. The invoicing and fee structure relating to campaign advertising charged by UM is based on the calculation, by UM, of “Gross Media Cost”.¹⁰⁷ Where UM places a verified advertisement for a client under a confirmed order, it is entitled to invoice the client for 95.5 per cent of the Gross Media Cost.

3.16 The operation of the charging structure is described in Table 3.2 below. Under the arrangement, UM retains 90 per cent of the Gross Media Cost but is required to remit the remaining 5.5 per cent to the GCU:

- 1.5 per cent of the Gross Media Cost, described as a campaign fee levied by the GCU to cover the cost of administering the CAS, is required to be paid into the Campaign Reserve Account (now the Campaign Advertising Special Account);¹⁰⁸ and
- 4 per cent of the Gross Media Cost, which offsets payments to UM, is required to be paid into the Media Commissions Account (now the Media Commissions Special Account).

¹⁰⁶ PM&C, in advising departments of advertising and media placement arrangements in December 2002, described this, in respect of campaign advertising, as a “campaign fee” and, in respect of non-campaign advertising, as a contribution “to the Commonwealth’s cost of administering the CAS”.

¹⁰⁷ Schedule 1E of the contract between the Commonwealth and UM defines Gross Media Cost in the following terms:

“Gross Media Cost is taken to be actual media cost plus media commission”.

¹⁰⁸ The Campaign Advertising Special Account is now drawn upon to meet salary as well as non-salary costs associated with the administration of the CAS.

Table 3.2**An example of the operation of the fee structure – Campaign Advertising (Universal McCann)**

Component	\$
Actual Media Cost (say, cost charged by television station for providing defined television spot)	\$990.00
Media Commission (say 11.11 per cent) of the Actual Media Cost	\$110.00
Gross Media Cost (GMC) (Actual Media Cost plus Media Commission)	\$1100.00
Amount invoiced to and paid by department to UM (95.5% of GMC)	\$1050.50
Paid to Campaign Advertising Special Account (1.5 % of GMC)	\$16.50
Paid to Media Commissions Special Account (4.0% of GMC)	\$44.00
Balance (90 per cent of the GMC) available to pass on to provider	\$990.00

Source: ANAO analysis of PM&C / UM contract

3.17 The contract does not specify a means of calculating Gross Media Cost, nor clearly link this figure to the amount charged by companies for the placement of advertising. Finance confirmed on 15 May 2008 that it had no evidence that GCU had examined or otherwise verified the relationship between the payments made by UM to media outlets and the amounts charged to departments for these services. The disposition of the remaining 90 per cent of Gross Media Cost retained by UM is not specified. Also, the contract does not define the term “media commission”. Its method of calculation is not described and there is no limit to the rate at which UM may choose to apply this charge.

3.18 As such, the contract does not effectively limit the amount that UM may charge the Commonwealth (or other client) in respect of a particular service.

3.19 The July 1997 Critchley report¹⁰⁹ indicates that the current complex arrangements were derived from earlier arrangements that reflected elements of industry practice. Under pre-1997 arrangements, departments using the CAS were invoiced the gross media cost plus a 1.5 per cent fee. A department’s payment was described as being split three ways:

¹⁰⁹ Commissioned by the Department of Administrative Services in 1996 to develop options and recommendations in relation to OGIA.

- 90 per cent of the gross media cost was paid to media outlets;
- 10 per cent of the gross media cost was paid to the media commissions trust account¹¹⁰: 2.5 per cent to meet the costs of master media agencies and 7.5 per cent to meet the non-production costs of the creative agencies; and
- 1.5 per cent of the gross media cost was paid to the campaign reserve trust account to meet the non-salary costs of administering the CAS.

3.20 In November 1998, responsibility for meeting the non-production costs of creative agencies was devolved from OGIA to departments. For departments, the burden of meeting the non-production costs of creative agencies was partially offset by a “net invoicing” arrangement under which departments would only be invoiced 95.5 per cent of the gross media cost, rather than 101.5 per cent. The proportion of advertising expenditure directed to meeting the costs of the master media agencies rose accordingly from 2.5 per cent to 4 per cent.

3.21 The contract also provides for the payment to UM of a fixed monthly fee, although UM is entitled to have the amount of the monthly fee reviewed if the annual volume of advertising expenditure exceeded \$85 million by 20 per cent or more.¹¹¹ UM may also be entitled to performance-based payments as follows:

- a bonus in relation to price negotiation outcomes in each of the first four years of operation of the contract if predetermined savings targets were met (the savings targets for the first three years were defined in the contract however the target for the fourth year was subject to later agreement between the parties); and
- productivity bonuses in respect of an annual period if in that period:

¹¹⁰ Departmental working papers suggest that, by industry convention, media commission is deemed to be 10 per cent of the gross media cost. In the advertising industry, practice has been that 10 per cent of the media buy would be returned to the media buying agency as “media commission” to fund its operations. Under the Central Advertising System, the media buying agency is directly remunerated by the Commonwealth, rather than being remunerated through retained commission. As such, the commission has been returned to the Commonwealth and used to offset the media buyer’s direct remuneration.

¹¹¹ The contract does not specify whether this amount is in a calendar or financial year, or in any twelve month period. PM&C chose to administer this condition on a calendar year basis. The thresholds for triggering the volume bonus were not changed in the 2006 contract extensions, but have subsequently been amended following negotiations between Finance and UM. This adjustment to the contract between the Commonwealth and UM is outside of the scope of this audit.

- media saving and / or value adding achieved specified targets; and
- customer satisfaction survey results achieved specified targets.

3.22 The administration of performance and volume bonus provisions is discussed further below under contract administration.

3.23 The contract with UM extensively documents contract deliverables and provides a complex and comprehensive reporting framework. In recognition of this complexity, the contract includes the provision for independent contract performance reviews and customer satisfaction surveys. Compliance with these terms is discussed further below in the section Contract Administration.

Non-campaign advertising – Fees

3.24 As noted above, HMA is responsible for non-campaign advertising media placements. The invoicing and fee structure relating to non-campaign advertising charged by HMA is based on the calculation of Media Cost.¹¹² Where HMA places a verified advertisement for a client under a confirmed order, it is entitled to invoice the client for a fixed percentage of the Media Cost, depending on the extent of production assistance provided.

3.25 The contract provides that HMA may invoice a client:

- where HMA provides limited production support, 96 per cent of the media cost;
- where HMA provides full production services, 100 per cent of the media cost.

3.26 The contract between the Commonwealth and HMA defines media cost in the following terms:

Media cost will be taken to be 100 per cent of the gross media cost.

3.27 Again, the contract with the Commonwealth does not provide a formulation for calculating gross media cost and does not specify a means for calculating media commission, nor describe its relationship with other cost components. In short, the contract fails to cap the amount HMA may charge in

¹¹² Schedule 1E of the contract between the Commonwealth and HMA defines Media Cost in the following terms “*Media cost will be taken to be 100 per cent of the gross media cost.*” No further basis for calculation is provided, nor is there a documented formula for calculating gross media cost. Finance has confirmed that the relationship between the amount HMA invoices to departments and the amount HMA pay to media providers has not been subject to review or otherwise verified.

respect of a given service or provide a basis for calculating the amount of media commission it collects.¹¹³

3.28 HMA fees for the services it provides are provided by HMA retaining a portion of the amount that it invoices Government clients. Under the contract, HMA may retain:

- 8.5 per cent of the media cost if it provides full production services; and
- 4.5 per cent of the media cost if it provides part production services.¹¹⁴

3.29 HMA is required to pay 1.5 per cent of the media cost into the Media Commissions Special Account. The operation of the HMA contract provisions are demonstrated at Table 3.3 below.

Table 3.3

An example of the operation of the fee structure – Non-Campaign Advertising (HMA Blaze)

	Full Production	Part Production
Gross Media Cost	\$1000	\$1000
Media Cost (100% of GMC)	\$1000	\$1000
Amount invoiced to and paid by department to HMA	\$1000	\$960
Retained by HMA as fee for service	\$85	\$45
Paid to Media Commissions Special Account (1.5% of Media Cost)	\$15	\$15
Available to be passed on to provider	\$900	\$900

Source: ANAO analysis of PM&C / HMA contract

3.30 On 29 November 2002, PM&C advised departments that the 1.5 per cent would be a contribution “to the Commonwealth’s cost of administering

¹¹³ As with campaign advertising, the non-campaign advertising fee structure is an evolution of a more straight-forward model of remuneration. The 1997 Critchley report (p. 76) observes that, in common with campaign advertising, non-campaign advertising was billed at 101.5 per cent of the gross media cost. Media providers received 90 per cent of the gross media cost while 10 per cent was deemed “media commission”. The non-salary costs of administering the CAS were offset by the 1.5 per cent fee.

¹¹⁴ This represents an apparent cost saving over the previous contract, where AIS (later Starcom) were entitled to charge departments 10 per cent of the gross media cost for the preparation and placement of advertisements and 5 per cent of the gross media cost where no substantive preparation was undertaken by AIS. However, the complex nature of charging for related services allowed under the HMA contract makes direct cost comparison complex. The ANAO found no evidence of any substantive cost benefit analysis of the AIS / Starcom contract by PM&C or of the relative cost effectiveness of the HMA contract structure compared with the preceding cost structure.

the CAS". A similar provision was advised in relation to campaign advertising expenditure.

3.31 Of the two special accounts operated by PM&C in support of the CAS, only the Campaign Advertising Special Account permits the debiting of amounts for the purpose of administering the CAS. PM&C records confirm that this Special Account was regularly debited for the purpose of providing funds to the department to support the administration of the CAS. However, PM&C confirmed on 25 July 2008 that HMA receipts had been remitted to the separate Media Commissions Special Account and that this Special Account had not been debited for the purpose of meeting the staffing and administrative costs of the operation of the GCU. Given the stated purpose of the 1.5 per cent fee is to contribute to the cost of administering the CAS, also crediting the 1.5 per cent fee to the Campaign Advertising Special Account would have ensured that, should it have been necessary, the funds would have been available to be drawn on for that purpose.¹¹⁵

3.32 The contract specifies fees for a range of additional services that HMA can provide clients on request. The ANAO did not examine the administration of these additional services in the course of the audit.

Administration of the Commonwealth Fee – Security and Transparency

3.33 Section 12 of the *FMA Act* states that:

An official or Minister must not enter into an agreement or arrangement for the receipt or custody of public money by an outsider unless:

- (a) the Finance Minister has first given a written authorisation for the arrangement; or
- (b) the arrangement is expressly authorised by this Act or by another Act.

3.34 This provision protects the Commonwealth from the risk of public monies being held insecurely and ensures such funds are able to be properly accounted for.

3.35 The CAS contracts jointly provide for UM and HMA to collect amounts on behalf of the Commonwealth, as part of the total cost invoiced to individual

¹¹⁵ The 1.5 per cent fee was not a feature of the preceding contract for non-campaign placement services between the Commonwealth and AIS (Starcom). However, the preceding contract did require AIS (Starcom) to remit 5% of the gross media cost directly to the GCU each month. The purpose of this payment and its disposition was not defined in the contract.

departments. The amounts are significant, exceeding \$16 million in 2007 (see Table 3.4). There is no discretion for the firms to do other than remit the amounts in full back to the Commonwealth.

Table 3.4

The Value of the Commonwealth Fees Collected by UM and HMA

Calendar Year	Campaign Advertising	Fee	Non-Campaign Advertising	Fee
2003	\$63 895 389	\$3 514 246	\$50 095 706	\$751 436
2004	\$94 394 961	\$5 191 723	\$45 829 675	\$687 445
2005	\$134 047 155	\$7 372 594	\$60 419 005	\$906 285
2006	\$140 467 838	\$7 725 731	\$73 621 140	\$1 104 317
2007	\$280 322 821	\$15 417 755	\$87 611 600	\$1 314 174

Source: ANAO calculations based on PM&C data

3.36 The CAS contracts clearly identify the proportion of amounts invoiced to departments which are to be returned to the Commonwealth but do not require that the amount be remitted to the Commonwealth on receipt. The contracts allow the fees associated with campaign advertising to be retained by UM for up to 41 days.¹¹⁶ The contract places no conditions on the holding or use of the funds before they are remitted to the Commonwealth, although they require the contractor to hold and use an account that is “an account held with an Authorised Deposit-taking Institution within the meaning of the *Banking Act 1959 (Cth)*.”

3.37 In these circumstances, the contractor enjoys the benefit of retaining these funds and considerable flexibility in their disposition without any requirement to pass potential benefits, such as interest earned, back to the Commonwealth. Furthermore, the Commonwealth is unable to reconcile and account for these funds until a considerable period has elapsed following their collection.

3.38 Section 12 of the *FMA Act* (see paragraph 3.33) requires officials or Ministers to obtain the written authorisation of the Finance Minister before entering into any agreement or arrangement for the receipt or custody of public money by an outsider (unless the arrangement is expressly authorised

¹¹⁶ For non-campaign advertising, the amount is remitted to the Commonwealth by HMA within two weeks of the end of the month in which it has been invoiced to the client – meaning it may be paid to the Commonwealth before actually being received by HMA.

by legislation). However, PM&C advised on 25 July 2008 that “it is not possible to confirm whether the Finance Minister’s authority was sought in respect of the CAS levy.”

3.39 The administration of the fee also lacked transparency. The full amount of the fee is not clearly identified on invoices – UM identify the 1.5 per cent charge which went to funding the operations of the GCU, but not the 4 per cent charge upon departments to fund payments to UM. The invoices issued by HMA to departments do not identify any component of the fee. Although agencies were advised in December 2002 when the CAS contracts were originally let that a fee would be imposed¹¹⁷, current awareness of this advice and the terms of the fee at the time of the audit was low among staff with responsibilities for advertising expenditure. Given the at times substantial nature of the fee – the value of the fees charged to departments exceeded \$16 million in 2007 – it would be appropriate to better advise departments of the contribution of the charge to the overall costs of conducting advertising.

Contract administration

3.40 The ANAO examined PM&C’s administration of the provisions contained in the CAS contracts concerning the management of the performance of the media placement agencies and the making of performance related payments.

Performance Management – Non-Campaign Advertising

3.41 The contract with the non-campaign advertising master media placement agency provides a comprehensive performance framework, including:

- six-monthly financial performance reviews (Schedule 3A) which would consider, in part, achievement against media savings targets and deliverables targets;

¹¹⁷ On 2 December 2002, PM&C advised agencies that, in respect of campaign advertising “in relation to disbursement of the 10 per cent media commission payable on Commonwealth advertising, 6 per cent will continue to be rebated to departments and agencies through a net invoice while the remaining 4 per cent will be drawn on to remunerate Universal McCann. The campaign fee of 1.5 per cent will continue to apply as this contributes to covering the Commonwealth’s cost of administering the CAS.” In regard to non-campaign advertising, departments and agencies were advised that “HMA Blaze will be remunerated through the 10 per cent media commission payable on Commonwealth advertising, with a small portion of 1.5 per cent contributing to the Commonwealth’s cost of administering the CAS”.

- six monthly functional performance reviews (Schedule 3B) which would consider tests and audits carried out under the included service delivery matrix along with accuracy, timeliness and useability performance;
- annual customer satisfaction surveys (schedule 3C); and
- a six monthly “joint and open” review of contract profitability (Schedule 1E)

3.42 The contract also provides for the parties to agree to arrangements for performance based payments.

3.43 The ANAO found that, notwithstanding declining customer satisfaction from 2004, PM&C did not move to implement the majority of the elements of the comprehensive performance framework specified in the contract (see Table 3.5 below). Furthermore, departmental documents indicate that no performance based payments have been made, nor any arrangements put in place under which such payments may have become payable.

Table 3.5

Non-Campaign advertising – Performance Management

Description	Targets	Outcomes
Six Monthly Financial Performance Reviews (Schedule 3A)	Reduce total non-campaign media expenditure by at least 15% in year 1. Subsequent year targets to be agreed. 95% compliance with reporting and remittance obligations.	Six monthly financial performance reviews not conducted. Total non-campaign expenditure rose by 46% in year 1. ¹¹⁸ No agreement reached on later year targets. Compliance performance unknown.
Six Monthly Functional Performance Reviews (Schedule 3B)	95% compliance with accuracy, timeliness and useability requirements.	Six monthly functional performance reviews not conducted.
Annual Customer Satisfaction Surveys (Schedule 3C)	Accuracy – 95% Timeliness - 95% Overall rating – 85%	Following initial survey in April 2004, surveys conducted annually. Overall customer satisfaction performance listed at Table 3.6.

¹¹⁸ Non-campaign expenditure in the twelve months up to and including November 2002 was \$34.1 million. In the twelve months to November 2003, non-campaign expenditure was \$49.7 million, an increase of nearly 46 per cent.

Description	Targets	Outcomes
Formal Six Monthly Profitability Reviews (Schedule 1E)	No targets included	Six month profitability reviews not conducted.

Source: ANAO analysis of PM&C records

3.44 PM&C records indicate that considerable emphasis was placed on the close management of the working relationship between the GCU and HMA, particularly in the early stages of the contract, focussed on improving customer service and resolving specific start-up issues. This focus is reflected in early improvements in the overall average result from the independent customer satisfaction surveys (see Table 3.6 – the overall average rating improved to 84 per cent after the first two years) but did not address the steady decline in customer satisfaction that occurred from November 2004.¹¹⁹ The overall client satisfaction rating target of 85 per cent has not been achieved over the life of the contract.

Table 3.6

Customer Satisfaction Survey Results – HMA Blaze

Survey Date	Overall Client Satisfaction Rating (Target 85%)
April 2004	73%
November 2004	84%
November 2005	82%
November 2006	79%
November 2007	75%

Source: PM&C Records. Studies undertaken by Corporate Diagnostics Pty Ltd

3.45 On 25 July 2008, PM&C confirmed that, based on information available to the department, the reviews described at schedule 1E, 3A and 3B of the contract (see Table 3.5) were not undertaken, and PM&C were unable to confirm that agreement had been reached on subsequent year financial targets as foreshadowed in schedule 3A. PM&C advised the ANAO that:

¹¹⁹ The 2007 customer satisfaction survey report notes that “the overall results remain good, but indicate an ongoing decline in the quality of service since November 2004. This should be closely monitored and immediately addressed by HMA Blaze” (Corporate Diagnostics 2007 HMA Blaze Client Satisfaction Survey p. 2).

under new management in 2007 and prior to its abolition, the GCU had instigated processes to address contract management and service delivery issues in relation to the Central Advertising System as a matter of urgency.

3.46 This had included “a preliminary assessment of the contract requirements” in August 2007, followed by a gap analysis of the contract in October 2007 and a contract management meeting with HMA on 29 November 2007, shortly before responsibility for management of the contracts was transferred to Finance. Also in November 2007, PM&C also sought advice on conducting an interim client satisfaction survey.

3.47 Finance advised the ANAO on 5 August 2008 that:

a review of the files ... does not provide any record of whether reviews mentioned (*at schedules 1E, 3A and 3B*) were undertaken, subsequent financial performance targets were agreed, or measures were put in place to address the decline in performance...

3.48 In summary, the contract with the non-campaign master media placement agency included a comprehensive reporting and performance framework but PM&C, although faced with declining customer satisfaction with service delivery, did not act to implement the performance framework. While PM&C acknowledged ongoing performance concerns in August 2007, it was unable to implement improvement strategies before responsibility for the CAS was transferred to Finance in December 2007.

Performance Management and Performance Payments – Campaign Advertising

Initial performance problems

3.49 The management of the campaign advertising contract provided significant early challenges to PM&C and campaign advertising services were problematic and difficulties persistent over the early years of the contract.

3.50 Independent contract performance reviews were a key element of the performance management framework established by the contract. This review was to provide independent verification of:

- the achievement of predetermined annual media rate negotiations;
- reporting performance;
- financial performance;
- overall media saving or value adding in the period; and

- strategy and media planning performance.

