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PARLIAMENT OF TASMANIA

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PARLIAMENTARY STANDING COMMITTEE OF PUBLIC ACCOUNTS

**Inquiry into Television Advertisements by**  
**the**  
**Tasmanian Greens**

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*Laid upon the Table of both Houses of Parliament*

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The Committee was appointed under the provisions of section 2 of the Public Accounts Committee Act 1970 (No 54)

MEMBERS OF THE COMMITTEE

LEGISLATIVE COUNCIL  
Hon I N Dean  
Hon R Forrest (from 1/7/08)  
Hon S L Smith (to 20/5/08)  
Hon J S Wilkinson

HOUSE OF ASSEMBLY  
Mrs H R Butler  
Mr S Kons (from 18/6/08)  
Mr J P Rockliff  
Mr G L Sturges (to 20/5/08)



## **1. THE PUBLIC ACCOUNTS COMMITTEE**

The Public Accounts Committee Act 1970<sup>1</sup> provides for the establishment of a joint committee, comprising three members from the Legislative Council and three from the House of Assembly.

The relevant excerpt from the legislation provides for the functions of Committee as follows:-

- (1) The Committee must inquire into, consider and report to the Parliament on any matter referred to the Committee by either House relating to -
  - (a) the management, administration or use of public sector finances; or
  - (b) the accounts of any public authority or other organisation controlled by the State or in which the State has an interest.
- (2) The Committee may inquire into, consider and report to the Parliament on:-
  - (a) any matter arising in connection with public sector finances that the Committee considers appropriate; and
  - (b) any matter referred to the Committee by the Auditor-General.

## **2. THE REASONS FOR ESTABLISHING THE INQUIRY AND TERMS OF REFERENCE**

The Public Accounts Committee received a reference from the Legislative Council to inquire into the matter of anti pulp mill television advertisements produced for the Tasmanian Greens which recently appeared on WIN TV, Southern Cross and Network Ten, with particular reference to the following –

### **Terms of Reference**

- (1) The source of funds used for the production and screening of the advertisements;
- (2) The guidelines and/or policy applying to the use of public funds provided to the Tasmanian Greens and whether any breach of those guidelines or policy has occurred;
- (3) The process undertaken to engage any organisation in the production of the advertisements; and
- (4) Any other matters incidental thereto.

The reference was dated 20 November 2007 and the television advertisements in question were screened from 28 to 30 August 2007 coinciding with the Debate in the Parliament on the Approval of the Permit under section 7 of the Pulp Mill Assessment Act 2007.

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<sup>1</sup> *The Public Accounts Committee Act 1970, No.54 of 1970*

### 3. BACKGROUND

On Tuesday 20 November 2007 the Hon P Harriss moved that the matter with terms of reference as above be referred to the Public Accounts Committee. Mr Harris stated that it was his belief in relation to the advertisements surrounding the Pulp Mill development —

*“there is a case to be answered by the Tasmanian Greens as to the expenditure of their ministerial and parliamentary support budget.”*<sup>2</sup>

During the debate in support of the motion the Hon D Parkinson spoke of relevant matters that he considered were appropriate for investigation—

*“any relationship that existed between Zoot Film Tasmania as a company and individuals associated with the Greens political party.....what advice Ms Putt sought in relation to payments..... If public monies were paid to any individual associated with the Greens Party.....”*<sup>3</sup>

The Hon T Martin spoke of issues which concerned him and needed clarification particularly advertising and why in some circumstances it was apparently acceptable and not in others and Hon A Ritchie considered it an important motion and was an—

*“opportunity for us to undertake an important process to scrutinise the spending of public moneys.....”*<sup>4</sup>

When summing up the debate Mr Harriss spoke of the necessity to clear the air with the—

*“use of public funds appropriately scrutinised by a Committee of the Parliament”.*<sup>5</sup>

The Motion was agreed to.