3.51 The independent contract performance reviews were not undertaken.¹²⁰ The only elements of the independent contract review framework that were implemented was the independent verification of media rate negotiation outcomes and the conduct of annual customer satisfaction surveys (although the first was not undertaken until April 2004). On 5 August 2008, Finance advised the ANAO that:

Based on Finance's knowledge and a review of files in its possession, there is no evidence that independent contract performance reviews required by Schedule 3 of the Universal McCann contract, beyond the independent verification of media rate negotiation outcomes and customer satisfaction surveys, have been conducted to date.¹²¹

3.52 Both PM&C and customer departments experienced difficulties with early contractor performance. The overall customer satisfaction rating in the first Customer Satisfaction Survey (April 2004) was 55 per cent (compared with 71 per cent for the non-campaign agency). The 2003 cost reduction target of 9.6 per cent was not met with costs instead rising by 1.2 per cent. The cost reduction target for 2004 was not achieved, and the media saving / value adding targets were not met in either 2003 or 2004.

3.53 Notwithstanding ongoing concerns regarding performance, PM&C did not move to fully implement the performance management framework provided for in the contract.

Contract renegotiation

3.54 Other difficulties were apparent in respect of the relationship with, and the making of payments to UM. In June 2004, UM booked television advertising time to the value of \$4.81 million for the proposed 27 June 2004 launch of the National Security Campaign (administered by the Attorney-General's Department (AGD)) without direction or authorisation from the administering department. Departmental records suggest that the UM had been booking media time under instruction from the GCU and the MCGC. However, a submission from some former members of the MCGC (see

¹²⁰ On 15 May 2008, Finance advised the ANAO that a review of files from the former GCU did not provide any evidence that such reviews had been undertaken.

¹²¹ Finance advised on 5 August 2008 that they were in the course of engaging a consultant to conduct performance reviews of Universal McCann's performance under the contract in relation to the volume of media expenditure for 2006 and 2007, the achievement of productivity bonus outcomes and verification of media rate negotiations.

paragraph 2.4) has advised that “the booking of the air time was an exercise of legitimate Ministerial discretion by the relevant Minister, with Prime Ministerial approval, based on the exigencies of the situation”. The decision to authorise the booking of advertising time was not known by the department at the time nor is the authority for the booking evident in any supporting documentation reviewed in relation to this audit.

3.55 On 23 June 2004, the Prime Minister’s Office advised the Attorney-General’s Office that the proposed campaign would not proceed as planned. At the MCGC meeting held on 23 June 2004¹²², UM were asked to cancel the television bookings. However, owing to the lateness of the decision, UM were obliged to pay for the booking despite the advertisement not being aired. As AGD had never authorised UM to make the purchase, UM were unable to recover costs from the Attorney-General’s Department. PM&C confirmed this outcome in a request to the AGS for advice on how best to settle the liability when they noted:

While UM have agreed to pay the media bills ... it will not be possible to then invoice the relevant department as there was no authority provided by the department to make the bookings (confusing but this is because the MCGC had authorised the bookings without the department necessarily knowing).

3.56 This is consistent with the understanding within AGD, where an official noted that UM:

... advised me today that under instructions from the GCU and the MCGC they had been booking media time on our behalf on a ‘delete and charge’ basis.¹²³ Now they’ve had to cancel it... UM advised that they intended on sending us an invoice for cancelled media time ... we have some concerns around that, given that the Dept hasn’t given them any authority to incur costs on our behalf.

3.57 On 1 July 2004, UM approached PM&C seeking a substantive increase in fees and expenses payable under the contract, noting that “not only has the volume been beyond anyone’s expectations, but the circumstances surrounding that volume have exacerbated these extraordinarily trying times”.

¹²² The approved MCGC record of decisions for this meeting indicates that the Attorney-General’s Department were not present. Furthermore, the National Security Campaign was not on the agenda for this meeting.

¹²³ This entailed the television networks not carrying the advertisements but UM paying the networks as if they did. In exchange, the networks agree to run future advertisements for the amount already paid.

The events surrounding the National Security Campaign were cited as one element of evidence put forward in support of the claim.

3.58 This letter initiated a process of consideration of various options for a revised fee structure for UM. The negotiations with UM are not well documented. However, a file note dated 2 December 2004 canvasses various options for increased base and performance pay and notes that:

UM had proposed not to charge interest or seek to recover the amount if the GCU agreed to a proposal to increase revenue to UM. The GCU put a counter proposal based on achieving incentive payments to which UM agreed although there is a difference of opinion on the achievability of the rate negotiation outcome.

3.59 The precise nature of the agreed contract variations is not clear. Agreement appears to have been reached in meetings between UM principals and the Assistant Secretary of the GCU and the Director of Government Advertising. The terms of the agreement reached at the meetings was set out in writing by UM, initially on 25 November 2004 and, in revised form, on 6 January 2005 but the documents provided by PM&C for review included neither a formal approval of the proposed contract variation nor any formal advice to UM of PM&C's agreement to the revised terms set out by UM in their correspondence. It is clear that the terms of the contract were understood by the parties to have been varied, as the payments subsequently made by PM&C were consistent with the terms outlined in UM's letter of 6 January 2005.

3.60 There appears to have been a substantial breakdown in administrative process. Approval for the contract variations was not given in writing, and PM&C did not act to document the terms of the approval. PM&C did not comply with its own Chief Executive Instructions, which required all contracts with a value over \$50 000 to be approved by the relevant Deputy Secretary. As there is no documented approval, the identity of the approver, and whether the officer was appropriately authorised to agree to contract variations of this magnitude, is not apparent.

3.61 There is also no evidence that legal advice on the contract negotiations was sought or that consultation occurred with senior officials outside of the GCU. Ultimately, it is not clear that the variations agreed were in fact effective or binding as the principal contract provides at clause 1.4 that:

No variation to the Agreement is binding unless it is agreed in writing between the parties.

3.62 The contract variations resulted in additional payments to UM of at least \$337 857 (excluding GST), comprising payment of a price negotiation bonus for 2005 (\$225 238) and a customer satisfaction bonus for 2004 (\$112 619), neither of which were payable under the terms of the original contract. It is not clear whether a further payment of a price negotiation bonus for 2006 (\$225 238) also resulted from the revised contract terms, although no other documentary basis for the payment (which was not payable under the terms of the original contract) was available.

3.63 It is important that, in situations where a department may, on one hand, face a potential financial liability to a contractor and, on the other hand, is considering increasing the fees and charges payable to that contractor; that the department can demonstrate that separate consideration was given to these matters.

3.64 Where such circumstances arise, leading to the payment of public monies, matters should be considered on their merits, outcomes agreed and documented both for accountability purposes and to properly inform the delegate with authority to approve payments.

Subsequent performance management

3.65 Tables 3.7, 3.8 and 3.9 document UM's performance in relation to defined targets and any subsequent bonus payment made by PM&C.

3.66 As noted above, PM&C put in place processes under which its internal auditor, Deloitte, generally provided an independent verification of the annual price negotiation outcomes. As indicated in Table 3.7, price negotiation performance has been independently assessed each year since the commencement of the current contract except 2004. PM&C advised the ANAO on 25 July 2008 that it was unable to confirm if or explain why a price review did not occur in 2004.

Table 3.7**Assessment of Price Negotiation Bonus Payment (3.C.(a))**

Rates agreed for	Original Target	Revised Target	Outcome Achieved	Payment Made
2003	A reduction of 9.6% on 2002	-	An increase of 1.2%	No
2004	A reduction of 2% on 2003 plus earlier targets met	-	not assessed	No
2005	No increase on 2004, plus earlier targets met	6%	4.4%	Yes, \$225 238 (exc GST) on 6 July 2005
2006	to be agreed later	3.5%	2.3%	Yes, \$225 238 (exc GST) on 25 September 2006
2007	not provided for in contract	not documented	1.6%	No

Source: ANAO analysis of PM&C records

3.67 The administration of performance-based payments was not well documented, with a failure to clearly agree performance targets in a timely manner. The price negotiation targets set out in the original contract were not achieved. However, bonus payments for 2005 and 2006 have been made, although PM&C have been unable to provide evidence of prior written agreement to revised targets for either year:

- in relation to the 2005 price negotiations, a revised target of a no more than 6 per cent increase in cost of campaign advertising was proposed by UM in the context of the 2004–05 contract revisions (as discussed at paragraph 3.60, PM&C did not accept the proposal in writing nor otherwise document the agreed terms of the contract variation);
- in relation to the 2006 price negotiations, UM were advised, following external review, that performance exceeded the agreed target of an increase of no more than 3.5 per cent based on the “Cost per Thousand (CPM)” model and no more than 2.34 per cent in the effective overall rate.

3.68 On 5 August 2008, Finance advised the ANAO that:

A review of the files in Finance’s possession has not yielded any documentation relating to price negotiations targets for 2005 being set ahead of the 2005 negotiations being undertaken or in relation to price negotiations targets for 2006 ahead of the 2006 negotiations.

3.69 Although UM's performance for the 2007 round was subject to external validation and represents an improvement over previous years, no provision for price negotiation bonus payments beyond 2006 was included in the original contract nor provided for in the 2006 contract extension. In regard to eligibility for performance payments in relation to the 2007 round of negotiations, Finance advised on 6 August 2008 that the UM contract extension to the end of 2008 introduced eligibility for a payment in relation to the 2007 round of price negotiation and later negotiations should they be undertaken.

3.70 In addition to the potential bonuses for price negotiation outcomes, the contract provides, at item C(b) of Schedule 3, for the payment of productivity bonuses in the following terms:

Productivity Bonuses (as indicated below) for an annual period:

- (i) if the Contract Performance Review relating to that period discloses that Universal McCann has achieved an overall media saving and / or value added of 15 per cent or better across all campaigns for that period; and
- (ii) if the Customer Satisfaction Survey relating to that period discloses that Universal McCann has achieved of overall relating of 75 per cent or more for satisfied or better for that period [*sic*].

Table 3.8

Media Saving / Value Added Performance and Bonus Payments (Contract reference: Schedule 3C(b)(i))

Period	Original Target	Revised Target	Outcome Achieved	Payment Made
2003	15% overall	-	not assessed	No
2004	15% overall	-	17.3% overall	Yes, \$112 619 (exc GST) on 4 January 2006
2005	15% overall	15% on 90% of campaigns	15.9% overall	Yes, \$112 619 (exc GST) on 31 January 2007
2006	15% overall	-	Subject to independent audit ¹²⁴	No
2007	15% overall	-		No

Source: ANAO analysis of PM&C records

¹²⁴ Finance advised on 5 August 2008 that independent audits of performance in this regard had been initiated.

3.71 Media saving / value added performance is detailed at Table 3.8 and Customer Satisfaction Performance at Table 3.9. The administration of these provisions and the related payments to UM raise several issues:

- the contract between the Commonwealth and UM requires that the media saving or value adding be established through the mechanism of a Contract Performance Review (as provided for in Schedule 3A of the contract) - these reviews have not been undertaken; and
- eligibility for the bonuses for a particular annual period appears to be dependent on both sub-paragraph (i) and sub-paragraph (ii) being met.¹²⁵ The only annual period in respect of which both mandatory conditions have been satisfied is 2005, however payments were made for 2004 and 2006.

Table 3.9

Customer Satisfaction Outcomes and Bonus Payments (Contract reference: Schedule 3C(b)(ii))

Period	Original Target	Revised Target	Outcome Achieved	Payment Made
2003	75%	-	55%	No
2004	75%	70%	68%	Yes, \$112 619 (exc GST) on 4 March 2005
2005	75%	-	80%	Yes, \$112 619 (exc GST) on 4 January 2006
2006	75%	-	77%	Yes, \$112 619 (exc GST) on 7 March 2007
2007	75%	-	68%	No

Source: ANAO analysis of PM&C records, Corporate Diagnostics 2007 UM Client Satisfaction Survey

3.72 It is of particular concern that a customer satisfaction bonus totalling \$112 619 (excluding GST) was made in respect of the November 2004 survey outcome, notwithstanding that performance did not meet either the original target of 75 per cent or the revised target of 70 per cent. PM&C records note that the delegate was advised on 27 January 2005 that:

¹²⁵ Other elements of the contract structure suggest the two matters (value adding and customer satisfaction) were to be considered separately. Finance has acted to clarify this ambiguity in a subsequent contract amendment, making the provisions clearly separate from one another.

This year the GCU set a benchmark of 70 per cent of overall customer satisfaction for Universal McCann to receive a 3.75 per cent bonus payment. The research undertaken by Corporate Diagnostics indicates that overall satisfaction is 68 per cent... This suggests that a performance bonus will again not be paid to the contractor.

3.73 However the delegate was advised that “there is scope to exercise a degree of flexibility and make a performance payment”. Grounds for making that payment were that the margin of error in the survey was +/- 9.2 per cent at a 95 per cent confidence level on a small sample size and that a determination to improve performance had been demonstrated. However:

- the observed margin for error indicates the result was more likely to fall below 70 per cent than above it; and
- the spending delegation held by the decision maker in this instance was limited to \$500 00 while the size of the bonus under consideration was \$112 619 (exc GST).

3.74 Finance advised the ANAO on 5 August 2008 that, after assuming responsibility for the management of the CAS in December 2007, it had implemented a range of measures to independently assess contractor performance and clarify the entitlements to performance payments. Where necessary, these adjustments have been supported by contractual amendments executed in conjunction with the extension of the contracts to 31 December 2008. These adjustments are not within the scope of this audit.

The volume bonus

3.75 Item E of Schedule 1 of the contract provides that UM is paid a fixed annual fee, payable monthly¹²⁶, and that:

The Annual Fee is based on an annual total expenditure by Clients on advertising placed under this Agreement of approximately \$85 000 000. The amount of the Annual Fee (and accordingly the monthly fee) will be reviewed by the parties if that annual expenditure varies by 20 per cent or more.

3.76 The contract commenced in December 2002 and, as Table 3.10 indicates, the threshold was breached in 2003, 2005, 2006 and 2007.

¹²⁶ The contract also includes provision for additional performance based payments as set out at Tables 3.8 and 3.9.

Table 3.10**Annual Campaign Expenditure – Calendar Year¹²⁷**

Year	Amount (\$ million)	Variation (from \$85 million)
2003	\$63.9	- 25 %
2004	\$94.4	+ 11 %
2005	\$134.0	+58 %
2006	\$140.5	+ 65 %
2007	\$280.3	+ 230 %

Source: PM&C and Finance records

3.77 In 2005, annual expenditure exceeded the threshold figure by more than 20 per cent. PM&C considered a number of options for calculating the amount of the bonus payment. PM&C initially favoured the payment of an amount based on the extent to which actual staffing costs (including overheads, monitoring and research fees) exceeded the base fee payable to UM under the contract. PM&C described this approach as “consistent with the intent of the contract”. PM&C subsequently settled on the payment of an additional amount based on “the percentage by which that expenditure exceeded expenditure of \$102 million”. This was the lowest cost option considered by PM&C in its analysis of the options for payment, but did not reflect the actual costs incurred by the contractor in handling the additional work.

3.78 UM were advised on 28 January 2006, that PM&C had undertaken a review of the fee applying for the 2005 calendar year and that the Commonwealth agreed to the payment of an additional amount of \$795 035 (excluding GST). UM were also advised that:

In the event that the threshold is exceeded again, the same formula will be used to calculate any additional fee payable. As the contract expires at the end of September 2006, a pro rata amount will be used for any calculations. In the event that the contract is extended, we may need to take into account and negotiated changes to remuneration levels [*sic*].

3.79 On 11 June 2007, in response to the campaign advertising volumes in the period January to September 2006 and in accordance with previous advice

¹²⁷ Data included in this table does not reconcile with that aggregate expenditure data presented elsewhere in the report as this table presents nominal expenditure by calendar year where as elsewhere (for example Figures 1 and 1.1, and paragraph 4) real expenditure by financial year is used.

to UM, PM&C officials sought approval to pay to UM a volume payment of \$179 936 (exc GST). The delegate was advised that no entitlement beyond September 2006 existed, as the contract extension beyond 30 September 2006 entailed higher base remuneration levels which were “appropriate for higher activity levels”. Such a view is not supported by the written contract, which still retained original provisions and conditions in respect of the payment of this bonus.

3.80 The pro-rata bonus for 2006 was not paid at that time, although the reasons for non-payment are not documented. Finance advised that UM had approached them regarding payment of a volume bonus in respect of 2006. In March 2008, Finance’s internal legal advice concluded that the department was obligated to make a payment of a volume bonus in respect of the 2006 year, calculated in the same manner as the 2005 bonus. Finance was not, however, obliged to use the same approach for 2007.

3.81 On the basis of this advice, on 9 April 2008, Finance made a payment of \$1 095 750 (GST inclusive) to UM in respect of the 2006 calendar year.

3.82 Finance also considered the eligibility of UM for the payment of a volume bonus for 2007. In 2007, rapid growth in advertising outlays meant that the volume bonus trigger point was passed in May 2007 and ultimately exceeded by 230 per cent. The extent to which the trigger was exceeded has meant that the Commonwealth faced a significant bonus payment in respect of the 2007 year. Consistent with its internal legal advice, Finance negotiated a revised formulation to the calculation of the volume bonus payment and on 18 June 2008 a payment of \$4 244 260 (including GST) was made in relation to 2007.¹²⁸ A strict application of the 2005 methodology would have yielded a bonus payment for 2007 in excess of \$6 million.

3.83 The volume bonus provisions of the contract were an integral element of overall payment arrangements and should have been taken into account in the contract extension executed in March 2006. The negotiations were undertaken against a backdrop of rising campaign advertising outlays which were, in part, recognised by the increase in the base monthly fee. At a minimum, it would have been appropriate to consider the reasonableness of

¹²⁸ Finance advised on 5 August 2008 that amendments to the contract with UM have continued the provision for an annual volume bonus over the life of the contract (including on a pro rata basis for any partially completed years) but with a higher threshold of \$126 990 000 (compared with \$102 000 000).

retaining the existing “trigger point”, which had been initially set in November 2002.

3.84 While it may have been difficult, in early 2006, to anticipate the strength of the growth in campaign advertising expenditure experienced in 2007, the ANAO found that PM&C, in the 2006 extension to the contract with UM, had not given appropriate consideration to the ongoing application of this element of the payment model. Furthermore, PM&C did not take timely action to clarify the extent of possible exposure when the volume of campaign advertising expenditure exceeded the threshold in May 2007. This created both unnecessary financial risk for the Commonwealth and, given the formula-based approach adopted by PM&C to calculating the amount of the bonus, created the prospect of a significant “windfall” gain for the contractor.

The 2006 contract extension

3.85 The contract between HMA and PM&C provides, at Item D of Schedule 1, that:

Subject to an ongoing high standard of service delivery, the Commonwealth may seek the extension of this Agreement for a further period/s up to 2 years on terms to be agreed.

3.86 Similarly, the contract between UM and PM&C provides, also at Item D of Schedule 1, that:

The Commonwealth may extend (the period of the contract) by giving Universal McCann written notice prior to the date it would otherwise expire.

3.87 In January 2006, PM&C entered into discussions with UM regarding the possibility of exercising the option to extend the existing contract for a further two years. At that time, UM had not met media rate negotiation targets and customer satisfaction targets for 2003 and 2004 and had also not met media saving / value adding targets for 2003. A similar dialogue was initiated with HMA, notwithstanding that HMA’s had not, over the life of the contract, met overall client satisfaction targets. The timing of discussions with HMA is not clear from the records. The discussion resulted in proposals from both companies to extend the contracted period until June 2008, although subject to revised terms.

- UM, on 6 February 2006, proposed an initial increase in their base fee of 20 per cent with a further increase from 1 October 2007, along with partial reimbursement of travel costs.