### 4. PROCEEDINGS

The Committee in the first instance sought the following information from the Premier—

1. *Copies of all rules and guidelines which apply to the global budget provided to the Tasmanian Greens including—*
  - (a) *Any relevant Treasurer’s Instructions;*
  - (b) *The date the guidelines were formulated and accepted and any subsequent amendments, exemptions or variations to such guidelines and/or policy;*
  - (c) *Whether such policy and/or guidelines are specific to the Tasmanian Greens or are generic documents applicable to all such funding;*
  - (d) *Any advice sought by, or provided to, the Tasmanian Greens in relation to the expenditure of its funding allocation.*
2. *Details of all payments by the Government for anti pulp mill advertisements produced or prepared for, or by, the Tasmanian Greens*

<sup>2</sup> Legislative Council. Hansard, 20 November 2007 p 48

<sup>3</sup> Ibid p 60

<sup>4</sup> Ibid p62

<sup>5</sup> Ibid p65

*which recently appeared on WIN TV, Southern Cross and the Ten network including authorisations and dates of authorisation.*

and the following from Ms Putt—

1. *A copy of each anti pulp mill advertisement which was produced by, or for, the Tasmanian Greens and any advertisement subsequently shown on WIN TV, Southern Cross and the Ten network including:
  - (a) Cost of production of each advertisement;
  - (b) Cost of television advertising; and
  - (c) Dates and times of when advertisements were put to air.*
2. *Copies of all guidelines and policies applying to the global funding from the Government which were used by the Tasmanian Greens to determine the appropriate use of such funds.*
3. *Copies of any advice sought by the Tasmanian Greens or provided by the Government in relation to the use of said funding.*

The Chairman had a brief meeting with the Auditor-General who provided a copy of a submission to the (Commonwealth) Joint Committee of Public Accounts by the Australasian Council of Auditors-General entitled “Government Information and Advertising Arrangements” as well as references to other reports by the NSW Auditor-General<sup>6</sup> and the Office of the Auditor-General New Zealand.<sup>7</sup>

Officers from Department of Premier and Cabinet, the Department of Treasury and Finance, the Leader of the Tasmanian Greens and Mr Andrew Wilson, Zoot Film Tasmania were called to give evidence.

Additional information was sought by the Committee following the appearance of the witnesses. All the information provided to the Committee during the course of the inquiry is included with other documentation tabled with this report.

## **5. THE SOURCE OF FUNDS USED FOR THE PRODUCTION AND SCREENING OF THE ADVERTISEMENTS**

In 2006 the Premier reviewed the methodology for funding the offices of the Tasmanian Greens and the Liberal Party and an increased global budget was agreed. In correspondence from the Premier to Ms Putt dated 24 April 2006 confirming details of the increases the Premier notes—

*“Ultimately whether you choose to allocate money along the lines suggested is entirely at your discretion”.*<sup>8</sup>

Ms Burton, Deputy Secretary, Department of Premier and Cabinet at the commencement of her evidence stated—

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<sup>6</sup> New South Wales. Auditor-General, Performance Report Government Advertising 2007

<sup>7</sup> New Zealand. Office of the Auditor-General, Government and Parliamentary Publicity and Advertising, 2005

<sup>8</sup> Premier, correspondence dated 24 April 2006

*“Funding for the office of the Tasmanian Greens is provided from Ministerial and Parliamentary Support, which is part of the Consolidated Fund. It is provided as a global allocation and from within Ministerial and Parliamentary Support Output 1.2 in the Budget Papers, ‘Support for Other members of Parliament’. As agreed by the Premier, distribution of funding across budget categories is at the discretion of the Greens. In practice this means that Premier and Cabinet is responsible for the administration of the funds provided to the office – that is, we process the accounts.....”*<sup>9</sup>

The responsibility for the allocation and expenditure of the funds is delegated by the Head of the Department of Premier and Cabinet to the Leader of the Tasmanian Greens.

A copy of that Delegation Authority,<sup>10</sup> included with the evidence to this report has a reference to the Tasmanian Government Procurement Handbook which in turn refers persons making purchases that all procurement should be undertaken subject to the Treasurer’s Instructions. Neither the Delegated Authority dated 17 February 2005 nor the Treasurer’s Instructions make any reference to a Government Communications Policy.

**Findings: The source of funds used for the production and screening of advertisements. The Committee finds that—**

- **the source of funds used for the production and screening of television advertising was the global budget provided to the Tasmanian Greens to be spent in accordance with the Tasmanian Government Procurement Policy; and**
- **the allocation and spending of the Global Budget is at the discretion of the Leader of the Party subject to a “Delegated Authority” from the Secretary of Premier and Cabinet.**

## **6. THE GUIDELINES AND/OR POLICY APPLYING TO THE USE OF PUBLIC FUNDS PROVIDED TO THE TASMANIAN GREENS AND WHETHER ANY BREACH OF THOSE GUIDELINES OR POLICY HAS OCCURRED**

There are two sets of guidelines and policies which the Committee have been informed are relevant to this Inquiry – the Treasurer’s Instructions and the Whole-of-Government Communications Policy.

The Treasurer’s Instructions are quite detailed and comprehensive and developed in order to provide clear accountability pathways for those responsible for the use of taxpayer funds. They are intended for the use of any officer responsible for procurement where the

<sup>9</sup> Ms R Burton, Transcript of Evidence 2 April 2008 p1

<sup>10</sup> Secretary of Department of Premier and Cabinet, Attachment to Correspondence from Premier dated 28 February 2008

use of public money is involved. This report details further information about the application of the Treasurer's Instructions in the next section.

The Whole-of-Government Communications Policy December 2006 version 6 has been developed and distributed by the Department of Premier and Cabinet and is intended for widespread application for government. According to the policy it aims to ensure effective communications between the Tasmanian public and the Government. It is stated that the policy applies to each of the Government Departments and other agencies listed in Appendix A and would appear to be to be mandatory for all those listed in Appendix A. The Policy also states that Tasmanian Government Business Enterprises, State Owned Companies and Independent statutory authorities may use the policy as a guide to their own communications.

The Department of Premier and Cabinet Annual Report 2006-07 describes the 'whole-of government communications policy' as being based on the principle that clear and consistent branding enables the public to easily recognise and therefore make use of Tasmanian Government initiatives and services.

The Policy Principle with respect to advertising '4.1.7 Advertising' states the following—  
*"Tasmanian Government Advertising is co-ordinated to support the social, economic and cultural objectives of the Government and to ensure that the public is adequately informed about government programs and priorities".*<sup>11</sup>

Three categories of advertising are defined in 4.1.7 of the Policy—

- (a) Campaign advertising – sustained series of advertising used to motivate, and can appear in any media or any combination of media;
- (b) Commercial advertising/Advertising features; and
- (c) Non-Campaign Advertising – this section includes display advertising or publications to communicate a specific message to a target audience.

Within the second category the definition includes the following section—

*"Public Funds must not be used to purchase advertising in support of a political party and Tasmanian Government Advertisements in any electronic medium must be clearly distinguishable from party political messages".*<sup>12</sup>

The Whole-of-Government Policy is, in all respects, prescriptive and directed at officers of the government dealing with government policy and government branding.

Ministers, Members of Parliament including the Tasmanian Greens, Liberal Party and Legislative Council Members are not listed as being required to use the policy or among those entities which may use the policy as a guide. The Policy is therefore quite silent with respect to Members of Parliament, Legislative Council Members, Greens and Liberals.

The only documentation the Committee was provided with that the Greens were required to comply with the Policy was contained in an email dated just a few days before the advertising was to appear on television. When the Tasmanian Greens made the decision to advertise they sought advice about process and payment procedure for securing some advance payments which were required by the television stations. Following that request

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<sup>11</sup> Whole-of-Government Communications Policy December 2006 p 10

<sup>12</sup> Ibid p 13

for advice there was a subsequent series of emails where reference was made by Ms Julie Pellas, Director of Communications about the Communications Policy particularly the section dealing with the use of public funds and party political messages.