- HMA, also in February 2006, proposed to continue on existing terms but to increase the amount payable to the GCU from 1.5 per cent of non-campaign advertising to 2.5 per cent, for expenditure over \$55 million in a financial year, payable from June 2006.¹²⁹

3.88 The possibility of contract extension was examined by PM&C in the context of improved CAS performance and settled staffing in key positions in the CAS agencies and on 2 March 2006, officials in PM&C sought the delegate's approval to extend both contracts to June 2008.

3.89 It is not clear that, in March 2006, the delegate had any viable option other than to extend the existing contracts, at least so as to allow sufficient time for the department to conduct a proper tender process. This is acknowledged in advice to the delegate which notes:

The time available between now and the expiration of the contracts (30 September 2006) for conducting parallel tender processes is tight and may require a short term contract extension, probably to 31 December 2006.

3.90 The financial analysis offered to the delegate did not address the potential costs and benefits of alternate service providers. The submission balanced the costs of going to market against the increased remuneration of the currently contracted firms, concluding that:

To undertake two competitive tender processes could be seen as an unnecessary expenditure of taxpayer funds given current performance levels.

3.91 As noted above, the assessment of performance was made without the benefit of information that may have been derived from the full implementation of the performance assessment frameworks contained in the original contracts. There is no evidence of a more thorough analysis of performance having been conducted in the lead up to the potential contract extension, nor evidence that PM&C investigated the potential costs and benefits of alternative service providers or of alternate service delivery arrangements.

3.92 While performance had clearly improved up to the point in time that the extensions were being contemplated, it is relevant that UM had not met the majority of measured performance targets, while HMA were yet to achieve the customer service target - its only independently assessed performance

¹²⁹ Based on achieved volumes, the additional rebate would have reduced Commonwealth advertising costs by \$157 000 in 2005/06 and \$299 000 in 2007/08.

measure. Accordingly, departmental records do not provide a clear basis for PM&C to be satisfied that the contractual stipulation that the extension was subject to “an ongoing high standard of service delivery” had been met.

Overall findings

3.93 PM&C’s administration of tender processes leading to the appointment of the current CAS master media placement firms was generally sound although PM&C did not effectively consult with client departments in the early definition of the business requirement or the tender planning, but did engage representatives of client departments to assist with the administration and oversight of the tender process. PM&C invested considerable effort in undertaking a generally thorough assessment of competing tenders although it did not include provision in its planning for due diligence checking of tenderers. Following adverse press speculation regarding the situation of one of the preferred tenderers, PM&C conducted limited checks in relation to that tenderer. No due diligence checking of other tenderers, including the successful tenderer for the non-campaign master media contract, was undertaken. In addition, PM&C undertook minimal transitional planning, placing a heavy reliance on the successful tenderer to develop appropriate strategies and secure Commonwealth interests.

3.94 However, PM&C’s implementation and administration of the subsequent CAS contracts was poorly managed. In particular, PM&C included complex and onerous performance management arrangements in the contracts which it did not effectively implement or properly administer over time. PM&C did not, in a timely manner, develop and implement options to effectively address poor customer satisfaction, which declined steadily following early improvements and was consistently below agreed targets. The administration of performance-based payments was not well documented, with a failure to clearly agree performance targets in a timely manner. In addition, a number of performance payments were made without the level of performance assurance required by the contract being met and, in at least one instance, when the verified performance clearly fell short of the agreed standard.

3.95 PM&C did not adequately document the 2004 variation to the terms and conditions of the campaign master media placement agency contract. There was no clear and consolidated specification of the terms of the agreement between the parties, nor is the consideration of the efficiency and

effectiveness of the proposed contract variations documented. The absence of properly documented terms complicated subsequent contract administration and made it difficult for PM&C to demonstrate compliance with either internal policy or the requirements of the financial framework.

3.96 The 2006 extensions to both CAS contracts were not supported by a thorough assessment of the costs and benefits of the proposed approach. PM&C's analysis concentrated largely on the costs of going to market rather than considering the potential benefits to the Commonwealth in the face of declining customer satisfaction with contractor performance. The delegate was not given sufficient notice for effective decision making – the department did not allow sufficient time for a thorough tender process to be conducted had the delegate chosen not to extend the existing contracts. The extensions also failed to address key exposures, such as ongoing performance payment arrangements for the campaign master media placement agency.

3.97 Ongoing defects in administration were recognised by PM&C in late 2007 but were not comprehensively addressed until early 2008, after responsibility for contract administration was transferred to Finance.

3.98 Although responsibility for the administration of the CAS has moved to Finance, the ANAO considers that there may be benefit in PM&C taking steps to assure itself that existing controls operate to ensure that other contract variations are being appropriately considered, approved and documented; and where relevant performance management and payment provisions are effectively administered.

3.99 On 5 August 2008, Finance advised the ANAO of a range of measures taken by Finance to improve contract management including paying overdue contract retainer and bonus payments, substantiating the basis for bonus payments, negotiating and concluding extensions to both media placement contracts and initiating independent performance audits of the contracts. Finance also assured the ANAO that current tender processes for the two major media purchasing contracts would address the concerns raised by the ANAO in relation to the management of prior contracts. A detailed examination of the initiatives taken by Finance is beyond the scope of this audit.

Recommendation No.4

3.100 The ANAO recommends that Finance, in developing the arrangements for the operation of the CAS beyond the expiration of current contracts:

- (a) include a performance management framework that addresses the risks associated with the contract administration and assists the Commonwealth to secure the delivery of contracted services;
- (b) simplify the financial arrangements associated with the contracts, including rationalising the use of special accounts, and improve the transparency of intra-governmental charging; and
- (c) provide, in future tender processes, for appropriate consultation with clients, the conduct of timely due diligence in relation to preferred tenderers and appropriate transition planning.

Finance response

3.101 The Department of Finance and Deregulation (Finance) supports Recommendation 4 and makes the following comments with regard to that recommendation.

Finance is presently involved in a tender process relating to the Master Media agencies for campaign and non-campaign advertising. The current tender processes have gone through a comprehensive and consultative strategic planning process, including consultations undertaken with various government agencies.

A contract management plan is also being developed to assist with contract administration in accordance with the principles contained in Recommendation 4.

Inconsistencies in the operation of the special accounts have been addressed such that receipts and disbursements are properly aligned.



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Auditor-General

Canberra ACT

5 March 2009

Appendices

Appendix 1: Guidelines for Australian Government Information Activities

Guidelines for Australian Government Information Activities

Principles and Procedures

February 1995

[Updated only to reflect changes in titles and names]

1. Definition of an Information Program

For the purposes of these Guidelines, information activities are defined as those activities involved in the production and dissemination of material to the public about Government programs, policies and matters which affect their benefits, rights and obligations.

They would include the production of:

- press, radio, cinema and television advertisements,
- audio-visual material,
- printed material (pamphlets explanatory booklets, etc)

and the use of:

- public relations consultants,
- market research agencies,
- advertising agencies,
- other specialist consultant

in the development of such material.

2. Principles for Government Information Programs

2.1 The Government stresses that all Australians have equal rights of access to information about programs, policies and activities which affect their benefits, rights and obligations. The Government therefore expects all departments, agencies and authorities (referred to as 'departments' in the rest of this document) to carry out their public information programs based on the principles which guide all of the Government's relations with the community - fairness and equity.

2.2 All departments are required to conduct their public information programs at a level appropriate for their impact on the community, particularly where they concern the individual's benefits, rights and obligations. Departments are also required to inform the public about their structure, their services and their functions.

2.3 Information activities are to be regarded as an integral part of the management of departmental programs and of the development of new programs.

2.4 Senior management should take active responsibility for the information activities of their departments and should ensure that their specialist information staff are used efficiently and effectively in both the development and implementation of these activities. This should involve access for information staff to, and co-operation from, all levels of their departments to enable them to carry out their duties with such efficiency and effectiveness.

2.5 The Government expects all departments and their information units to employ the highest standards of communication knowledge and techniques in the conduct of their information programs.

2.6 All information programs conducted by departments should be as impartial and as complete as practicable and based on the information needs and capacities of the target audience. Information programs should be based on relevant research, and contain feedback and evaluation mechanisms where possible. Departments should use simple, clear language in all communication with the public to ensure their messages are easily understood.

2.7 The Government recognises that not all individuals or groups within the community are equally well placed to gain access to Government information. A 1980 report into departmental information identified this problem and defined the 'information poor' as:

"those who are disadvantaged through low income, poor education, inadequate knowledge of English, physical handicap, geographical isolation or any other reason."

2.8 The Government requires that departments, in preparing their information programs, give special attention to communicating with any of these disadvantaged individuals or groups which are identified as being within the designated target audience.

2.9 In line with its priority concerns, the Government expects particular attention to be given to the communication needs of young people, the rural community, and those for whom English is not a convenient language in which to receive information.

2.10 The Government also expects departments to recognise the full participation of women and ethnic communities in Australian society and to realistically portray their interests, lifestyles and contributions to Australian society.

3. Procedures for the Ministerial Committee on Government Communications [MCGC]

3.1 The Government's information activities are coordinated by the Special Minister of State under that Minister's responsibility for information coordination and services.

3.2 MCGC -WHAT MUST GO FORWARD

3.2.1 Procedures are now in place to ensure that departmental information programs meet the Government's priorities and objectives and use the appropriate techniques of communication. They specify that all major and/or sensitive information activities, whether or not they include paid advertising, and including information activities for which it is proposed to engage the services of outside consultants, are to be approved first by the responsible Minister and then, following discussion with the Government Communications Unit (GCU), Department of the Prime Minister and Cabinet, brought before the MCGC for approval. ("Sensitive" covers issues which might offend sections of the community or may produce negative reactions from the community group being addressed or its opponents.) The Committee is responsible for scrutinising all departmental proposals for information activities to ensure that they are justified and well directed.

3.3 RESEARCH AND EVALUATION

3.3.1 The MCGC also considers all significant market research related to information programs or campaigns that is either sensitive or has an expected value of \$100,000 or more and which is proposed be commissioned. In this context "significant" means any major study that the department proposes for the purposes of assisting the development of campaign ideas or concepts, identifying the target audience(s), monitoring knowledge of, or attitudes to the campaign itself, or large scale evaluation of public information programs.

3.3.2 The MCGC will also scrutinise the formal evaluation of each information campaign.

3.4 MCGC MEMBERSHIP

The MCGC is chaired by the Special Minister of State and has five other permanent members who together provide a whole of government perspective. Other Ministers or their advisers join the Committee when it is dealing with subjects within their portfolio responsibilities.

3.5 CABINET REQUIREMENT

3.5.1 As specified in paragraph 3.21 of the Drafter's Guide for the Preparation of Cabinet Submissions and Memoranda, which is the companion document to the Cabinet Handbook, particular attention should be given in Cabinet Submissions to public presentation of government policies and initiatives. They are to be submitted for endorsement by the responsible Minister and Cabinet in the decision making process. Where implementation of proposals would entail a public information program, the Submission should give a brief outline of the proposed nature and level of activity and the estimated cost. The Drafter's Guide details the requirements for departments to bear in mind the co-coordinating role of GCU, and the need for major or sensitive information activities to be approved by the MCGC.

3.6 SUCCESSFUL COMMUNICATION STRATEGIES

3.6.1 The most successful communication programs are based on establishing the needs of the target audience. This should be achieved by such means as surveys, reports by counter staff, correspondence, the assessments of regional offices, and media reporting and reaction.

3.6.2 Departmental information units should establish effective liaison with media representatives in order to take advantage of the mass media in providing a ready-made and very effective channel of communication between the Government and the public.

3.6.3 Departments should also take advantage of appropriate intermediaries, such as community groups and local councils, as channels of communication with the public. Such groups can provide an effective method of communication of information to specific target groups. However, departments must themselves accept responsibility for accurate counselling of the public concerning benefits, rights and obligations.

3.7 NON-ENGLISH MEDIA ADVERTISING

3.7.1 All departments funding advertising campaigns must make provision for delivery of culturally appropriate messages to people whose first language is not English, via the non-English language media - newspapers, radio and, where available, television - consistent with the aims and objectives of each campaign.

3.7.2 At least 7.5 per cent of the campaign budget allocated to newspaper advertising must be devoted to non-English newspapers. Similarly, at least 7.5 per cent of the campaign budget allocated to radio advertising must be devoted to non-English radio - SBS and community radio stations.

3.7.3 It is not proposed at this stage to place targets on the use of non-English television but it should be used where appropriate. As narrowcast and cable outlets develop, this may need to be revised.

3.7.4 It should be noted that where a campaign does not embrace newspapers and/or radio advertising in mainstream English language media, it may still be appropriate to consider the use of the non-English media.

3.7.5 The non-English speaking background [NESB] component of all campaigns shall be part of the overall communications strategy, and take into account the fact that 17.2 per cent of the Australian population aged five and over speak a language other than English at home. NESB strategies shall form part of each portfolio's Annual Information Plan submitted to the Special Minister of State after the Budget.

3.7.6 The GCU has a special responsibility to the MCGC to ensure the effective delivery of Government information, especially information about rights and entitlements to these audiences. The GCU is available to assist departments when designing communications strategies and will monitor compliance once campaigns are approved by the MCGC.

3.7.7 While there is no target for non-campaign advertising - employment ads, calls for tender and other public notices - departments are reminded of the need to reach the entire Australian community. The use of the ethnic press may be appropriate for some public notices such as when seeking submissions to policy reviews or advertising grant programs.

3.8 ABORIGINAL AND TORRES STRAIT ISLANDER NEEDS

3.8.1 Departments are requested to pay particular attention to reaching Aboriginal communities and to take into account the fact that many Aboriginal communities are in rural and remote areas, that not all Aboriginal people are literate and that English is not always spoken. For these communities, Aboriginal broadcasting offers one of the most effective mediums for communicating important information about Government programs. Thought should be given to allocating a percentage of funds, for communication programs relevant to the Aboriginal community, to the Aboriginal media. In preparing material for the Aboriginal media, Aboriginal people should be considered as presenters.

3.8.2 Opportunities should be taken wherever possible to depict Aboriginal and Torres Strait Islander people as an integral part of Australian society, forming part of the social and cultural fabric of our distinctive Australian culture. Care should be taken that this is not done in a stereotypic way.

3.9 ACCEPTING PAID ADVERTISING

3.9.1 Departments are encouraged to consider accepting paid advertising in their own publications. However, they should ensure that the advertising material meets the Government's standards on the portrayal of the various groups within Australian society.

Appendix 2: The Consultant Register

1. Government policy to November 2007 was that the GCU maintain a register of communications consultants (including advertising agencies, public relations consultants, market research companies, graphic designers, writers and the like) interested in undertaking government work. This register was drawn upon by the GCU in advising agencies of potentially suitable consultants to participate in the development and delivery of communications campaigns. PM&C has described the operation of the policy as follows:

Where the campaign falls within the MCGC's jurisdiction, the communications strategy, briefs and lists of agencies (prepared in consultation by the department and the GCU from consultants in the GCU Register of Consultants) must all be approved by the MCGC.¹³⁰

2. Advice on the requirement to register and the related processes was made available on the GCU's web site www.gcu.gov.au.¹³¹ Firms wishing to be considered for work on Government advertising campaigns were advised:

To add your company to the Consultant Register, complete the main Consultant Registration form (*Step One*) and the specialist keywords form(s) (*Step Two*) that best describe your company's core business.

The forms are available as MS word files that can be downloaded, completed and sent to the GCU (*Step Three*).

When completing the forms, keep in mind that the more information the GCU has about your company, the better we can match your company's expertise to the type of projects that arise.

After sending your completed forms to the GCU, it is recommended that your company presents its credentials to the GCU (*Step Four*). This helps the GCU to better appreciate the skills and experience your company has to offer.

3. Firms were able to register at any time. Registrations were not invited by public advertisement and GCU did not conduct any systematic assessment of the merits of firms that had registered. There was no structured process to validate the claims made by firms through the registration process.

¹³⁰ PM&C Annual Report 1998–99, p. 81.

¹³¹ This site was taken down following the November 2007 Federal Election and the subsequent abolition of the GCU.

4. This method of operation appears to have continued largely unchanged since at least 1997, when an external review of OGIA described the administration of the Consultant Register in the following terms:

The Register is based on an honour system: any Consultant wishing to register may do so and all Consultants' claims are considered true unless otherwise proven. To register, Consultants are required to fill out a Registration Form.¹³²

5. Once the department and GCU had settled on a mutually agreed consultant list, operational documents indicate the following process:

- The consultant list, along with the associated brief, was approved by the portfolio minister and then by the MCGC;
- The department issued the brief to the listed consultants and sought written proposals addressing the approved brief;
- For research consultants, the department in consultation with the GCU, selected a consultant. For other consultants, the department in consultation with the GCU conducted an evaluation of proposals and prepared a shortlist of consultants (generally two) who appeared before the MCGC, who selected its preferred consultant.

6. The process of assembling a consultant list was not generally documented. The consultant register itself was not employed to provide an ongoing and developing foundation for consultant selection, for example by recording data on consultant utilisation or performance.

7. Improved documentation of the processes leading to the development of consultant lists, leading to the creation of a record of the considerations in the preparation of each consultant list, was recommended by the ANAO in 1995 and agreed by OGIA. OGIA, at that time, advised the ANAO that it had "already adopted all of (the suggested) procedures".¹³³

Performance

8. The ANAO undertook an analysis of consultant selection decisions taken by the MCGC between 5 February 2003 and 25 July 2007. Table A 1 provides a high level summary of the decisions examined.

¹³² Critchley Management Consultants Office of Government Information and Advertising Review Report July 1997, p. 26.

¹³³ ANAO Audit Report No.30 1994–95, *Commonwealth Government Information and Advertising* p. xxi.

Table A 1**MCGC Consultant Selection Decisions 2003 to 2007**

	Number	Percentage
MCGC consultant selection decisions		
• Creative consultancies	56	42%
• Public Relations consultancies	29	22%
• NESB consultancies	16	12%
• Research consultancies	12	9%
• Indigenous consultancies	11	8%
• Other consultancies	8	6%
TOTAL	132	100%
Number of "single source" decisions	33	25%
GCU briefing includes a recommendation or otherwise highlights the preferred consultant	65	49%
MCGC decision concurs with GCU briefing	54	83%
MCGC decision does not concur with GCU briefing ¹³⁴	11	17%
Where a competitive process was involved	9	14%
Where single sourcing was recommended	2	3%

Source: ANAO Analysis of MCGC decisions

9. PM&C guidelines provided for a competitive tender process to be adopted in relation to the selection of consultants, and 75 per cent of all decisions rested on a competitive process. However, a quarter of all decisions examined (33, or 25 per cent) were not the result of a competitive process, including:

- five decisions to extend current contracts without going back to the market;
- two decisions to award work to a consultant under an existing contract;

¹³⁴ Where the MCGC did not concur with the GCU briefing and a competitive process had been employed, the MCGC decided to award the work to the other shortlisted candidates (in all such instances, only two firms had been shortlisted). In two instances where the MCGC rejected a recommended single source arrangement, the MCGC agreed to award the work on the basis of a single select process but chose a different consultant.

- one decision to combine the new campaign with work being undertaken on a related campaign.
10. A further two selection decisions followed from “single short listing” – that is, following an initial consideration of more than one potential consultant, only one consultant was put to MCGC for consideration.
11. Although decisions on research consultancies are generally taken by departments, the MCGC’s agreement was sought to 12 proposals to “single sourcing” research consultants (9 per cent of all MCGC consultant decisions).
12. The MCGC did not operate on the basis that it was required to accept the recommendation of officials and in nearly 50 per cent of selections the briefing by the GCU in PM&C did not identify a preferred consultant or otherwise highlight the outcome of any evaluation process that may have been conducted by departments (although the departmental evaluation was often attached for MCGC consideration). In 83 per cent of selection decisions where the GCU had made specific observations regarding the relative merits of the consultants (or otherwise advised the MCGC of the outcome of the department’s comparative evaluation), the MCGC’s decision was consistent with that assessment.
13. As described in Table A2, 72 firms (or combinations of firms¹³⁵) were considered by the MCGC for the 132 consultancies that were decided in the period under examination (either by having been shortlisted from a larger field or having been proposed for “single select” consideration). The frequency with which individual firms were considered varied markedly by market segment.

¹³⁵ On 5 occasions consortia of firms were considered. In each case, the parties had also been considered in their own right for other opportunities.

Table A 2**MCGC Consultant Selection Decisions 2003 to 2007 - key figures**

	Creative	Public Relations	NESB	Indigenous	Overall
Consultancies	56	29	16	11	132
Firms considered	33	18	6	8	72
Consideration ratio (consultancies / firms considered)	1.7	1.6	2.7	1.4	1.8
Firms considered only once	12	9	2	5	32
Most times a single firm considered	9	9	15	7	15
Firms receiving only one contract	9	8	2	3	22
Multiple contracts (%)	64%	50%	67%	55%	71%
Most contracts received by one firm	6 (2) ¹³⁶	6	8	5	8
Single select decisions	10	4	0	2	34
Most single select decisions for one contractor	3	2 (2) ¹³⁷	n/a	1 (2) ¹³⁸	6 ¹³⁹
Hit rate for most successful contractor (contracts / times considered)	100% / 86%	67%	53%	71%	53%

Source: ANAO analysis of PM&C data. Figures are generally not additive, as decisions on research consultants (generally taken by departments) are not shown separately.

Informing future arrangements for consultant selection

14. An examination of the operation of the consultant register and the consideration of experience in other jurisdictions suggests scope to enhance efficiency and effectiveness, along with accountability and transparency, in centrally managed processes for consultant engagement by ensuring that:

- access to any panel or register is publicly notified, with assessment of suitability for selection for specialist roles based on documented criteria leading to a defined term of appointment;
- that the list of appointed agencies is publicly notified, for example on the Finance website;

¹³⁶ Two firms each received six contracts.

¹³⁷ Two firms each received two contracts.

¹³⁸ Two firms each received one contract.

¹³⁹ This figure is for a research consultant.

- that ongoing membership of any panel is subject to regular review (for example, at the end of fixed terms);
- that the administrative arrangements provide a continuous record of the times that consultants are considered for selection, the jobs for which they are selected and their performance in those jobs; and
- that the use of consultants that have not been pre-qualified be subject to the usual procurement provisions governing the engagement of consultants (e.g. Division 2 of the CPGs).¹⁴⁰

¹⁴⁰ Advice to departments from the former GCU was that the use of the register, when in accordance with the Guidelines for Australian Government Information Activities February 1995, was exempt from the mandatory requirements of the CPGs but when utilised for other purposes could be considered a multi-use list.

The Finance / ANAO Better Practice Guide *Developing and Managing Contracts* describes a multi-use list as a list of pre-qualified suppliers who have satisfied specific conditions for inclusion on the list. It is difficult to see how the Consultant Register met this requirement, as inclusion in the Consultant Register was on the basis of application, with no process for notifying or making assessments against specific criteria as would generally be required for a multi-use list.

Appendix 3: The National Security Campaign – Attorney-General's Department

This Appendix provides an overview of Attorney-General's Department administration of the National Security Campaign from 2003, when it assumed responsibility for the campaign from the Department of the Prime Minister and Cabinet through to mid-2006. Advertising was launched in September 2004 and the campaign ran, with several distinct phases of television advertising, until June 2006.

Introduction

1. In November 2002, against the backdrop of the 11 September 2001 terrorist attacks in the United States, the 12 October 2002 Bali bombings and the announcement by the Government of a "credible threat alert" on 19 November 2002, the Australian Government announced a public information campaign to reassure Australians about national security issues.
2. A taskforce was established within PM&C to manage the campaign, which comprised national television, radio and press advertising and the direct mail-out (including a booklet and fridge magnet) to Australia's 7.2 million households. The total budget for the campaign was in the order of \$18.5 million. The MCGC met to consider the campaign on 16 occasions between 25 November 2002 and 31 January 2004, including 14 meetings during which the MCGC examined and suggested refinements to the various advertisements and publications prepared for the campaign.
3. In February 2003, the taskforce was disbanded and the Attorney-General's Department (AGD) assumed oversight of the ongoing tracking research and, in consultation with PM&C, for ongoing communications activities. The AGD was initially allocated \$1.2 million for further research and ongoing communications activities for the 2003–04 financial year.
4. Research commissioned by AGD in mid-2003 informed the development of a draft communication strategy that was prepared for MCGC consideration in late 2003. Tracking research commissioned by AGD indicated a general public expectation that given the size of the initial national security campaign and the importance of the issues, the earlier campaign would be followed up. However, there was growing concern within the AGD regarding delays in following up on the earlier substantive campaign overseen by PM&C. In this context, AGD moved to develop a draft communication strategy

with a view to gaining MCGC and broader Government endorsement of the proposed directions.

Campaign Development and Delivery

5. The draft strategy was endorsed by the Attorney-General on 22 October 2003. The Attorney-General was advised that a longer-term, low level 'drip feed' style campaign was supported by market research and would be appropriate to reinforce key messages; however, the \$1.2 million provided in the Budget for communication activities in 2003-04 would be inadequate to meet the communication needs identified in the research.

6. The department moved to have the strategy considered by the MCGC in late 2003 and also initiated contract extensions to secure, on an ongoing basis, the services of the three firms that had worked with PM&C on the initial campaign¹⁴¹.

7. The draft strategy was initially listed for consideration by the MCGC on 4 November 2003 but was removed from the agenda pending discussions between the department and the Prime Minister's Office (PMO). The AGD met with the GCU in late November to express frustration about delays in clarifying the campaign direction and in having the MCGC consider the proposed campaign. In January 2004, the department wrote to the GCU seeking direction on key elements of the campaign but also continued with a limited range of low-level activities that were able to be pursued without MCGC endorsement.

8. On 19 February 2004, AGD advised the GCU that AGD had been able to progress only a limited range of "business-as-usual" communications activities, primarily around the National Security hotline, but that these activities had largely been with stakeholders. AGD had not proceeded with promoting the hotline with the general public, nor followed up earlier initiatives with the non-English speaking community.

9. During February, AGD were advised that the MCGC would consider the National Security campaign on 30 March 2004. AGD initially understood that the MCGC did not want to discuss a communication strategy and

¹⁴¹ This included Brown Melhuish Fishlock Pty Ltd (BMF) for advertising development and production; Worthington Di Marzio Pty Ltd (WDM) for research and Cultural Partners Australia (NSW) Pty Ltd (CP) for NESB services. No specialist public relations firm was engaged.

accordingly the department focused on preparing to brief the MCGC on the latest tracking data.

10. Prior to the MCGC meeting but following the 11 March 2004 terrorist attacks in Madrid,¹⁴² the Attorney-General wrote to the Prime Minister seeking agreement to recommencing modest communications activity around national security matters. The Attorney-General advised the Prime Minister that it was timely to remind the public that they could play a key role in keeping watch for anything suspicious. Market research indicated that awareness of the National Security Hotline and its purpose was slipping. The Attorney-General proposed an approach that would involve low-key advertising centred on print media and posters in public transport and would refer people to the national security website and the original campaign booklet.

11. In anticipation of MCGC consideration, the AGD continued market testing of the communication options. The department formed the view that a media buy of closer to \$2 million would be required to achieve campaign objectives. As the funding was not available within the department's budget, additional funding would need to be sought.

12. On 30 March 2004, the MCGC met to consider the proposed National Security campaign. The MCGC was advised of a range of campaign objectives and that activities would target the general community through public relations, supported by low level advertising to increase awareness of the Hotline through press, outdoor and transit advertisements.

13. AGD proposed the campaign commence on 11 April 2004 and run until 8 May 2004 (or with additional budget funding, the campaign could run until 3 July 2004). The MCGC was advised that a strategic approach of using grass-roots public relations and low level advertising to promote the Hotline was supported by tracking research outcomes.

14. The MCGC did not agree to the campaign strategy proposed by the department¹⁴³ but rather asked the research company to prepare a report setting out the parameters of a broader national security campaign. The

¹⁴² On 11 March 2004, terrorists undertook a series of coordinated bombings against the commuter train system of Madrid, Spain killing 191 people and wounding 1,755.

¹⁴³ The submission to the ANAO by some former members of the MCGC (paragraph 2.4 of the report refers) stated that, at the time, the MCGC considered "the proposed format of the campaign would have been ineffective because it did nothing more than reinforce existing links." The MCGC considered that what was required was to give "people confidence that their actions could affect a positive outcome against terrorism."

department was not present during discussions between the committee and the researchers but were later briefed by the GCU on the meeting outcomes.

15. The campaign research consultant prepared a position paper that went to the MCGC on 8 April 2004, along with updated tracking survey outcomes and examples of creative concepts used for overseas national security campaigns. The GCU advised the MCGC that the position paper suggested that “a further television campaign would not be suitable for what is presently required” and that the latest round of tracking research and positioning recommendations maintained that the campaign should continue to use grass-roots public relations and low level advertising to promote the Hotline.

16. Following consideration of the position paper and the overseas examples, the MCGC asked for revised creative concepts to be presented on 23 April 2004. The MCGC subsequently selected a creative concept for further development and agreed new campaign directions. The proposed new campaign included television, which would require additional funding. Following discussions with the GCU and Universal McCann, the AGD estimated the initial launch phase of the campaign would cost around \$6.5 million, while the subsequent maintenance phase would cost between \$2.4 and \$5 million.

17. Throughout this period, the additional work required of campaign research and creative consultants was accommodated through variations to the principal contracts which AGD had taken over from PM&C in 2003. The execution of the variations is discussed further below.

18. On 18 May 2004, the Attorney-General wrote to the Prime Minister again, advising that, based on the latest research, he now proposed a more intensive advertising campaign than previously envisaged and advised to the Prime Minister. The Attorney-General sought approval for a more intensive two month campaign, followed by lower level maintenance advertising and public relations throughout 2005–06, that would be developed under the guidance of the MCGC. The total cost of the campaign was estimated at \$12.2 million. AGD had \$2.1 million available from its 2003–04 and 2004–05 allocations and the Attorney-General sought approval for an additional \$10.1 million to fully fund the campaign.

19. AGD advised the ANAO on 31 July 2008 that the research that underpinned the advice to the Prime Minister consisted of concept testing conducted by the research consultant and reported to the department on

21 April 2004. This research report noted that the preferred campaign idea depended more heavily upon the television component to maximise the effectiveness of the press element. However, this campaign concept, while subject to further development, was not the concept ultimately implemented. The research report did not make a case for preferring a higher intensity to a lower intensity campaign, but notes that the community believed that the strongest and highest impact options would include television in the mix of media channels.

20. The creative materials were considered further by the MCGC on 20 May 2004 and again on 1 June 2004. The proposed media plan included a campaign launch in June 2004, with television, print and outdoor advertising for a period of two months. The advertising would be supported by public relations activities. A maintenance period, consisting of lower level advertising and public relations activities, would continue until June 2005.

21. The MCGC considered the creative materials and media plan again on 9 and 17 June 2004 with the goal of launching the campaign on 27 June 2004. On 22 June 2004, the AGD briefed the Attorney-General on developments in campaign preparation, noting the confirmed start date for the campaign of 27 June 2004.

22. On the 23 June 2004, the Prime Minister wrote to the Attorney-General agreeing to provide \$6.075 million to fund the new National Security Campaign. PM&C emailed policing and security personnel nationally advising of the launch of the campaign on 27 June 2004.

23. However, later on 23 June 2004, the Attorney-General's office advised AGD that the PMO had directed that the campaign not be launched on 27 June as planned. No reason for cancelling the campaign was provided to the department. At that time, around \$650 000 had been committed by the AGD for the advertising materials produced to date. Furthermore, significant contingent liabilities had been incurred through the booking of advertising time by UM under instruction from the GCU and the MCGC but without the AGD's authorisation.

24. On 25 June 2004, the then Secretary of the AGD was advised that, at the meeting of the MCGC on 23 June 2004 (at which AGD was not represented), the Government's media buying agency was asked to cancel existing media bookings for the national security campaign until further notice.

25. AGD advised PM&C on 2 July 2004 of discussions with UM concerning the purchases. AGD noted that UM had advised that it had, under instruction from the GCU and the MCGC, booked media time on behalf of AGD. PM&C were advised that, when UM informed AGD that UM intended sending the department an invoice for the cancelled media time, AGD indicated that the proposal caused the department some concern, as AGD had not given UM any authority to incur costs on its behalf.

26. No subsequent attempt was made to recover costs from AGD in relation to this purchase. The matter is discussed further in Chapter 3 of the report, in the context of the administration of the CAS contracts.

Election Campaign Launch

27. Following the 9 September 2004 bombing outside of the Australian Embassy in Jakarta, the Government decided to relaunch the National Security Campaign. As the Government was in caretaker mode due to the 9 October 2004 Federal election, the agreement of the Leader of the Opposition was sought to the proposed campaign. Following an exchange of correspondence between the Prime Minister and the Leader of the Opposition, the Prime Minister advised the Opposition Leader on 17 September 2004 that he intended that the National Security campaign would be launched during the election campaign and that, subject to the agreement of the Commissioner of the AFP, the AFP would be identified as the sponsoring agency in the advertising authorisation and the Commissioner of the AFP as the authorising officer.

28. AGD commenced to work towards a campaign launch date of 25 September 2004. The proposed campaign utilised the creative materials developed for the campaign originally planned to launch on 27 June 2004, altered only to reflect the revised authorisation.

29. On 24 September 2004, the then Secretary of the AGD authorised expenditure of \$7 150 000 (including GST) on media placement and despatch for the National Security campaign launch and initial maintenance phase. The Secretary was advised that the size and components of the media buy had been authorised earlier by the MCGC and that the Prime Minister had authorised the campaign to run as soon as possible. However, as the launch was occurring in the caretaker period, neither the materials nor the media plan were subject to any further consideration by the MCGC.

30. The campaign was launched with an initial round of advertising on 25 September 2004. Advertising recommenced on Monday 27 September 2004 and, following an initial four week period, continued for a further three months at lower weighting. The campaign included television, newspaper, transit interiors and outdoor advertising, and was run in 33 languages as well as English. Final expenditure on National Security campaign media placement in 2004–05 totalled \$6 908 000 (including GST).

Campaign maintenance 2004–05

31. On 29 November 2004, the Attorney-General approved the detailed media plan for the maintenance phase of the National Security Campaign through to the end of 2004–05. The Attorney-General was advised that calls to the National Security Hotline had increased five-fold over the period of the campaign launch, but had dropped by two-thirds following the cessation of advertising. The maintenance phase would employ the same campaign materials used at the campaign launch, although with standard authorisation and branding. The MCGC agreed to the proposed media plan on 30 November 2004 and the AGD subsequently authorised UM to proceed with bookings.

32. The issuing of the Media Buying Authority on 30 November 2004 was within the scope of the FMA Regulation 9 approval provided by the Secretary of the AGD on 24 September 2004, which had been directed to both the launch and maintenance phases of the campaign.

Planning for 2005–06

33. For the 2005–06 Budget, the Attorney-General sought additional funding for the National Security Hotline of \$10.0 million a year, including \$4.9 million for ongoing communications. While this was not agreed, existing funding was continued for a further two years, allowing \$1.2 million a year for ongoing communications.

34. The AGD continued tracking research and, on 29 April 2005, advised the Attorney-General that the maintenance phase had not been sufficient to maintain awareness of the Hotline, although it had had a sustained impact on call numbers. While call numbers had fallen during the maintenance period, they were 21 per cent higher than pre-campaign levels.

35. While noting its concern that the funding for the National Security campaign was inadequate to maintain ongoing awareness of the Hotline, the

department asked the Attorney-General to consider a strategy for 2005–06 that employed a public-relations based approach to maintaining awareness and that was consistent with the resourcing the Government had made available to the department through the budget process. The Attorney-General approved this strategy on 3 May 2005.

36. The strategy was put to the MCGC on 24 May 2005. The MCGC was advised that the media weights during the maintenance phase had been insufficient to maintain levels of awareness of the Hotline achieved during the campaign launch. The MCGC deferred consideration of the proposed strategy and advised the department that it should consider a more substantive campaign in 2005–06, including television.

37. On 12 July 2005, following the 7 July 2005 London public transport bombings, the Government agreed to the National Security campaign being relaunched as soon as possible, with costs to be agreed between the Attorney-General and the Minister for Finance and Administration. Additional funding would be made available to the AGD through the Additional Estimates process. The campaign would launch on 14 July 2005, utilising existing creative materials, and would run for an initial period of one month.

38. On 13 July 2005, AGD authorised UM to proceed with booking media placements at a total cost of \$2 428 020 (including GST) for the first three weeks of the campaign. Approval for expenditure was not provided until the following day (14 July 2005) when the then Secretary of the AGD was formally briefed on the relaunch of the campaign.

39. On 7 August 2005, the Attorney-General approved a revised communication strategy and draft media plan for 2005–06 that formalised arrangements around the 14 July 2005 campaign relaunch, and included further bursts of advertising activity in September / October 2005, November 2005 and February / March 2006. The total cost of the strategy was \$10 200 000. While \$1 817 000 was available from within existing departmental appropriations, additional funding of \$8 383 000 would be required in the additional estimates process to fully fund the campaign. On 10 August 2005, the communication strategy and media plan were considered and approved by the MCGC.

40. On 26 August 2005, the then Secretary of the AGD approved a proposal to spend \$7 955 980 (including GST) on the media buy for the remainder of 2005–06, and AGD authorised UM to proceed to book the agreed media plan.

41. On 29 August 2005, the Minister for Finance and Administration wrote to the Attorney-General approving the provision of \$8.382 million in 2005–06 for the national security public information campaign.

42. While the AGD continued to monitor the impact of the campaign through tracking research and conducted research relating to specific issues around the campaign, the structure of communications activities for the remainder of 2005–06 had effectively been defined by the Ministerial decision of 7 August 2005 and the MCGC decision of 10 August 2005.

43. In 2006, the AGD initiated the development of a new phase to the National Security communications campaign for the period beyond 30 June 2006. This entailed the development of new campaign strategy and the selection of a new creative team. The development and implementation of this phase of the campaign is beyond the scope of this audit.

Contract Administration – Issues

44. Table A 3 below describes the contractors involved in the delivery of this phase of the National Security campaign, the total funds expended and the procurement approaches adopted by the department.

Table A 3

Contractors to the National Security Campaign

	Role	Procurement Approach	Expenditure (inc GST)
Worthington di Marzio	Market Research	Contract extension	\$757 386
BMF	Creative	Contract extension	\$847 330
Cultural Partners	NESB	Contract extension	\$263 953
Universal McCann	Media Placement	Standing Contract	\$16 869 360

Source: ANAO analysis of AGD documentation

Procurement Planning

45. The AGD faced a number of barriers to effective procurement planning.

46. The framework of priorities established following the transfer to AGD from PM&C of responsibility for national security communications in early 2003, and the level of funding provided to AGD, was consistent with a low level of ongoing communications activity for which AGD sought policy endorsement in the second half of 2003.

47. The levels of resourcing provided through the budget processes for 2004–05 and 2005–06 were modest and consistent with the low level of campaign activity initially envisaged by AGD in 2003. However, the funding provided through the budget process was substantially augmented in both years and, consequently, the scope of the campaigns delivered by the AGD was far beyond that which would have been foreseeable on the basis of the budget allocation.

48. The AGD also had difficulties in having the strategy proposed by the Attorney General in relation to the ongoing communications requirements listed for MCGC consideration and in securing agreement to a communication strategy that would have supported longer term strategic planning around the campaign.