Ms Putt noted that when her office received the email with the reference to the Communications Policy it was the first time the Greens had heard of such guidelines. The Department of Premier and Cabinet could not confirm or deny that the Greens had ever been informed about the Communications Policy and its application.

The Committee did not receive any evidence or documentation to support the principle that reference or compliance to the policy document is recommended, required or even desirable for non-government expenditure included in the budget output, 'Ministerial and Parliamentary Support Output 1.2 in the Budget Papers, 'Support for Other Members of Parliament'.

In opening remarks to the Committee Ms Burton said—

*“Going to the nub of the of the discussion today, whole of government communications policy applies to all inner-budget government departments.....The Communications policy is written from the perspective of normal operations of government departments.....Clearly some aspects of this policy cannot sensibly be applied to non-government offices funded as ministerial and parliamentary support”.*<sup>13</sup>

Tony Ferrall, Department of Treasury and Finance supported this when he stated—

*“...it is a grey area and by convention there are some aspects of the policy that wouldn't be suitable for or applicable to all political parties.....”*<sup>14</sup>

Ms Burton went on to speak to the specific provisions of the policy section 4.1.7 Advertising—

*“To give you an example of that there is a requirement on p10 of the document under 4.1.7 that the themes and messages of advertising must be consistent with government policy.....We would not expect that the agency communications manager - in this case Premier and Cabinet - would approve the content of any advertising by parliamentary officers, as they do for a normal departmental business unit.....”*<sup>15</sup>

and further that the design and presentation has to reflect positively on the Tasmanian Government. These requirements obviously would not be followed and could not expect to be followed.

On the question of what might be considered advertising in support of a political party Mr Foulleston said—

*“We would not expect the funds to be used for Vote 1 Jim Wilkinson or Vote 1 Jeremy Rockliff or Vote 1 Heather Butler.....You would not expect public funds to be used in such a purely political way as that”.*<sup>16</sup>

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<sup>13</sup> Ms Burton, Transcript of Evidence 2 April 2008 p1

<sup>14</sup> Mr Ferrall, Transcript of Evidence 11 April 2008 p1

<sup>15</sup> Ms Burton, Transcript of Evidence 2 April 2008 p1

<sup>16</sup> Mr Foulleston, Transcript of Evidence 2 April 2008 p2

The Committee continued with the theme of political advertising and an excerpt of Hansard is reproduced below—

*“MR ROCKLIFF—Is that where you draw the line? It is difficult because we obviously consult DPAC with respect to some material that we might want to put out from time to time. We are clearly advised that none of the material can, for want of a better word bag the Government but we can inform our constituents, the electorates or Tasmanian people about what we are doing as a political party. The material also contains our logo. We always consult DPAC and make sure everything is ticked off and approved. I am assuming advertising is not a form of electronic material or mail outs or whatever.*

*MS BURTON—Yes*

*MR REEVE—I think there is a difference between promoting the policy of your party as opposed to promoting the members of your party and we do draw a line there”.*<sup>17</sup>

Following this exchange Ms Burton further explained that the Department of Premier and Cabinet do not provide advice on what is political or not according to the policy, the officers at the Department of Premier and Cabinet assume that the delegated person will apply their own judgment to any decision making. Ms Burton made it clear that the Department of Premier and Cabinet could not advise about the policy in that sense and it is very much a judgment call.

*“We would never see what they were planning to use as part of their advertising”*<sup>18</sup>

There was general acknowledgement by the witnesses from the Department of Premier and Cabinet that the policy was not entirely appropriate but was rather an aid to judgement. Mr Foulston went on to explain that—

*“the issue here is that in a strict reading of the Financial Management and Audit Act the Department of Premier and Cabinet gets a series of funds to administer. Some of those funds happen to be the funds that go to the Liberal Opposition and the Tasmanian Greens. And that is where this greyness comes in.....some of the appropriate things in here that would apply to the normal business units of the Department of Premier and Cabinet are clearly nonsensical.....”*<sup>19</sup>

Ms Burton also referred to the policy as being a grey area—

*“.....there are obviously reasons why we cannot apply the strict crown Tasmanian Government issues to the parliamentary offices. It makes it a grey area.....”*<sup>20</sup>

Later Ms Burton said—

*“To clarify, in the case of the parliamentary offices we would never see what they were planning to use as part of their advertising..... We see ourselves operating at arm’s length and so we would pay the invoice”.*<sup>21</sup>

<sup>17</sup> Transcript of Evidence 2 April 2008 p2

<sup>18</sup> Ms Burton, Transcript of Evidence 2 April 2008 p6

<sup>19</sup> Mr Foulston, Transcript of Evidence 2 April 2008 p4

<sup>20</sup> Ms Burton, Transcript of Evidence 2 April 2008 p 3

<sup>21</sup> Ibid p6

**Findings: The guidelines and/or Policy applying to the use of public funds provided to the Tasmanian Greens and whether any breach of those guidelines occurred.**

**In relation to the Whole-of-Government Communications Policy—the Committee finds that—**

- **the Policy appears to have been drafted in the context of government operations and it is doubtful if consideration to the output Group 1 expenditure was considered when the policy was first drafted and approved or later revised;**
- **the Policy therefore is an inappropriate document as a reference for expenditure for non-government Members of Parliament;**
- **the manner in which the Department of Premier and Cabinet informed the Greens in the first instance about the Communications Policy was poorly handled and in ‘ad hoc’ manner and not in accordance with the professional responsibility of the agency responsible for compliance;**
- **there is no evidence to suggest that advice about Government requirements with respect to the Policy had ever been given to either the Greens or others prior to the email note. If the policy is a government requirement then there is a responsibility to inform at an appropriate time and in an appropriate manner;**
- **information about the whole-of-government communications policy could and should have been included with the Delegation authority;**
- **the Guidelines are largely silent on criteria, definitions, scope and content for expenditure for the Budget Output group;**
- **There is no authoritative source of advice or guidance immediately available to Non-Government Members as to what is acceptable or not in relation to material which is distributed in any format; and**
- **has a breach occurred? In the strict interpretation of the Policy a breach has occurred, however this is due to the inappropriateness of the guidelines pertaining to Non-government parties and Members.**

## 7. THE PROCESS UNDERTAKEN TO ENGAGE ANY ORGANISATION IN THE PRODUCTION OF THE ADVERTISEMENTS

### 7.1 – Treasurer’s Instructions

Ms Putt described the process undertaken to enter into an agreement with Zoot Film Tasmania to produce an advertisement for television. At a Greens Party meeting on 13 August 2007 when Mr McKim was Acting Leader in the absence of Ms Putt the Party discussed—

*“..... potentially showing some TV advertisements in the context that the Premier was widely advertising support for approval of the Pulp Mill to go through Parliament at the time”.*<sup>22</sup>

In his capacity as Acting Leader and with some knowledge of the industry, Mr McKim was to draft simple text and organise television advertisements. On a later date, either 19 or 20 August 2007, the Party gave the go-ahead for television advertising with a limit of approximately \$20,000.

Ms Putt said that she delegated Mr McKim and his office to arrange the production and then the arrangements with the television stations—

*“Nick was requested by the party room to approach Zoot Productions, whom we knew to be capable of producing such an advertisement to ascertain if they could do so.....we said if he (Andrew Wilson) was unavailable we would obtain a quote from elsewhere and look for another production company”.*<sup>23</sup>

The company selected by the Greens, Zoot Film Tasmania, is a partnership between Mr Andrew Wilson and Ms Jane Binning.

Mr Reeve from the Department of Premier and Cabinet confirmed that in the case of the Green’s television advertisements he was not personally involved but knew of a chain of emails about the process to be followed and the advice provided to the Greens dated 22 August 2007.