49. In practice, the substantive phases of advertising activity (including both development and delivery) were initiated in response to unforeseen developments in the international security environment. The Government tasked AGD to respond rapidly to the emerging requirements and provided significant additional funding outside of the budget process.

50. The short term nature of the decision making process demonstrated in relation to this campaign, while reflecting the uncertainty and pressure of the operational environment, had made traditional planning and procurement frameworks problematic. In particular, the impact of the short term pressure on decisions was reflected in the contracting model adopted by the AGD, which entailed multiple contract variations and extensions over a period of thirty months, often relating to work already in train or even completed. A more flexible contracting framework, allowing work to be commissioned at short notice while still complying with the requirements of the financial framework, would have been more appropriate to the circumstances faced by the department

Procurement Decisions, Financial Approvals and Contract Execution

51. In delivering the first phase of the campaign, PM&C entered into contracts:

- with Worthington Di Marzio (WDM) for research on 20 December 2002 for 12 months;

- with Brown Melhuish Fishlock (BMF) for advertising on 16 January 2003 for the period 28 November 2002 to 10 February 2003; and
- with Cultural Partners Australia (NSW) Pty Ltd (CPA) for NESB services on 16 December 2002 for 12 months.

52. AGD let no new contracts during its administration of the second stage of the National Security campaign; rather, in response to ongoing developments in the campaign, it executed 35 contract variations in respect of these three contracts.

- The contract with WDM was varied on 11 occasions. On eight occasions the scope of the contract was varied (including three instances where the duration of the contract was also extended). On three occasions the contract duration was extended with no adjustment to the scope. Seven variations served to bring within the scope of the contract work that was either in train or completed before the variation was offered to the contractor.
- The contract with BMF was varied on 14 occasions. Eleven variations included changes to the scope of the contract, including two which also extended the duration of the contract.¹⁴⁴ Three variations extended the duration of the contract but did not vary the scope. Eleven variations served to bring within the scope of the contract work that was either in train or completed before the variation was offered to the contractor.
- The contract with CPA was varied on ten occasions. Eight variations included changes to the scope of the contract, including three which also extended the duration of the contract. Two variations extended the duration of the contract but did not vary the scope. In each of the three instances where the timeframe for commencing the work is detailed in the contract variation, the work was either in train or completed before the variation was offered to the contractor.

53. None of the 35 contract variations were supported by a documented assessment of the merits of the variation, including whether the additional expenditure of funds constituted value for money. There is no separate and contemporaneous documentation of the spending proposal, nor evidence of when the spending proposal was approved, the reasons for its approval or the

¹⁴⁴ The initial variation purported to extend the period of the contract for 12 months to 16 January 2005, although the initial contract expired on 10 February 2003.

nature of any enquiries the approver may have made to satisfy the requirements of FMA Regulation 9. While recognising the circumstances, it is incumbent on departments to ensure the requirements of the relevant policy and legislative frameworks are met. On 19 December 2007, AGD confirmed to the ANAO that there was no independent documented approval of the variations either individually or in summary and advised that, while it considered the signed variation letters to the contractors to be evidence that the contract variations were approved, it had since implemented a process whereby approvals for contract variations are documented in writing prior to contract variation letters being issued.

54. The 35 variations to the three ongoing contracts are summarised in Table A 4 below. Of the 27 of the variations that entailed new activities, at least 21 related to work that had been commenced prior to the variation being formally executed, including eight where the work had been completed prior to the variation being executed.

Table A 4

AGD contract variations – status of work covered by variation

Contractor	Contract Variations	Changes to scope	Work in train or complete at execution	
			Number	% of variations
WDM	11	8	7	88%
BMF	14	11	11	100%
Cultural Partners	10	8	3	38% ¹⁴⁵
	35	27	21	78%

Source: ANAO analysis of AGD documents

55. There is no specific requirement for a formal contract to be concluded in advance of a contractor commencing work. The joint Australian National Audit Office - Finance Better Practice Guide *Developing and Managing Contracts* acknowledges that:

in some circumstances (for example, responding to a natural disaster or similar emergency) it may be necessary for a contractor to be engaged and for work to commence urgently prior to having signed a written contract.¹⁴⁶

¹⁴⁵ Of the 10 variations, two involved no change to scope (variations to timing only), four provided no start date and one related to ongoing regular activities but did not provide an explicit start date. The remaining three contract variations related to work clearly in train or complete at the time the variation was offered.

56. The Guide suggests that, where an appropriate imperative requires work to commence in advance of contracts being concluded, that key terms be agreed in writing prior to work commencing:

In such cases it is important to document key terms in writing and have these acknowledged prior to actual work or delivery commencing.¹⁴⁷

57. A limited subset of the contract variations directly impacted by the international security events of March and September 2004, and July 2005, could be said to fall within the range of decisions impacted by the special events described in the Better Practice Guide. However, for the majority of the contract variations, no imperative of the kind envisaged by the Guide was evident. Furthermore, there is no clear evidence that executing the variations in a more prudent manner was incompatible with achieving the tight time frames set by Government for the campaign launches.

Media Buy

58. Both the September 2004 and the July 2005 campaign launches saw final approval for the campaign, and hence final authorisation of the media buy, delayed until close to the day of the campaign launch:

- for the campaign launch of 25 September 2004, expenditure was authorised on 24 September and the Media Buying Authority signed on 27 September (approval for television advertising on 25 September was conveyed separately by email on 24 September 2004); and
- for the campaign launch on 14 July 2005, expenditure was authorised on 14 July and the media buy authorised on 13 July (ahead of the expenditure approval).

59. The demands of Government for a rapid response in relation to campaign launches reflected the uncertainties in the environment at the time, but effectively ruled out early campaign launch date approval and sufficient lead time for the optimum media buying conditions.¹⁴⁸

¹⁴⁶ ANAO *Better Practice Guide – Developing and Managing Contracts February 2007* p. 52.

¹⁴⁷ *Ibid.*, p 52.

¹⁴⁸ The Government was engaged in consultation with the Opposition over the launch of the campaign as late as 17 September 2004. With the Government deciding to have the AFP launch the campaign, it was necessary to obtain the agreement of, and clear materials with, the AFP which did not occur until 21 September 2004. Expenditure was approved on 24 September 2004. In July 2005, the AGD approved the media buy the day after the Government had decided to restart the campaign.

60. In particular, it is apparent that, in 2004, the lateness of the booking left UM facing significant price premiums, and ensuring campaign targets were met had implications for other advertisers. For example, the full page advertisements appearing on 27 September 2004 attracted loadings of up to 25 per cent due to other paying clients having to be moved from the Monday to alternate days and the loading that the publications had to forgo in order to get the Australian Government bookings in at such short notice. Television commercial dispatch rates rose by nearly 400 per cent. In order to offset these costs increases within the approved budget, the weight of television advertising was reduced.

61. On 15 October 2004, AGD was advised that television advertising also suffered price premiums and had an adverse impact on other advertisers, noting that as a consequence of the late approval of expenditure, the available airtime was extremely limited and was either not very cost efficient or available only at a price premium, and in some instances required that bonus airtime be taken off other advertisers to provide the government with airtime.

62. It is clear from the September 2004 launch that there are inherent costs and risks associated with launching a substantive advertising campaign at short notice. While this may be unavoidable in light of the factors influencing decisions to advertise in this field, it would be appropriate to assess the impact and be able to inform government of the associated costs. AGD advised that this was not done for either the 2004 or 2005 campaign.

63. Of the \$18.7 million spent on the National Security advertising campaign between its transfer to AGD in 2003 and the conclusion of the 2005–06 phase of advertising activity, 90 per cent (\$16.9 million) was directed toward the media buy.

64. Systematic confirmation of delivery of the media buy is undertaken by, or commissioned by, the media buyer who reports accordingly to the administering department. A variety of reports are provided to departments to demonstrate delivery of the authorised media buy, including independent monitoring of broadcast media by Nielsen Media Research Australia, and “tear sheets” (comprising copies of physical media) to demonstrate magazine and newspaper placements.

65. On 31 July 2008, AGD advised the ANAO that while it had received tear sheets to evidence the publication of print advertising, it did not receive

delivery reports that outlined the delivery of the authorised electronic media buy.

66. Notwithstanding that AGD had no assurance of the completeness of the delivery of the electronic media purchase, it sought no further assurance before proceeding to make payments in response to the invoices submitted in relation to the media buy.

Evaluation

67. The focus of formal evaluation in relation to the development and delivery of the National Security communications campaign has been limited to:

- the use of market research to refine advertising concepts and materials; and
- the use of tracking research to monitor the reach and impact of advertising in relation to specific target audiences.

68. This emphasis was reflected in the communication strategy agreed by the Attorney-General on 18 May 2004, which underpinned the conduct of the September 2004 campaign, and the development of the materials included in that campaign. The communication strategy notes that:

Market research will be used to refine the advertising concepts and public relations materials, and inform the media plan.

Bi-monthly tracking research will monitor the impact of the strategy on community attitudes, trends in community confidence and emerging issues. This will be supported by media monitoring and analysis.

69. This emphasis was also reflected in the 2005-06 communication strategy, approved by the Attorney-General on 7 August 2005. However, the 2005-06 strategy was expanded to include a provision for benchmarking and more general analysis including analysis of call numbers to the Hotline to provide an insight into the effectiveness of the strategy. It was considered that media tracking and analysis would assist in monitoring community attitudes, trends in community confidence and emerging issues. Feedback through information and formal networks, such as the National Counter Terrorism Committee was also expected to be used to assess the impact of the strategy. The 2005-06 strategy anticipated that the tracking studies and other feedback would provide guidance on the direction of the development of a communications strategy for 2006-07.

70. The use of tracking data is a widespread and important element of the development and ongoing administration of advertising campaigns. However, tracking research is not an effective substitute for a sound analysis of the overall performance of the initiative. In particular, it does not:

- address issues of basic campaign formulation and implementation, such as the appropriateness of campaign messages, the overall level of investment in the campaign, or the balance between different streams of activities within the campaign; or
- provide any insight on the effectiveness of the administration of the individual components of the campaign, including the design, implementation and management of contractual relationships.

71. The ANAO found no planning in place to undertake any formal evaluation of the overall performance of the initiative or to evaluate the contract performance, nor evidence that structured evaluations of this nature had been undertaken. On 31 July 2008, AGD advised the ANAO that the department undertakes regular analysis of callers to the National Security Hotline and considers feedback from a variety of sources to gain insights into campaign effectiveness, but that this analysis had not to date been assembled into a single strategic assessment document. AGD agreed such a document would be useful and was considering how this might be best undertaken for the current phase of the campaign.

Appendix 4: The PHI Campaign – Health

This Appendix provides an overview of the Department of Health and Ageing's administration of the Private Health Insurance Campaign, which commenced on April 2007 and ran through to 30 June 2007.

Introduction

1. In April 2006, Cabinet approved a number of changes to private health insurance (PHI) arrangements and agreed to a general marketing campaign, jointly funded with industry, focusing on the benefits of PHI.¹⁴⁹ The campaign would commence in April 2007, in conjunction with reforms to PHI arrangements.

2. Funding for the campaign was provided in the 2006–07 Budget. The Government allocated a total of \$52.1 million over four years through the *Private health insurance – enhanced choices* initiative, under which Health, the ATO, Medicare Australia and the Private Health Insurance Ombudsman would conduct campaigns to increase consumer awareness of the incentives and benefits associated with private health insurance.¹⁵⁰ This included \$18.0 million earmarked for the April 2007 PHI campaign.

Campaign Development and Delivery

3. In August 2006 the Department of Health and Ageing commenced the development of a communication program, comprising advertising and public relations activity, to describe the benefits of both existing and new Government PHI initiatives, and reinforce the value of private health cover to both individuals and the wider community.

4. On 31 August 2006, the Minister for Health and Ageing approved a research brief and a list (developed by the department in consultation with the GCU) of four possible research consultants.

5. The brief, and consultant list, were agreed by the MCGC on 6 September 2006 and following an evaluation conducted by the department, the preferred consultant, Open Mind, commenced work on 21 September 2006.

¹⁴⁹ JH06/0113 of 3 April 2006.

¹⁵⁰ Budget Paper No. 2 Budget Measures 2006–07, p. 278.

6. On 7 November 2006, the Minister approved a communications strategy (developed by Health and informed by the ongoing research activities) along with briefs for advertising, public relations and specialist support for advertising in languages other than English. The Minister also approved lists of potential consultants for these roles. The Minister was advised that developmental research had identified low levels of awareness of key elements of existing policy and it was recommended that Australians be reminded of these policies as well as informed of the proposed changes. The Minister was also advised that research had identified the need to reposition perceptions of the role of private health insurance in the overall health system as well as the Government's continued commitment to the public system.

7. The proposed strategy, consultant briefs and lists of possible public relations and creative agencies were approved by the MCGC on 14 November 2006.

8. Health conducted question and answer sessions for potential tenderers in Sydney on 16 and 17 November 2006, and sought written proposals from interested parties by 29 November 2006. Consultants presented their proposals to the department on 30 November and 1 December 2006.

9. Health formally evaluated all bids and referred the bids of the two top ranked advertising tenderers to an external adviser for an independent evaluation of the value for money of the proposed production strategies.¹⁵¹

10. On 5 February 2007, the Minister agreed with the recommendation of the department that the nominated firms be proposed to the MCGC for roles in the campaign, in particular that:

- Whybin / TBWA and George Patterson Y&R be considered for the advertising consultant role;
- Horizon Communication and Quay Connection be considered for the public relations consultant role; and
- Cultural Perspectives and Cultural Partners be considered as the specialist NESB adviser.

¹⁵¹ This service was provided by P3. P3 is an independent consulting company that provides marketers and advertisers with cost benchmarks, industry best practise knowledge, training and third party advice on how to maximise the value of their advertising budgets.

11. On 8 February 2007, the MCGC met to select the consultants for the PHI campaign. The MCGC was provided with the relevant briefs, the proposals from the consulting firms, the departmental evaluations and the independent price assessments of the advertising agency bids. The following selection decisions were made:

- Whybin / TBWA was selected as the advertising consultant (they were recommended by the department and the GCU advised the MCGC that there was potential to negotiate savings with the agency);
- Quay Connection was selected as the public relations consultant (the department advised that Quay was suitable but was not the preferred tender, with Horizon rated ahead on two key selection criteria – however, the GCU also advised the MCGC that Quay had provided an innovative proposal underpinned by substantial strategic thought); and
- Cultural Perspectives was chosen as the specialist NESB adviser (consistent with the departmental evaluation).

12. Negotiations with Whybin on potential cost reductions were undertaken by the GCU. Health were not invited to participate in the negotiations, notwithstanding their strong representation to the GCU on 14 February 2007 that the department be engaged in the negotiations with Whybin. Because the contract with the advertising agency was to be held by Health, which then had ultimate responsibility for the consequent expenditure, the department considered it important to negotiate the costs in partnership with the GCU.

13. PM&C responded to the request from Health on 15 February 2007 advising that the GCU had briefed Whybin in accordance with the instructions given by the MCGC. PM&C indicated that Whybin would provide a written response, which would be copied to Health. PM&C further indicated that the GCU would then brief the MCGC, which would then decide on whether to select Whybin or another agency.

14. On 19 February 2007, PM&C advised Health the engagement of Whybin could proceed.

15. Consultants commenced working with Health in February 2007. On 14 March 2007, the MCGC approved the proposed media buy and on 29 March 2007, Health authorised Universal McCann to book an eight week advertising campaign, to commence on 29 April 2007, at a cost of \$15 398 995.

On 17 April, the Minister approved a full suite of television, press, radio and internet advertising to go to MCGC for final approval. These were considered, and approved, by the MCGC on 18 April 2007. However, at this meeting, the MCGC requested substantive changes to the media buy, with the campaign duration reduced by 25 per cent and the intensity increased. The reasons for this decision were not documented at the time, although some former members of the MCGC have advised the ANAO, in the context of this audit (paragraph 2.4 of the report refers), of several reasons for this decision (see paragraph 36).

16. On 29 April 2007, the Minister launched the PHI communication campaign and mainstream advertising was commenced. Advertising concluded on 30 June 2007.

17. Table A 5 below summarises the principal contracts let under the PHI campaign and the associated expenditure.

Table A 5

Contractors for the PHI Campaign

Consultant	Role	Procurement Approach	Expenditure (inc GST)
Open Mind	Market Research	Select tender	\$528 531
Whybin	Creative	Select tender	\$2 069 287
Quay Connection	Public Relations	Select tender	\$73 162
Cultural Perspectives	NESB Consultant	Select tender	\$198 642
Universal McCann	Media Placement	Standing contract	\$15 060 361
Total			\$17 929 982

Source: ANAO analysis of Health documentation

Contract Administration – Issues

Procurement Planning

18. In addition to the development of an overall communications strategy, which was subject to Ministerial and MCGC scrutiny, Health also developed a comprehensive procurement plan establishing the broad parameters for the financial administration of the campaign. The procurement plan incorporated a risk assessment that highlighted the risk of policy and legislative breaches associated with consultants commencing work without appropriate spending agreements and contractual arrangements being in place.

Procurement Decisions and Contract Execution

19. Four contracts were let to support the delivery of the PHI campaign. All procurement decisions were based on select tender processes involving a structured and documented evaluation of bids against defined criteria, including value for money.

20. The research consultant commenced work prior to the department formally accepting the recommendations of the evaluation panel.¹⁵² The creative, public relations and NESB consultancy recommendations were endorsed by the respective evaluation panels in December 2006 and January 2007 before being endorsed by the Minister on 5 February 2007 and considered by MCGC on 8 February 2007.

21. In two of the three selections, the decision of the MCGC was consistent with the departmental evaluation. However, as noted in paragraph 11 above, the MCGC selected the second ranked public relations consultant. The reasons for the decision of the MCGC are not recorded. Consistent with its usual practice, the MCGC's official meeting record simply notes that the Committee approved the engagement of Quay Connection as the PR agency.

22. The official meeting record also makes no mention of any special conditions attached to the approval. However, Health records note that the MCGC was not convinced that some of the strategies outlined in Quay's proposal were appropriate for the campaign, and instructed Quay to revise its approach and negotiate an acceptable proposal with the department in line with the campaign brief.

23. Health experienced significant difficulties and ultimately failed to reach agreement on a proposal for the provision of services in line with the campaign brief. This matter is discussed further at paragraph 30 below.

24. Health was aware of, and formally documented, the substantive difficulties the department experienced in implementing contractual arrangements in support of the procurement decisions taken. Internal legal advice of 3 October 2006 relating to the engagement of Open Mind concluded that by allowing a consultant to commence work prior to execution of a contract, the department is exposed to risk both legally and from the

¹⁵² The research consultant commenced on 21 September 2006. The written evaluation was not formally endorsed by the evaluation panel until 3 October 2006 and was not subsequently put to the delegate until 16 October 2006.

perspective of the FMA Act, and is not acting consistently with the department's Procedural Rules.

25. On 25 January 2007, while seeking approval to the overall campaign procurement strategy, departmental officials noted that due to the time constraints imposed by the need to comply with MCGC requirements, there is a risk that the successful tenderers for the advertising, PR and NESB communications contract may need to commence work prior to formal execution of their contracts. If this were to occur, it would constitute a breach of both the Chief Executive Instructions and the FMA Act.¹⁵³

26. Table A 6 below indicates significant delays (of up to 154 days) between Health entering into agreements with contractors (indicated by their actual start date) and the approval of spending proposals to support those agreements. Health subsequently concluded that FMA Regulation 9 may not have been breached, on the grounds that the earlier agreement to the procurement plan, which included an in-principle financial agreement by the delegate, constituted an "overall financial authorisation ... in place before work started". However, it is not clear that the delegate had a sound basis at that time for determining that the proposal would make efficient and effective use of public money, as neither the scope nor cost of the individual components of the project had been clearly established and there had been no opportunity to consider potential tenderers. Furthermore, Health went on to explicitly approve spending proposals in relation to each of the procurements (as detailed in Table A 6) and so did not, at that time, consider the approval of the procurement plan to have been an adequate approval to spend public money.

¹⁵³ The FMA Act and associated regulations do not, of themselves, require the formal execution of written contracts prior to a consultant commencing work for an agency. However, an explicit approval of a proposal to spend money on the consultancy (pursuant to FMA Regulation 9) is required before the department enters into an agreement, written or otherwise, with a consultant under which the consultant will be paid money. The approval of the expenditure proposal does not have to be in writing but must be considered, as the approver must be satisfied, after making such inquiries as are reasonable, that prescribed conditions have been met. As such, approval results from a conscious decision making process. If approval is not in writing, the terms of the approval must be documented as soon as is practicable.

Table A 6**Contracting – Key dates**

Consultant	Commenced Work	FMA Regulation 9 Approval	Contract Execution
Open Mind	21 September 2006	16 October 2006	23 October 2006
Whybin / TBWA	14 February 2007	23 March 2007	28 March 2007
Quay Connection	9 February 2007	13 July 2007	13 August 2007
Cultural Perspectives	14 February 2007	8 June 2007	20 June 2007

Source: ANAO analysis of Health documents

27. On 25 August 2008, Health advised the ANAO that:

The department wishes to have on record that it identified specific strategies to treat the risks identified, and in particular, strategies to ensure that future contracts would meet FMA requirements.

In line with the department's control framework, compliance issues were identified in regular quarterly compliance monitoring done by the department (October-December 2006, January-March 2007, April-June 2007 reports) and action was taken to develop a process to have standard contracts signed before the commencement of work by contractors. With the changes to the arrangements for government communication campaigns, combined with the rigorous internal compliance measures taken by the department, recurring problems with future advertising contracts are not anticipated.

28. The delay in contracting with Quay Connection was largely due to the substantial difficulties experienced by Health in reaching agreement over the scope of the activities to be undertaken by Quay Connection.

29. Quay commenced work shortly after the MCGC decision of 8 February 2007 that they would be the project's public relations consultant. While neither the basis for the decision nor any special conditions were recorded by the GCU, Health records indicate that despite selecting Quay in place of Health's recommended tenderer, the MCGC wanted Quay to review their strategy and reach agreement with Health over the provision of a set of services different from those proposed to the committee.

30. While Health agreed with Quay on a number of defined tasks that could be progressed, Quay and Health were unable to reach final agreement on an overall proposal and budget until May, at which time senior Health officials first raised the option of terminating the arrangement rather than proceeding with the agreed program of activities.

31. On 15 June 2007, Health and Quay agreed that Quay would not undertake any new work on the Private Health Insurance Campaign. Health proceeded to work with Quay to agree on the work undertaken to date and determine appropriate remuneration in respect of that work. A formal contract was executed on 13 August 2007, covering work already completed, and following the submission of a complying activity report and invoice by Quay, payment was made in late November 2007.

Contract Extension and Amendment

32. Health negotiated numerous adjustments to their contract with Open Mind to accommodate emerging requirements for additional market research and tracking. The variations are detailed in Table A 7 below.

Table A 7

Contract variations – Health and Open Mind

Variation signed	Subject	Value	Expenditure Approval (Reg 9)	Duration
30/11/06	Concept Testing A	\$94 930	29/11/06	November 2006 to April 2007
06/02/07	Concept Testing A	no additional cost	not required	no change
07/03/07	Concept Testing A	no additional cost	not required	no change
14/03/07	Concept Testing B	\$65 340	07/03/07	February 2007 to April 2007
18/05/07	Benchmarking and Tracking	\$75 896.50	09/05/07	17 April to 31 July 2007

Source: ANAO analysis of Health documents

33. Each of the variations was supported by an assessment of the work to be undertaken and a documented approval of a proposal to spend money exists to support each variation. However, it is clear in relation to the 14 March and 18 May variations, that the new work was commenced prior to the approval of the expenditure proposal and prior to the execution of the associated contract variation.

34. The contract with Cultural Perspectives was varied on two occasions (20 August 2007 and 14 September 2007) in relation to the timing of key deliverables. No change to expenditure or contract scope was made.

The Media Buy

35. On 29 March 2007, the department approved expenditure of up to \$15 991 775 (GST inclusive) for an advertising campaign commencing 29 April 2007 and running through to 30 June 2007. The campaign included television, newspaper, magazines, radio, digital, NESB, Indigenous and print handicapped components. The proposed media plan had been approved by the MCGC on 14 March 2007.

36. On 18 April 2007, Health went to the MCGC seeking final approval of all creative materials and related documents. While the MCGC agreed to the material proceeding to production, it asked for a significant revision to the timing of the television campaign. The TV campaign was reduced from nine weeks to six weeks, with the intensity of advertising increased markedly so that overall expenditure was maintained. Although no reasons for this decision were recorded at the time, a submission by some former members of the MCGC, provided in the context of this audit (see paragraph 2.4 of the report), advised that the Committee felt a nine week campaign was too long for a number of reasons. They considered a shorter, more intensive campaign would be less likely to be lost (on the public) against the background of other private sector advertising and would be able to be concluded before 30 June, increasing the opportunity for persons to gain the proposed tax benefit for the 2006–07 taxation year. Further the Committee anticipated that scheduling issues would arise from the proposed communication initiatives which were to flow from the May Federal Budget. The requested changes required a marked increase in weekly activity and, being made only eight days prior to the campaign launch, created significant challenges for the Government's media buying agency, Universal McCann. The new media plan was not resubmitted to the departmental delegate for approval of the revised activity levels.

37. Advertising commenced on schedule but concerns regarding delivery quickly emerged. Health advised ANAO on 25 August 2008 that the department had, on 2 and 3 May 2007, emailed UM seeking clarification in relation to mistakes in the planning and execution of the media buy and that there were significant telephone and email exchanges with UM and the GCU in an effort to resolve these issues.

38. On 10 May 2007, UM wrote to Health responding to areas of concern which had been identified by the department, including commercials appearing up to two weeks ahead of schedule and general performance in the first week. Departmental annotation of the client booking report (which

described media activity for the first week of the campaign) indicates Health had significant reservations regarding the appropriateness of the media buy, principally regarding a lack of spots in quality prime time programs.

39. On 11 May 2007, Health again wrote to UM to outline areas of concern and to seek replacement advertising and compensation. Health advised UM of a number of issues that it believed may have impacted on the campaign and its overall effectiveness, including that:

- 45 second spots had been booked in the first three days of the campaign, despite an agreement to air only the 60 second commercials at that time and, despite agreements reached at an emergency meeting between UM and the department on Saturday 28 April, some 45 second spots continued to air in a range of markets during the critical early stage of the campaign;
- particular advertisements were despatched and aired numerous times in all markets despite being specifically scheduled to run much later in the campaign, in conjunction with other planned activities, while another commercial aired late; and
- the campaign performance for the first week barely reached 50 per cent of target TARPs for the 45 second commercials, and relied heavily upon Adelaide and Perth markets for the overall numbers, rather than the crucial Eastern seaboard audience.

40. Notwithstanding concerns regarding the delivery of agreed advertising, on 30 June 2007 Health approved an initial payment to UM, for media placements up to 31 May 2007, of \$4 880 743.66.

41. Assurance regarding the delivery of contracted advertising services is provided by the campaign media placement agency. Other than the direct observations of departmental staff, this constitutes the only mechanism in place for departments to assure themselves of the delivery of services prior to the payment of accounts. Health, having already conveyed its concerns regarding the proper placement of advertisements for this campaign, contacted UM on 11 July 2007 to express reservations regarding the provision of performance reports, noting that the department required confirmed proof that all advertisements ran as stated, given the problems experienced with the first month of the campaign.

42. Departmental documents indicate Health remained concerned in regard to whether certain advertisements were submitted in accordance with the media plan and whether previous failures in respect of television advertising had been rectified as agreed. Health also sought confirmation of the placement of some magazine and metropolitan print advertising. However, on 11 July, Health officials were advised by UM that UM would incur an interest bill potentially totalling \$92 000 per month if Health did not pay outstanding invoices by 12 July, as UM would be required to “take a loan to cover the money they owe to media agencies”.

43. Payment to UM of \$8 934 476.20 was approved on 12 July 2007, although the delegate was advised that:

It may also be appropriate for us to hold a discussion with (official) on whether the department is obligated to make a payment for services under the terms of a 30 day contract (such as the one between the GCU and Universal McCann) where to do so would mean that payment would occur either before the service has been delivered, or prior to a determination being made on satisfactory service delivery.

44. On 13 February 2008, the ANAO sought clarification from Health as to the basis of the 12 July 2007 certification that the placement services had been fully delivered and whether the requests for specific assurances made by Health on 11 July 2007 had been met. In particular, the ANAO asked whether Health had been provided with the requested spot reports, metropolitan tear sheets or the overall final report. On 28 February 2008, Health advised the ANAO that no additional assurance had been received but that Health had nonetheless proceeded with payment.

Evaluation

45. Initial planning documents for this campaign did not include a framework for subsequent evaluation. Although campaign planning included provision for tracking research over the life of the campaign and for evaluating the impact of creative materials through market research, the evaluation framework did not include provision for a post-implementation evaluation of campaign administration and performance. On 25 August 2008, Health advised the ANAO that in planning advertising campaigns, the department routinely makes provision for evaluation of campaign effectiveness.

46. During the course of the audit, Health advised that an evaluation of the campaign had been initiated. While Health was unable to provide terms of

reference for the evaluation, the department did confirm on 25 August 2008 that the two year PHI Communications Campaign finished on 30 June 2008 and a process of evaluation of the campaign was currently underway, with a report expected to be completed later in 2008.

Appendix 5: The Workplace Relations Reform Campaigns – DEEWR

This Appendix provides an overview of the Department of Education, Employment and Workplace Relations' (DEEWR) ¹⁵⁴ administration of the Workplace Relations Reform Campaigns, which were conducted in 2005 and 2007.

Introduction

1. On 26 May 2005, the Prime Minister announced wide-ranging workplace reforms. The reforms would be implemented through legislation to be introduced into the Parliament before the end of 2005. The major aims of the legislative reforms were to create a national workplace relations system that would apply to a majority of Australia's employers and employees and to establish an independent body to set and adjust minimum and award classification wages, and minimum wages for defined classes of employees. The reform process was to be accompanied by a substantive communications campaign.
2. On 22 June 2005, the Minister for Employment and Workplace Relations approved the key elements of a two stage communications strategy.
 - The first phase entailed broad communication about the Government's proposed changes before the Bill was introduced into the parliament. Communication tools proposed included printed information kits, containing facts sheets and question and answers, and a dedicated website for obtaining information and submitting comments.
 - The second phase would entail educating employees and employers and would include a widespread multi-media advertising campaign to commence in February 2006 following the passage of legislation, aimed at communicating the changes and explaining the operations of the new system across the community.

¹⁵⁴ The Department of Education, Employment and Workplace Relations was established by the Administrative Arrangements Order issued following the November 2007 Federal election. It replaced the former Department of Education, and of Employment and Workplace Relations. The Department is referred to as the Department of Education, Employment and Workplace Relations (or DEEWR) throughout this report.

Campaign Development and Delivery

3. The proposed communication strategy for the 2005 Workplace Relations Reform campaign was put to the MCGC on 5 July 2005 after which substantial changes were made to the proposed strategy. The engagement of consultants was accelerated, an initial round of non-campaign print and radio advertising was developed for launch within days, and the development of a mass media campaign to be run in advance of the introduction of legislation to the Parliament was initiated. The Minister for Employment and Workplace Relations wrote to the Prime Minister on 8 July 2005 seeking funding of \$5 million for “a preparatory phase of the communications campaign.”

4. The initial round of media placements involving radio and press advertisements commenced on 9 July 2005 and ceased on 24 July 2005. These advertisements were developed by the GCU with the assistance of Brandmark Consulting (Brandmark) and in consultation with DEEWR on technical matters.¹⁵⁵ They were placed as non-campaign advertisements through the Commonwealth’s non-campaign master media placement agency, HMA, at a total cost of \$2 936 135 (including GST). Brandmark subsequently invoiced the government for \$46 320 (including GST) in respect of services provided. DEEWR advised the ANAO on 10 September 2008 that:

The department had no role in the development of these advertisements other than checking the content for technical accuracy the day before they first appeared in the print media.

5. Three consultant firms were engaged to work on the development of the campaign:

- Jackson Wells Morris were selected by the MCGC on 13 July 2005 for public relations and issues management;
- Colmar Brunton were selected by DEEWR on 25 July 2005 to undertake developmental and evaluative research; and
- Dewey & Horton were selected by the MCGC on 9 August 2005 for creative concept development and production.

¹⁵⁵ The Senate Finance and Public Administration Committee were advised on 31 October 2005 that HMA Blaze undertook the production and placement of the advertisement (Hansard F&PA 98, 31 October 2005). On 29 February 2008, the ANAO were advised by DEEWR that special assistance in the production of the advertisements was provided by Brandmark.

6. On 28 July 2005, departmental officials recorded the terms of an approval, given on 8 July 2005, to expend up to \$5 million for workplace relations reform advertising. The record of approval does not identify potential contractors, the scope of work to be undertaken or the possible cost of any of the major project elements but the delegate certified that the expenditure “will make efficient and effective use of public money”.¹⁵⁶

7. The Minister for Employment and Workplace Relations again wrote to the Prime Minister on 8 August, seeking funds of \$37.9 million (excluding GST) for the initial phase of the campaign. The Prime Minister responded on 21 September 2005 agreeing to additional funds up to a maximum of \$34.9 million, excluding GST.

8. DEEWR commissioned the development and production of a range of supporting materials and services,¹⁵⁷ including some by direct sourcing under standing contracts and some through subcontracting arrangements overseen by Dewey & Horton. Television, radio and print advertisements commenced in the week beginning 9 October 2005.¹⁵⁸

9. On 13 October 2005, the Prime Minister approved an additional \$20.1 million (excluding GST) for additional media placement costs, additional copies of the booklet, additional tracking research and increased call centre capacity. The media buy was increased from \$25 965 019 to \$40 412 358.22 (inc GST).

10. Television, radio and print advertising ceased on 30 October 2005.

11. The Workplace Relations Amendment (Work Choices) Bill 2005, amending the *Workplace Relations Act 1996*, was introduced into the House of Representatives on 2 November 2005. The Bill was referred to the Senate Education, Employment and Workplace Relations Committee for

¹⁵⁶ On 10 September 2008, DEEWR advised the ANAO that this approval was considered by DEEWR to constitute a record of the approval of spending in relation to the subsequent contracts (and in some instances, contract variations) with Jackson Wells Morris, Dewey & Horton and Colmar Brunton. None of the consultants had been selected, nor the scope of their work defined, at the time of the approval on 8 July 2005. At the same time, DEEWR identified other spending approvals, or records of spending approvals, in relation to the three contractors given after 8 July 2005, and specifically identifying the proposed contractors.

¹⁵⁷ A call centre was also established to handle enquiries regarding the proposed legislation but the implementation and administration of this arrangement is outside of the scope of this audit.

¹⁵⁸ Although the media buy was approved by DEEWR, DEEWR advised the ANAO on 10 September 2008 that “based on email records held by departmental officials, the precise details of the media placement (e.g. TARPS – Target Audience Rating Points) were decisions discussed and settled directly between Brandmark and the MCGC”.

consideration and passed by Parliament on 8 December 2005. It received royal assent on 14 December 2005.

12. Following the passage of the bill, DEEWR implemented an education programme targeting employers and employees but not including the broader multi-media campaign elements previously proposed. Many of the activities were conducted through to the end of June 2006. The Employer Advisor Program, which was a central component of the communications activities, continued through to December 2007.

13. Tracking research was undertaken over the life of the campaign, however no other evaluation of the campaign outcomes nor of the strategy or methodology was undertaken by DEEWR.

14. The MCGC met on 22 occasions in relation to the campaign and twice considered matters out of session. Fourteen of the meetings involved a review of the creative materials. A summary of the structure of consultancy arrangements and overall expenditure is at Table A 8 below.

Table A 8

Consultancy arrangements - 2005 Workplace Relations Reform Campaign

Function	Consultant	Expenditure (inc GST)
Research	Colmar Brunton	\$2 181 425.64
Public Relations	Jackson Wells Morris Subcontracting arrangements with Stooke Consulting Group and Wingali P/L	\$815 244.20
Creative Development and Production	Dewey & Horton, Brandmark, JS McMillan ¹⁵⁹ , NILS, Aadake Worldwide Subcontracting arrangements: Brandmark / iPrint.	\$5 883 194.19
Media Placement	UM (campaign)	\$37 454 621.09
Media Placement	HMA (non-campaign)	\$2 936 135.07
	TOTAL	\$49 270 620.19

Source: ANAO analysis of DEEWR documents. Campaign media placement expenditure advised by DEEWR on 10 September 2008.

¹⁵⁹ Printing undertaken by JS McMillan was undertaken under an existing departmental contract. JS McMillan produced 1 590 000 16 page booklets, including 450 000 booklets which were later destroyed.

2007 – The Fairness Test, the Workplace Ombudsman and the Workplace Authority

15. In early April 2007, at the request of the office of the Minister for Employment and Workplace Relations, DEEWR engaged a research consultant to “explore the potential need for a campaign and what form that may take”. From initial request through to DEEWR providing a letter of engagement to the consultant took less than 10 hours, including the GCU gaining out of session agreement to the proposal from the MCGC. No research brief was prepared by the department.

16. On 3 May 2007, the Minister for Employment and Workplace Relations sought the Prime Minister’s approval to a communication campaign “to inform and educate the public about the Australian workplace relations system”. Also on 3 May, DEEWR consulted with the GCU over a public relations brief and possible public relations consultants, and a creative brief and possible creative advertising consultants.

17. The Prime Minister announced changes in the *Workplace Relations Act* 1996 on 4 May 2007, including the introduction of an assessment framework for new Australian Workplace Agreements, and the establishment of a Workplace Authority (in place of the Office of the Employment Advocate) and a Workplace Ombudsman (in place of the Office of Workplace Services). The Prime Minister also announced the Government’s intention to proceed with a workplace relations advertising campaign, to be run in conjunction with the proposed legislative amendments.

18. On 5 and 6 May 2007, advertisements appeared in the national press under the heading “*A stronger safety net for working Australians*”. The advertising was placed as non-campaign advertising through the Government’s non-campaign media placement agency HMA, at a total cost of \$640 000.¹⁶⁰

¹⁶⁰ On 22 May 2007, PM&C officials advised the Senate Finance and Public Administration Committee that the placement of the advertisements was initiated by the Prime Minister’s Office, who contacted the GCU on 4 May 2007 to advise the GCU to “commence preparation, in cooperation with DEEWR, for non-campaign advertising on 5 and 6 May.” The advertisements were drafted by the GCU, in consultation with DEEWR and the Prime Minister’s Office. The Committee were advised at that time that the cost of the advertising was \$472 195 (Senate Finance and Public Administration Committee Hansard 22 May 2007, pp. 30-36). On 10 September 2008, DEEWR advised the ANAO that expenditure for this element of the campaign was \$639 971.52 (inc GST), although DEEWR also advised that they were unable to locate a signed approval for either the placement of the advertisements or the related expenditure.

19. Public relations and media production companies were selected on 9 May 2007 and the first round of television, newspaper and radio advertising ran from 20 May 2007 to 28 May 2007. The media placement cost for this week of advertising was \$3 691 000 (inclusive of GST).