Ms Putt also said there were previous occasions when responses to seeking advice were less than satisfactory. She cited two separate issues with respect to obtaining legal advice when the advice from the Department of Premier and Cabinet was to apply the Treasurer’s Instructions and use the Solicitor-General and Crown Law respectively – advice which was later found to be inappropriate and incorrect in the circumstances. This was subsequently rectified by an exemption from the Secretary of Treasury and Finance for obtaining such legal advice.

Mr Ferrall, Treasury and Finance explained to the Committee the requirements for obtaining quotes according to the Treasurer’s Instructions. There are different requirements according to the expected procurement cost. He confirmed that as the work in question was under \$10,000 there was no requirement to obtain quotes. The procurement management as per the delegation was the responsibility of Ms Putt. An

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<sup>22</sup> Ms Putt, Transcript of Evidence 11 April 2008 p12

<sup>23</sup> Ibid p13

overriding principle for all procurement is to obtain value for money. The quote and the final amount in the case of the anti-pulp mill television advertisements comprised separate items for each of the television stations and for the production company.

The Committee asked if, in the circumstances, the costs could be considered to be one item and therefore subject to a different set of rules with regards to obtaining quotations. Mr Ferrall said he understood them to be separate procurements. Ms Burton tabled advice from Mr Reeve dated 2 April 2008 also confirming that the procurement process undertaken by the Greens was acceptable. This was also the opinion of Ms Smith from the Department of Premier and Cabinet, Finance division, who acknowledged that in this case where the media bookings were done separately it was legitimate and feasible for separate accounts.

Ms Smith —

*“Generally for a government campaign it would be more common for us to use what we term a full-service agency to produce the ads and then take care of the media bookings..... Whereas, in this case, that was done directly with the television stations. That is quite different to how we would normally proceed. I think they are legitimate and then you are dealing with different contractors and outlets. If it was something that came under the policy we would see it as feasible that you would not necessarily put those costs together in one job. Had it been booked through one consultant or agency then it would be a full cost figure. In this case it is not”.*<sup>24</sup>

The Committee has been provided with a copy of the quotation and the invoices as paid.

The final amount paid to Mr Wilson was considerably less than the quote and this raised some questions from the Committee. The significant reduction was attributed to the fact that it was a rush job, outsourced and at less cost. Mr Wilson explained—

*“When we first quoted we were looking at, I think it was two days producing and one directing..... When we then got the job we talked to our production company. We outsourced to a post house and this one particular post house did everything for us. We basically cut out all my time right out of it which was the best and most efficient way.....”*<sup>25</sup>

The finance section of the Department of Premier and Cabinet is responsible for the payment of accounts. In their evidence the witnesses from the Department of Premier and Cabinet stressed that the role of the Department was solely the processing of accounts and it was not to oversee or monitor the reasons, purpose or content relating to any invoices presented for payment. The concern of officers of the Department is that process has been followed in relation to the procurement of services and the Treasurer’s Instruction’s. Ms Burton said —

*“One of the issues around Premier and Cabinet’s role is that we do not provide advice on what is political and what is not political..... we assume that the delegated member will apply his or her judgement to any decision making...”*<sup>26</sup>

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<sup>24</sup> Ms Smith, Transcript of Evidence 2 April 2008 p8

<sup>25</sup> Mr A Wilson, Transcript of Evidence 16 April 2008 p3

<sup>26</sup> Ms R Burton, Transcript of Evidence 2 April 2008 p3

The Department of Premier and Cabinet's role was also highlighted by the Secretary of Treasury and Finance in the correspondence dated 27 March 2007 exempting the Tasmanian Greens from the Treasurer's Instructions in relation to the procurement of legal services—

*“DPAC retains responsibility for the expenditure of those funds and as such must ensure that expenditure is made in accordance with the Treasurer's Instructions”*<sup>27</sup>

In the course of her evidence to the Committee Ms Putt made a number of points in relation to the Treasurer's Instructions—