20. On 28 May 2007 the Prime Minister agreed to additional funding of \$5 million for 2006–07, to cover newspaper advertisements on the weekend following the 4 May announcements and the further communications activities conducted in the week commencing 20 May 2007.¹⁶¹

21. The MCGC approved the appointment of a specialist radio consultant on 18 June 2007 following disappointing results from the initial radio material. Given the urgency of the requirement and the limited availability of appropriate specialist contractors, DEEWR, in consultation with the GCU, decided to sole source a specialist radio consultant.¹⁶²

22. Following the first round of advertising, DEEWR took a strategy to the MCGC for further advertising from July through to mid-October 2007. In briefing the MCGC, the GCU noted:

The GCU agrees that using mass media sparingly in the second phase is an appropriate strategy, given the advice from Open Mind that a lighter touch is required, especially for television advertising.

23. On 4 July 2007, a second phase of advertising, with print and radio advertisements, was commenced. Television advertising recommenced on 15 July 2007 and, apart from one week (the week commencing 19 August) continued to 13 October 2007.

24. On 2 August 2007, the Prime Minister agreed to the provision of funding totalling \$51.8 million, although expressing the hope that the amount would be “in full or in part absorbed”.

25. The MCGC approved, on 22 August 2007, the appointment of a specialist consultant to assist with preparation of advertising in languages

¹⁶¹ DEEWR advised the ANAO on 29 February 2008 that expenditure in relation to this campaign that was incurred in 2006–07 was met from departmental appropriations while expenditure in 2007–08 was met from administered appropriations. DEEWR further advised on 10 September 2008 that the \$5 million approved for 2006–07 was transferred to DEEWR from an appropriation previously made to the Office of Workplace Services / Office of the Employee Advocate.

¹⁶² On 10 September 2008, DEEWR advised the ANAO that the department first raised the need for a specialist radio consultant with the Minister’s Office on 3 June 2007 after consideration of the draft radio materials prepared by the primary creative advertising consultant. The appointment of Eardrum was approved by the MCGC on 18 June 2007.

other than English. DEEWR advised the ANAO on 10 September 2008 that the GCU had recommended Cultural Partners Australia for single source selection given the workload pressures of other NESB-specialist consultants on the GCU panel.

26. On 17 September 2007, the Prime Minister was advised by the portfolio Minister that “the funding previously agreed will be fully expended”. The Prime Minister subsequently agreed to provide DEEWR with a further \$9.3 million (excluding GST), to allow the campaign to continue.

27. Television advertising concluded on 13 October 2007. The last four weeks of the campaign saw a doubling in the intensity of television advertising compared to the May phase of television advertising (six hundred target audience rating points (TARPS – see Glossary) up from three hundred TARPS a week in May).

28. The overall campaign media placement cost for the second phase exceeded \$55 500 000 (including GST).

29. A summary of the structure of consultancy arrangements and overall expenditure is at Table A 9 below.

Table A 9

Consultancy arrangements - 2007 Workplace Relations Reform Campaign

Function	Contractors	Expenditure (inc GST)
Research	Open Mind	\$1 640 269.44
Public Relations	Gavin Anderson	\$353 695.18
Creative Development and Production	Whybin / TWA	\$4 859 553.75
Campaign Media Placement	Universal McCann	\$55 502 814.13
Non-Campaign Media Placement	HMA Blaze	\$639 971.52
Radio	Eardrum	\$685 732.91
NESB	Cultural partners	\$285 284.34
	TOTAL	\$63 967 321.37

Source: ANAO analysis of DEEWR documents.

30. The MCGC met on at least 24 occasions to consider the 2007 campaign. While three meetings focused on briefs and agency selection, the majority were concerned with the preparation and placement of the creative materials and the preparation of new creative materials over the course of the campaign.

Following the resumption of advertising in July 2007, the MCGC approved at least seven revisions to the media plan, the last on 19 September 2007.

31. As previously agreed by ministers, \$60.754 million (GST exclusive) was provided in the 2007-08 Portfolio Additional Estimates process to cover expenditure on the communication campaign.

32. Outside of the tracking research that was undertaken over the life of the campaign, no evaluation of the campaign strategy or methodology has been undertaken by the department.

Contract Administration – Issues

Procurement Planning

33. Advance planning of procurement strategies and processes allows for the early identification of risks and the development of appropriate mitigation responses.

34. The overarching communications strategy, required under the administrative arrangements applying up to November 2007, focused primarily on the message to be delivered, the target audience and the factors impacting on the ability to effectively communicate the message. It did not generally address factors bearing on procurement strategy or processes. In particular, the strategy did not examine the risks or uncertainties that might impact on campaign development and delivery, nor consider the possible use of more flexible or innovative strategies to effectively manage uncertainty.

35. DEEWR's ability to effectively plan for the 2005 and 2007 Workplace Relations Reform campaigns was complicated by the external drivers leading to major changes in campaign strategy and timing, and DEEWR experienced considerable difficulty in applying past procurement practices in the uncertain environment it encountered.

36. In 2005, DEEWR's proposed campaign was significantly accelerated following the MCGC's initial consideration of the campaign on 5 July 2005. DEEWR, with Ministerial agreement, had planned a mass media campaign commencing in early 2006, allowing sufficient time for standard tendering and assessment processes to be followed. Following consideration by the MCGC, the campaign was accelerated with initial advertising in July 2005 and a major multimedia campaign commencing in October 2005. The submission to the ANAO by some of the former members of the MCGC (see paragraph 2.4 of the

report) advised that the decision to expedite the timing of the campaign was made by the (EEWR) Minister and Prime Minister and it was then incumbent on the Committee to coordinate that decision. Public relations and creative agencies were selected by MCGC in July and August 2005, not on the basis of documented advice from officials but rather on the basis of proposals made by the tenderers directly to the MCGC.¹⁶³

37. In 2007, DEEWR initiated research in advance of the Prime Minister announcing the key changes which were to become the subject of the campaign. Although DEEWR advised that they were briefed in advance on the proposed changes and the need to conduct research into current attitudes prior to initiating research, no research brief was prepared to support the engagement of the research consultant and there was no clear and early articulation of the campaign strategy.

38. There is no evidence of DEEWR, in the early stages of the 2007 campaign, undertaking a systematic, documented assessment of risks associated with the new campaign or otherwise formally considering the lessons learnt from the administration of the 2005 campaign.

39. In summary, the initiation and administration of the 2005 and 2007 campaigns were particularly challenging. The overall governance framework created significant issues for departments (as discussed in Chapter 2) which were exacerbated by the speed of campaign development and the active participation of the MCGC in the administrative model for campaign advertising that applied at the time. However, having faced significant challenges in 2005, the department in 2007 should have been better placed to develop and implement strategies to support the effective administration of a campaign in similarly challenging circumstances.

Procurement Decisions

40. At least eight principal contracts were let over the course of the Workplace Relations Reform campaigns – three in 2005 and a further five in 2007. The consultants and key aspects of the procurement decisions are summarised at Table A 10 below.

¹⁶³ DEEWR confirmed to the ANAO on 10 September 2008 that there was no opportunity for prior documented assessment of proposals by officials in these cases although departmental officials were present at the MCGC meetings where consultant selection decisions were made.

Table A 10

The Workplace Relations Reform Campaigns: Key Procurement Decisions

Consultant	Function	Date of Decision	MCGC selected tender?	Selection Method	Bids considered	Assessment of proposals documented	Reasons for decision documented
Colmar Brunton	Research	25/07/05	No	Select Tender	4	Yes	Yes
Jackson Wells Morris	Public Relations	13/7/05	Yes	Select Tender	2	No	No
Dewey & Horton	Creative	9/8/05	Yes	Select Tender	4	No	No
Open Mind	Research	3/4/07	No	Single Source	n/a	No	No
Gavin Anderson	Public Relations	9/5/07	Yes	Select Tender	3	No	No
Whybin	Creative	9/5/07	Yes	Select Tender	2	No	No
Eardrum	Radio	18/6/07	Yes	Single Source	n/a	No	No
Cultural Partners	NESB	22/8/07	Yes	Single Source	n/a	No	No

Source: ANAO analysis of DEEWR documentation

41. In addition another consulting firm, Brandmark, was engaged to work on the print and radio elements delivered in July 2005. The basis for the initial engagement is discussed further below at paragraphs 49 to 53. Brandmark were also subsequently subcontracted by one of the principal contractors to work on the remaining campaign elements. This arrangement is discussed at paragraphs 87 to 90.

Consultant Selection – 2005

Research

42. The process for the selection of Colmar Brunton as the research consultant for the initial campaign conformed broadly with the usual practices for the engagement of research consultants. Following approval by the portfolio Minister, the MCGC considered and approved the research brief and

tender list out of session on 7 July 2005. Proposals were sought, by 18 July 2005, from five potential contractors (one subsequently withdrew) and a 'question and answer' session for tenders was held by DEEWR on 11 July 2005. The proposals were assessed by an evaluation committee comprising DEEWR officials and a representative of the GCU; their recommendation, and an accompanying proposal to spend money, was approved on 25 July 2005. The final decision and the reasons underpinning that decision are well documented.

Advertising and Public Relations

43. In response to the Government's decision to bring forward the 2005 advertising campaign (relative to the timetable originally proposed by DEEWR), an accelerated and abbreviated selection process was implemented for the public relations and advertising consultants. Tenderers pitched directly to the MCGC and written proposals were not provided to the department in advance of MCGC meetings.

44. There was no documented assessment of proposals or short listing of tenderers by officials, either in DEEWR or PM&C, and no written advice on the relative merits of the proposals, including their value for money, was provided by officials to the MCGC. DEEWR advised the ANAO on 10 September 2008 that the timing of the final presentations to MCGC did not provide any scope for a documented assessment of the proposal by officials but that departmental and GCU officials attended the MCGC sessions and considered all pitches from creative and public relations consultants. DEEWR also indicated that, while departmental officials were involved in discussions regarding the merits of individual agency pitches, the decision to select the consultant was made by the MCGC.

45. The public relations brief was provided to four companies, two of whom subsequently withdrew. Two agencies pitched to the MCGC meeting of 12 July 2005. The Committee deferred its selection of a public relations consultant to allow one of the agencies (JWM) to clarify the ongoing availability of key personnel. A letter confirming the ongoing availability of current specialist staff to continue work on the campaign was provided on 13 July 2005 after which the MCGC selected JWM as the public relations consultant for the campaign.

46. The advertising brief was provided to four firms, who all pitched to the MCGC meeting of 28 July 2005. The MCGC invited two firms to return with

more developed creative concepts. These two firms returned to pitch to the MCGC on 8 August 2005 (following briefing on research findings) and on 9 August 2005 the MCGC selected Dewey & Horton as the preferred advertising consultant.

47. The above processes, documented by departments at the time, is at variance with evidence given to the Senate Finance and Public Affairs Committee, which on 31 October 2005, asked PM&C a number of questions in relation to the selection processes adopted for the public relations and advertising consultants employed on the Workplace Relations Reform campaign.¹⁶⁴ Specifically, the Committee was informed that:

- the public relations brief was sent to four firms, and that based on responses to the brief, the number of consultants was narrowed to two by DEEWR and PM&C officials, and the two remaining firms then pitched to the MCGC who, on 13 July 2005, selected the public relations firm for the campaign; and
- the advertising brief was provided to four firms, short-listing was done by officials, two agencies presented to the MCGC and a creative advertising firm for the campaign was selected on 9 August.

48. DEEWR later reported that both the research and public relations contracts had been awarded following open tender processes.¹⁶⁵ DEEWR has since advised the ANAO that this was the result of a processing error which has since been addressed by the department.

Brandmark Consulting (Brandmark)

49. In July 2005, Brandmark provided consultancy services in relation to the preparation of press advertisements placed in the early stages of the Workplace Relations Reform campaign.

50. In June 2006, the GCU advised DEEWR that, in July 2005, there was an urgent need to engage skills to coordinate the production of print advertising in relation to the Government's workplace reforms packages in response to the ACTU's media campaign. The GCU identified a specific individual from Brandmark as having these skills. At the time, the person was engaged by the Department of Human Services to assist in the development of

¹⁶⁴ Official Committee Hansard, Senate Finance and Public Administration Legislation Committee, 31 October 2005, pp. 91-94.

¹⁶⁵ DEWR *Annual Report*, 2005-06, p. 337.

communications for that department. In view of the need to prepare the advertising material in a very short time, it was GCU's advice that the person be temporarily released from DHS to allow them to assist DEEWR in the preparation and finalising of the advertising.

51. However, DEEWR advised the ANAO on 10 September 2008 that the department had no role in the development of the series of newspaper and radio advertisements run in July 2005 regarding the proposed workplace relations reforms, other than checking the content for technical accuracy on the day before the press advertisements first appeared. Further, DEEWR noted that it was not aware that Brandmark had worked on these advertisements until it received an invoice from Brandmark which was forwarded to the department in September 2005 by the office of the Minister for Employment and Workplace Relations. It was only after the GCU provided written confirmation of the engagement and DEEWR had received internal legal advice confirming that the Commonwealth was liable for the payment, that the department paid the invoice.

52. DEEWR subsequently paid Brandmark \$46 320 (including GST) for work over the period 3 July 2005 to 13 August 2005.

53. PM&C had primary responsibility for the preparation and placement of the July 2005 radio and press advertisements and were also primarily responsible for engaging Brandmark in the production process. However, the advertisements were placed as non-campaign advertisements, separate from and in advance of the broader Workplace Relations Reform campaign. Accordingly, when asked by the Senate Finance and Public Affairs Legislation Committee on 31 October 2005 whether any consultants or companies, other than the research consultant, the public relations consultant and the advertising consultant, had been contracted or engaged in relation to the campaign, PM&C advised the Committee that only those three firms had been engaged.¹⁶⁶

Printing and other services

54. In some instances, principal contractors used sub-contractors to assist with the delivery of services and the production of materials. These arrangements are discussed at paragraphs 79 to 91. DEEWR also utilised firms

¹⁶⁶ Official Committee Hansard, Senate Finance and Public Administration Legislation Committee, 31 October 2005, p. 94.

already contracted to the department to assist with the production of campaign materials. In particular:

- printing valued at \$839 099 was commissioned from JS McMillan under a standing contract (JS McMillan were the preferred print supplier for DEEWR under a contract that ran from 29 November 2004 to 31 March 2008); and
- document management and distribution services valued at \$77 554 were commissioned from Salmat, who were contracted to provide mail-house services to DEEWR from 1 June 2005 to 1 June 2008.

55. Translation and alternative format presentations for key documents were provided by the National Information and Library Service (services valued at \$26 827) and Aadake Worldwide (services valued at \$1 891).

Consultant Selection 2007

56. The selection of consultants for the 2007 campaign was, similar to the 2005 campaign, substantially truncated.

Research

57. The research consultant (Open Mind) was selected by the MCGC on 3 April 2007 in a non-competitive process. The selection process was completed, and a letter of engagement issued by the department, within 10 hours of the portfolio Minister's office requesting the department engage a research consultant. At that time, the department had not prepared a formal research brief nor otherwise documented the possible reasons for conducting a campaign. Rather, the consultant "was to explore the potential need for a campaign, and what form that may take".¹⁶⁷ Once the initial scope and cost of work had been settled between the department and the consultant, a departmental official approved expenditure on 13 April 2007 (more than a week after the consultant commenced work). The documentation put to the departmental delegate addressed neither the reasons for undertaking a non-competitive selection process, nor the requirement for the extreme urgency shown in engaging Open Mind.¹⁶⁸

¹⁶⁷ DEEWR advice to the ANAO 10 September 2008.

¹⁶⁸ The ANAO notes that Open Mind had been contracted by the Office of Workplace Services in April 2007, following a competitive tender process, to provide services closely related to those for which it was subsequently engaged by DEEWR.

Advertising and Public Relations

58. On 7 May 2007, the MCGC approved advertising and public relations briefs and consultant lists. DEEWR provided three firms with the public relations brief and two firms with the advertising brief and, on the same day and in conjunction with the GCU, conducted question and answer sessions for the potential tenderers. The firms pitched to the MCGC on 9 May 2007. On the basis of the pitches, and without any documented assessment of the proposals by officials, the MCGC selected Gavin Anderson as the public relations consultant and Whybin as the advertising consultant.

Radio

59. Although radio advertisements featured in the May 2007 launch of the Workplace Relations Reform campaign, the initial round of consultant selections did not include a specialist radio consultant. When DEEWR, following consultation with the GCU, took its strategy for advertising in the second half of 2007 to the MCGC on 18 June 2007, it sought the MCGC's agreement to the single sourcing of a specialist radio consultant, Eardrum Pty Ltd. The engagement of Eardrum without a competitive process was recommended to the MCGC by the GCU.¹⁶⁹

Advertising in languages other than English

60. On 22 August 2007, the MCGC agreed to the single selection of Cultural Partners as a specialist consultant to support advertising in languages other than English.

61. The MCGC were not briefed in advance on the proposal but, following consultation with the GCU, DEEWR tabled a brief to engage an appropriate specialist consultant at the 22 August meeting.¹⁷⁰ A project brief to define the nature and scope of the task was subsequently developed by DEEWR to provide a basis for agreeing on a program of activity and settling budgets with Cultural Partners.

¹⁶⁹ DEEWR advised the ANAO on 10 September 2008 that the proposal to engage a specialist radio consultant followed an initial assessment of the proposed radio advertisements prepared by the primary creative advertising consultant – see paragraph 21.

¹⁷⁰ DEEWR advised the ANAO on 10 September 2008 that the GCU recommended Cultural Partners Australia for single source selection owing to the workload pressures on a number of the GCU-listed NESB consultants – see paragraph 25.

Summary

62. The initial decision to engage Colmar Brunton in 2005 is supported by an initial task specification, a documented assessment of the efficiency and effectiveness of the suppliers being considered to undertake the task, and a clear recommendation to the departmental delegate.

63. The three remaining select tender decisions from the 2005 campaign are poorly documented. There is no documented assessment of the merits of the proposal put forward by the consultants, the value to the Commonwealth arising from the strategies they proposed or the considerations that were in the minds of the decision makers. DEEWR has advised that the department was unaware that Brandmark had worked on the initial non-campaign advertisements. Accordingly, DEEWR had no formal agreement with Brandmark relating to the brief period it worked on the early stages of the campaign, nor were PM&C able to provide DEEWR with any formal contemporaneous documentation in relation to the engagement.

64. There is also no documentation of the decision making process that underpinned the two abbreviated select tender processes conducted as part of the 2007 campaign. There is no documented assessment of the relative merits of the various tenderers or of the factors that were before the decision makers in each instance.

65. The three single select decisions undertaken pursuant to the 2007 campaign are similarly poorly documented. The decisions to proceed without a competitive selection process was in each case made by the MCGC with the department required to settle the terms of the engagement, including the principal terms governing whether the agreement represents an efficient and effective use of public money. In only one of the three single select decisions (the decision to engage Open Mind), has the department documented its consideration of the merits of the engagement. However, in that instance, the submission to the delegate outlining the scope of work to be undertaken was not made until 9 days after work had commenced and, while it noted that “the department is responsible for this procurement and for obtaining value for money”, the submission drew no specific conclusions regarding the efficiency and effectiveness of the use of public money, rather noting that the proposed scope and approach was reasonable and appropriate to the need.

66. The ANAO acknowledges that departments often faced a tension between the need for a timely response to the priorities and decisions of the

MCGC and the need to ensure that the department's procurement actions and associated contract management were consistent with the legislative framework and government procurement policy. These pressures were highlighted by DEEWR on 10 September 2008 when it advised the ANAO that:

The contracted timelines and processes imposed by the MCGC and administered by the GCU meant the department was often required to execute contracts after work instructions had been given at MCGC meetings. In these instances, the department recorded the terms of the approach in a document as soon as practicable after giving the approval ... Further ... the pace at which the 2005 workplace relations campaign evolved needs to be acknowledged with MCGC consistently requesting consultants to undertake further or additional work.