*“They are enormous and labyrinthine..... they change frequently..... we do not know how people know they have changed..... when we have spoken with DPAC about keeping up to date with these things we have been informed that there is an internal notification process that happens in government departments....we are actually in the dark a lot of the time.....we had not been aware the entire time that we were operating a global budget of the application of the Treasurer's Instructions in terms of exactly what the Treasurer's Instructions were.....goes to an issue I want to raise later about the need for training”.*<sup>28</sup>

**Finding: The process undertaken to engage any organisation in the production of advertisements.**

**In relation to the Treasurer's Instruction's the Committee finds that—**

- **the process undertaken by the Tasmanian Greens would appear to have been appropriate except in relation to a 'conflict of interest declaration' which is addressed separately below;**
- **the method of distribution of amendments and changes to the Treasurer's Instructions did not include political parties and Members of Parliament;**
- **there is a Government Members Handbook and Code of Conduct provided by the Department of Premier and Cabinet for all Government Members but insufficient materials addressing the requirements of Non-Government Members of Parliament; and**
- **the Committee accepts that the Treasurer's Instructions due to their nature are complex and subject to frequent changes.**

## **7.2 – Conflict of Interest and the Treasurer's Instructions**

The Committee asked Mr Wilson, Zoot Film Tasmania about the business arrangements of the partnership between himself and Ms Binning. Mr Wilson gave evidence to the effect that it was a partnership where each partner had a different creative role and that there was agreement that—

<sup>27</sup> D W Challen, Correspondence dated 26 March 2007 reproduced in Legislative Council Hansard 20 November 2007.

<sup>28</sup> Ms Putt, Transcript of Evidence 11 April 2008 p15

*“the hours that we charge individually are the hours that we take home, minus a small percentage that we put back into the business to cover our overheads.....being rent, phone Internet and things like that.....Nothing that I earn , none of the head hours that I charge goes to Jane or vice versa”.*<sup>29</sup>

Further questions as to whether Ms Binning did any of the work or derived any benefit elicited the information that Ms Binning had been in Launceston at the time and had no dealings at all with the job. A search of the records by Mr Wilson indicated that due to the splitting of the phone bill there was, at best, a \$20 benefit to Ms Binning.

When Ms Putt was asked about the personal relationship between Ms Jane Binning who is a partner in Zoot Film Tasmania and Mr McKim, Ms Putt confirmed that she was aware of the relationship and she also said she made it clear that—

*“I probably knew that she had an involvement with the company. I cannot recollect whether I knew she was a partner in the company but I was very clear that she was not to be engaged by us to do this job and that she was not to play a role in this so it was therefore my understanding that there was no conflict of interest that would arise”.*<sup>30</sup>

Later Ms Putt said—

*“I was aware that Ms Binning had an involvement in the business. It was and remains my understanding that each of the partners takes on jobs individually through the way the company operates.”*<sup>31</sup>

The Committee then inquired if Mr McKim was asked to complete a conflict of interest declaration in accordance with the Treasurer’s Instructions. Ms Putt responded that she was not aware of the Treasurer’s Instruction and further she did not believe the process involved a conflict of interest.

The ‘Treasurer’s Instruction 1101 Procurement Principles – goods and services’ includes the following relevant section dealing with ethical standards ‘Compliance with ethical standards and observing the Procurement Code of Conduct’—

(xv) Buyers must complete a conflict of interest declaration and take steps to avoid involvement in any procurement activity where any conflict of interest (actual or perceived) may arise.

On the matter of conflict of interest Mr Ferrall was asked to whom any declaration of conflict of interest should be made. Mr Ferrall commented that such a hypothetical question was difficult to answer without the context and other facts; Ms Hudson added that the Treasurer’s Instructions did not specify where such a form would be lodged and suggested it would be up to the Agency responsible to formulate a process. Neither Mr Ferrall nor Ms Hudson could recall any instances where this sort of issue has arisen previously in the Department of Treasury and Finance. This was later confirmed by the Department of Treasury and Finance.