Financial Approvals and Contract Execution

67. The financial framework requires that a person must not enter into an agreement under which public money is, or may become payable, unless a proposal to spend public money has been approved under Regulation 9 and, if necessary, in accordance with Regulation 10. In this context, an "agreement" for the purposes of this provision would include a formal contract, for example between a department on behalf of the Commonwealth, and a public relations firm. However, an oral agreement between a department and a firm under which the firm would commence work in anticipation of entering into a formal contract would equally be captured.

68. DEEWR have advised the ANAO that they "considered quotes and costings from consultants before approving any work" and gave consideration to whether the proposals led to efficient and effective use of public money before agreement with firms that they should commence work on a particular project, or element of a project. At times, this occurred without a formal written contract in place, or was related to matters that were outside of the scope of any existing formal contract. DEEWR have also advised that where the MCGC or GCU provided advice directly to consultants following their selection or requested consultants to undertake further or additional work, this may have "given rise to an unwritten contract".

69. As noted at paragraph 67, agreements of this nature should not be entered into unless a proposal to spend public money has been approved under FMA Regulation 9. While the difficulty in clearly identifying the statutory decision maker in respect of the expenditure of public money on advertising is discussed in Chapter 2 of the report, DEEWR has, in relation to

each of the principal contractual arrangements for the Workplace Relations Reform campaigns, identified what the department understood at the time to be the relevant expenditure approval.

70. Table A 11 compares the commencement dates of the consultants (that is, the date on which it is clear that an agreement with the department was in place) with the date on which the department approved expenditure, or where this has not been explicitly documented, the date of issue of the relevant purchase order.¹⁷¹

71. In all cases other than those involving Colmar Brunton and Whybin, it is not clear that a proposal to spend public money had been approved prior to the department entering into an agreement under which public money was, or would become, payable.

Table A 11

Is there evidence of spending approval prior to entering into a contract or agreement?

Contractor	Date of documented departmental spending approval	Consultant Commencement Date
Colmar Brunton	25 July 2005	1 August 2005
Jackson Wells Morris	3 August 2005	20 July 2005
Dewey & Horton	29 September 2005	15 August 2005
Open Mind	13 April 2007	4 April 2007
Gavin Anderson	28 May 2007	9 May 2007
Whybin / TBWA	10 May 2007	10 May 2007
Eardrum	6 July 2007	22 June 2007
Cultural Partners	7 September 2007	6 September 2007

Source: ANAO analysis of DEEWR documentation

Note: The ANAO was advised by DEEWR on 10 September 2008 that approval to spend up to \$5 million on workplace relations reform advertising had been given by the delegate on 28 July 2005 and that this expenditure should be considered as supporting the Colmar Brunton, Jackson Wells Morris and Dewey & Horton contracts, although earlier and later expenditure approvals specifically in support of these contracts has also been provided. Although this approval was provided in advance of the selection of contractors and the definition of work, the delegate was explicit in certifying that the expenditure "will make efficient and effective use of public money".

¹⁷¹ As discussed in Chapter 3, where the departmental official was constrained in relation to a key matter going to the efficiency and effectiveness of expenditure under the spending proposal (for example by a direction from the MCGC on who to contract with), it is not clear under the decision making model in place at that time that the official should be properly identified as the approver for the purposes of FMA Regulation 9.

72. The extent of the potential Commonwealth liability established by a contract or agreement may not become apparent until such time as the contract is formalised in writing between the parties. If the potential liability exceeds the spending approval, action should be taken to seek a revised approval before proceeding to enter into the agreement. An examination of fee caps specified in the contracts along with the relevant prior approvals, detailed at Table A 12, suggests that for only two of the eight principal contracts was the existing financial approval adequate to cover the potential financial liability being accepted by the Commonwealth by entering into the contract.

73. The rapid pace at which advertising campaigns are sometimes executed can create substantive difficulties for agencies in formally executing contracts prior to consultants commencing work. Past practice suggests departments and consultants have reached undocumented agreements under which work is initiated, while seeking to formalise the arrangements as soon as is practicable.

Table A 12

Spending approval limit at time of original contract execution

Contractor	Date of Contract Execution	Contractual Fee Cap	Documented spending approval at date of execution (inc GST)
Colmar Brunton	6 October 2005	\$1 661 499	\$994 360
Jackson Wells Morris	25 July 2005	\$250 000	nil
Dewey & Horton	30 November 2005	\$2 612 942	\$2 592 892
Open Mind	21 August 2007	\$387 647	\$1 650 000
Gavin Anderson	28 June 2007	\$440 000	\$175 000
Whybin / TBWA	4 September 2007	\$4 052 090	\$2 210 000
Eardrum	12 September 2007	\$869 137	\$869 137
Cultural Partners	27 September 2007	\$292 006	\$284 526

Source: ANAO analysis of DEEWR documentation

74. As noted in Appendix 3, there is generally no legal requirement for a written contract to be concluded in advance of a contractor commencing work.¹⁷² However, there are real risks to the Commonwealth associated with undocumented and / or uncertain agreements and the number of instances in

¹⁷² The joint Australian National Audit Office - Finance Better Practice Guide *Developing and Managing Contracts* acknowledges that "in some circumstances (for example, responding to a natural disaster or similar emergency) it may be necessary for a contractor to be engaged and for work to commence urgently prior to having signed a written contract."

which they are employed, the period for which they are employed and the volume of business transacted under such arrangements should be minimised and departments should attach considerable priority to ensuring that formal contracts are in place to support any substantive outsourced activity.

75. In each of the contractual arrangements entered into by DEEWR in support of the Workplace Relations Reform campaigns, the contractor had commenced providing services prior to the execution of a written contract. Significant delays were experienced in executing formal contracts (on average, contracts were executed more than 10 weeks after the commencement of the provision of services) and the value of work undertaken without a formal contract being in place was significant.

Table A 13

Work undertaken prior to contract execution

Contractor	Work Started	Contract executed	Delay (days)	Work undertaken prior to execution		Payments prior to execution
				\$	% of final	
Colmar Brunton	1 Aug 2005	6 Oct 2005	66	\$1 072 442	79%	nil
Jackson Wells Morris	20 Jul 2005	25 Jul 2005	5	0	0%	nil
Dewey & Horton	15 Aug 2005	30 Nov 2005	107	\$2 964 749	113%	\$2 592 892
iPrint / Wellcom ¹⁷³	31 Oct 2005	30 Nov 2005	30	\$1 668 055	100%	\$1 668 055
Brandmark	3 Jul 2005	not known		not known	not known	not known
Open Mind	4 Apr 2007	21 Aug 2007	139	\$902 312	233%	\$850 577
Gavin Anderson	9 May 2007	28 Jun 2007	50	\$112 010	25%	nil
Whybin / TBWA	10 May 2007	4 Sep 2007	117	\$4 445 779	110%	\$1 472 953
Eardrum	22-06-2007	12-09-2007	82	\$374 337	43%	\$374 337
Cultural Partners	6-09-2007	27-09-2007	21	\$87,602	30%	\$87,602

Source: ANAO analysis of DEEWR documents

¹⁷³ On 29 February 2008, DEEWR advised that "iPrint were engaged by Dewey & Horton as a sub-contractor for design and print management work. iPrint invoiced the department directly for printing costs associated with the WorkChoices booklet." While the contract between Dewey & Horton and DEEWR was not executed until 30 November 2005, iPrint had completed the printing of the brochure in October 2005 and DEEWR approved payment of the related invoice, for \$1 668 055.77, on 28 November 2005.

76. Table A 13 demonstrates the at times significant delays in executing properly documented contracts, as well as the substantive volume of work carried out under undocumented agreements between the Commonwealth and contractors. In particular, the consultancies for creative concept development and production were substantially completed and paid for before written contracts were executed. The consultancy with Open Mind had been completed, paid for, and substantial inroads made into the contract extension prior to the execution of the original contract. On 10 September 2008, DEEWR advised the ANAO that the department experienced:

genuine difficulty in finalising contracts given the pace at which the workplace relations campaigns were driven by the MCGC. For instance, finalising contracts in respect of the 2005 campaign in circumstances where MCGC consistently requested consultants to undertake further or additional work was nigh on impossible. This was particularly true in respect of the market research undertaken by Colmar Brunton and the creative advertising work undertaken by Dewey & Horton (including Brandmark).

Contract Extension and Amendment

77. The rapid pace of change inherent in both the 2005 and 2007 exercises saw five of the eight principal contracts being amended, with three contracts being amended twice. The amendments are summarised in Table A 14 below.

Table A 14

Contract Extensions

Contractor	Contract version	Date executed	Status of work covered by contract / extension	Revised Fee Cap	Existing Expenditure Approval
Colmar Brunton	Extension 1	4/11/05	Completed	\$1 828 719	\$994 360
	Extension 2	29/03/06	In progress	\$2 216 455	\$994 360
Jackson Wells Morris	Extension 1	16/12/05	In progress	\$350 000	\$500 000
	Extension 2	27/04/06	In progress	\$950 000	\$500 000
Dewey & Horton	Extension	9/02/06	Completed	\$2 984 799	\$1 000 000
Open Mind	Revision	19/9/07	In progress	not capped ¹⁷⁴	\$1 650 000
Cultural Partners	Revision	17/12/07	Completed	\$282 284	\$284 526

Source: ANAO analysis of DEEWR documentation

¹⁷⁴ The September 2007 extension of the contract with Open Mind saw the inclusion of a provision allowing, at the direction of DEEWR, additional qualitative testing of new creative phases of the campaign at a cost of no more than \$100 000 for each new round of testing. As the number of rounds is not capped, payments under this provision required a separate spending approval.

78. In all instances, the work that was the subject of the contract variation was in progress or completed at the time the extension was executed. As such, the work had been initiated and in some cases concluded on the basis of informal agreements between the parties and without the Commonwealth's interests being safeguarded by the existence of a written contract.

Sub-contracting

79. Sub-contracting under the principal contracts was generally governed by the inclusion in the contracts of provisions which required that proposals to sub-contract work be made to the project officer in writing and be approved by the project officer in writing.

80. The July 2005 contract between DEEWR and JWM had additional provisions allowing for sub-contracting, without written approval, if the party to be sub-contracted was among the specified personnel listed in the contract.

81. Sub-contracting was utilised by Dewey & Horton and JWM in delivering the 2005 Workplace Relations Reform campaign. However, in neither instance were the contractual provisions governing sub-contracting observed.

iPrint (Dewey & Horton)

82. On 29 March 2008, DEEWR advised the ANAO that iPrint was engaged by Dewey & Horton as a sub-contractor for design and print management work. However, iPrint invoiced the department directly for printing costs associated with the Work Choices booklet.

83. DEEWR advised that the printing was coordinated by Brandmark, under the auspices of the Dewey & Horton contract, as the department's existing print supplier was unable to fulfil a "directive from the MCGC to "print more books".¹⁷⁵ DEEWR advised the ANAO that iPrint submitted a quote on 7 October 2005, by email directly to the project officer, in relation to the printing of 5 000 000 booklets. DEEWR accepted the quotation and advised iPrint accordingly on 7 October 2005.

¹⁷⁵ A submission from some former member of the MCGC, provided in the context of this audit (paragraph 2.4 of the report), disagreed with this view, stating that there was no "directive" to print more books rather it was a unanimous suggestion from the MCGC, which was strongly supported by the Minister for EEWR, and was not disagreed with by DEEWR officials. The submission advised that the suggestion was made on the basis that research showed that many people wanted authoritative hard-copy information on the workplace-relations system.

84. DEEWR made a payment of \$1 668 055 (including GST) to iPrint for the printing of the booklets. However, DEEWR was unable to provide evidence that relevant provisions of the contract with Dewey & Horton in relation to subcontracting had been followed, or that Dewey & Horton were a party to the arrangement between DEEWR and iPrint. In particular, there is no evidence that:

- Dewey & Horton sought DEEWR's agreement to a subcontracting arrangement involving iPrint;
- Dewey & Horton were aware of the correspondence between DEEWR and iPrint regarding the publication of booklets;
- the scope of the work undertaken by iPrint fell within the scope of the contract between DEEWR and Dewey & Horton; or that
- payments made to iPrint were made in accordance with the provisions of any contract.

85. On 10 September 2008, DEEWR advised the ANAO that it had established a "verbal agreement" with Dewey & Horton regarding the subcontracting of iPrint.

86. By 28 November 2005, the commercial transaction between DEEWR and iPrint was complete. Agreement over the cost of the printing had been reached directly between DEEWR and iPrint and the related payment made by DEEWR to iPrint. However, the contract between DEEWR and Dewey & Horton, which established the framework under which Dewey & Horton were able to subcontract elements of the project, was not executed until 2 days later, on 30 November 2005.

Brandmark (Dewey & Horton)

87. Dewey & Horton also engaged Brandmark as a sub-contractor for the Workplace Relations Reform campaign. PM&C records indicate that the GCU was advised on 11 August 2005 that Dewey & Horton were proceeding to appoint Brandmark to act as consultants to the agency on the Workplace Relations Reform Campaign and that the GCU advised Dewey & Horton that this met with the GCU's approval. The GCU also advised Dewey & Horton that any costs from Brandmark should be billed to DEEWR as a production cost.

88. DEEWR has no record that Dewey & Horton sought or obtained approval from DEEWR for this arrangement, although on 10 September 2008

DEEWR advised the ANAO that handwritten notes of discussions involving department officials and GCU officials dated early August 2005 clearly indicated that the expectation of both the GCU and MCGC was that Brandmark would work closely with the department on the campaign and would be subcontracted to the creative agency, Dewey & Horton. In short, the department advised that it had no role in the decision that Brandmark would be subcontracted to Dewey & Horton.

89. DEEWR subsequently paid invoices submitted by Dewey & Horton clearly identifying the pass through of consulting fees and expenses relating to Brandmark totalling \$333 542 (\$189 180 in November 2005 and \$144 362 in February 2006).

Subcontracting - Jackson Wells Morris

90. JWM also subcontracted work to two firms in the course of the 2005 Workplace Relations Reform (totalling \$131 869). In this case, the principal contract (between DEEWR and JWM) establishing a framework for implementing subcontracting arrangement was in place prior to the subcontracting occurring.

91. DEEWR advised the ANAO on 10 September 2008 that the department had been aware of the proposed subcontracting arrangements: it had participated in the selection of the firms to be engaged as subcontractors and, in one instance, varied the principal contract to accommodate the particular activity to be undertaken. However, DEEWR took no steps to ensure that contractual requirements for the engagement of subcontractors were observed.

Additional Production Costs - 2005

92. Significant additional production costs were incurred beyond those relating to tasks undertaken by Dewey & Horton, iPrint and Brandmark. These primarily relate to the printing of materials, publications and advices and were undertaken by a number of firms utilising different procurement approaches.

93. The most substantial campaign printing costs related to printing services provided by JS McMillan, where campaign related expenditure totalled \$1 052 005 (see Table A 15). DEEWR advised the ANAO on 29 February 2008 that:

JS McMillan were selected to undertake work as they are a preferred print supplier for the department. DEEWR currently has a Service Contract (the

contract commenced on the 29 November 2004) ... with an expiry date of 29 November 2007.

Table A 15

Additional Campaign Printing – JS McMillan

Item	Quantity	Cost (inc GST)
16pp booklet	1 590 000 ¹⁷⁶	\$512 610.06
Note Pads	100 000	\$56 575.70
Poster	101 000	\$16 157.91
Postcard	51 000	\$3 830.77
DL Brochure (Seminars)	963 000	\$49 924.60
Fact Sheets	1 873 000	\$361 180.80
Miscellaneous		\$51 725.46
TOTAL		\$1 052 005.30

Source: DEEWR advice to ANAO 10 September 2008

94. On 29 September 2005, the delegate gave FMA Regulation 9 approval to a proposal to pay Salmat \$1 240 000 (including GST) for the packaging, order fulfilment and postage for the Workchoices booklet (including the development and operation of an internet ordering system). As Salmat were contracted to supply mail-house services to DEEWR¹⁷⁷, DEEWR did not consider that a separate contract was required for the provision of these services. An assessment conducted by DEEWR in January 2007 indicates total payments to Salmat for these services was \$77 554. On 29 February 2008, DEEWR advised the ANAO that Salmat was not subsequently required to produce the internet ordering system for booklets as originally requested. Furthermore, the scope of packaging, order fulfilment and postage for the booklet was less than originally expected due to demand for the product being lower than anticipated.

95. Additional minor production costs (\$27 950) were incurred to facilitate the production of documents for persons with a visual impairment and languages other than English. In addition, on 29 February 2008, DEEWR confirmed that a range of minor printing and production tasks were

¹⁷⁶ Includes 450 000 booklets that were destroyed following printing.

¹⁷⁷ DEEWR reported having paid Salmat \$1 156 090 in 2003–04 and \$702 193 in 2004–05 for the provision of mail-house services (DEEWR Annual Reports 2003–04 and 2004–05)

undertaken by Corporate Express (mouse mats and contract cards), Megara (folders) and Bytes and Colours (banners). These procurements have not been examined in the context of this audit and expenditure figures are not included in total advertising expenses.

96. DEEWR records indicate that it established a call centre to handle public inquiries regarding the reforms, at a total cost of \$3 937 762 (including GST). The development and administration of the call centre is outside the scope of this audit.

Evaluation

97. Tracking research by DEEWR through 2005 and 2007 is set out below in Tables A 16 and A 17. Expenditure on tracking research totalled \$801 533 in 2005 and \$643 343 in 2007. Ad-hoc and summary reports were also produced from time to time.

Table A 16

Tracking Research – Workplace Relations Reform Campaign- 2005

Type	Duration	Number of Reports
Employee and Community	22 August 2005 to 11 July 2006	17
Employer	6 October 2005 to 11 July 2006	14
Tactical	12 to 31 October 2005	6

Source: ANAO analysis of DEEWR documentation

98. Tracking research is not a substitute for effective evaluation. Rather, it generally seeks to “enable marketers to gauge whether their advertising is achieving its objectives”.¹⁷⁸ When initiated in 2005, DEEWR described the objectives of the research as being to explore, monitor changes in, and report on, attitudes to the new Work Choices system, as well as any perceived barrier to the audience groups being aware of, understanding and accepting the details of the changes.

¹⁷⁸ Nielsen Media Research, <<http://www.nielsenmedia.com.au/issues.asp?issuesID=23>> [accessed 24 February 2009].

Table A 17**Tracking Research – Workplace Relations Reform Campaign- 2007**

Tracking research reports for the 2007 campaign
Wave 1: Preliminary Report 1 June 2007
Final Report 29 June 2007
Wave 2: Preliminary Reports: 24 August 2007, 4 September 2007, 26th September 2007
Final Report 22 October 2007
Topline Reports (Main Community Results): 4, 12, 18, 25 September, 2 October 2007

Source: ANAO analysis of DEEWR documentation

99. Tracking research, as a performance measure, is a key input into evaluating the effectiveness of advertising activities. It does not, of itself, address issues such as efficiency, opportunity cost or the merits of alternative approaches and / or administrative strategies. It does not provide a complete performance evaluation framework. However, the ANAO found no evidence of a substantive performance evaluation strategy for the Workplace Relations Reform campaigns in either 2005 or 2007. On 29 February 2008, DEEWR advised the ANAO that, other than the tracking research, no other evaluations of the 2005 and 2007 campaigns have been undertaken.

100. DEEWR advised the ANAO on 10 September 2008 that the Employer Adviser Program had run as an element of the overall communication strategy from the passage of the legislation in 2006 through to December 2007, and accordingly it was not appropriate to evaluate the effectiveness of the campaign until that element had been completed. At the same time, DEEWR noted that the department had received a direction from the MCGC in late January 2006 not to evaluate the campaign until asked to do so by the Committee. DEEWR confirmed to the ANAO on 10 September 2008 that, following the announcement of the Federal election, all workplace activities, including evaluations related to this intensive, multi-media campaign involving expenditure in excess of \$113 million were stopped.

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