There was a further comment on the question of conflict of interest from Mr Ferrall—

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<sup>29</sup> Mr A Wilson, Transcript of Evidence 16 April 2008 p1

<sup>30</sup> Ms Putt, Transcript of Evidence 11 April 2008 p15

<sup>31</sup> Ms Putt, Transcript of Evidence p21

*“Simply because you know an individual wouldn’t necessarily make it a conflict. It is Tasmania and there are a lot of people who are known..... think it is a question of whether the relationship is likely to either influence the outcome of the particular transaction..... goes beyond whether there is a real conflict.....is there an apparent conflict.....you would expect the potential conflict to be identified”.*<sup>32</sup>

The Department of Treasury and Finance do not keep a register of conflict of interest declarations and could not indicate how often they could have been submitted. The only documentation provided by the Department of Treasury and Finance was generally directed at procurement by consultants and probity advisers participating in procurement evaluation although it was noted that the general underlying principles still apply. On the matter of Treasurer’s Instruction’s generally the Agency does not undertake any checks of compliance with the Treasurer’s Instruction’s across other agencies.

The Department of Premier and Cabinet advised that the State Service Code of Conduct requires employees to disclose any potential conflict of interest and a determination is made and then the information is placed on the personal file of the employee. The Department of Premier and Cabinet do not keep a register and did not indicate the frequency of disclosures.

When it was put to Ms Putt that in the light of Mr McKim’s relationship with Ms Binning there was a potential conflict of interest, Ms Putt told the Committee that she had not thought it would be so and that the Greens hadn’t had any discussions about it but conceded that in hindsight it could be seen in that light. Ms Putt stated—

*“I suppose that now it has been cast in this light I can understand how that has happened and perhaps the motivation for it so to that degree I can understand it but it is still my clear perception that there actually is not a conflict involved”.*

**Findings: In relation to a Conflict of Interest the Committee finds that—**

- **work was directed to a company where Mr McKim’s partner was in a position to benefit;**
- **that a conflict of interest should have been declared by Mr McKim;**
- **even if the Greens did not believe there was an actual conflict of interest there was a perception of conflict of interest and the Greens should have erred on the side of caution and completed a declaration;**
- **Ms Putt’s insistence that Ms Binning was not to do the work suggests that she was aware of a possible conflict of interest;**
- **the Delegation Authority provided to the Leader of the Greens for expenditure refers to the Procurement Handbook but not specifically to the Treasurer’s Instructions;**

<sup>32</sup> Mr Ferrall, Transcript of Evidence 11 April 2008 p6

- **the Procurement Handbook directs users to the Treasurer’s Instructions;**
- **the Greens should have acted on the Treasurer’s Instructions in relation to a perceived or actual conflict of interest;**
- **although there is a requirement for conflict of interest declarations to be made there is a lack of clarity surrounding the process for lodgement and recording of conflict of interest; and**
- **haste in the procurement process is not a defence.**

## 8. ANY OTHER MATTERS INCIDENTAL THERETO

In the course of this Inquiry the Committee, as reported earlier, examined a report by the New Zealand Controller and Auditor-General who reported that he had been concerned about the weaknesses in the guidelines and the administrative framework for spending and publicity for governments and parliamentary parties which can legitimately be paid for with public funds. His report identified a number of issues including the boundary between the executive and legislative branches of government.

Whilst directed at the situation in New Zealand there is much in the report which is relevant to the situation in Tasmania. It clearly identifies the three groups who use public resources for publicity and advertising. They are Ministers of the Crown and their staff; government departments, crown entities and other central government entities; and parliamentary party leaders, their staff and other members of parliament.

He noted particularly the difficulties in distinguishing between party political business (which as a rule taxpayers should not fund), and “ministerial” business or “parliamentary party business” (which do involve public funds). At that time there was a concern about weaknesses in the guidelines and administrative framework for spending and the report identified and made recommendations for the three groups using public resources for publicity and advertising.

A further report by the New Zealand Auditor-General – Advertising expenditure incurred by the Parliamentary Service in the three months before the 2005 General Election’ also examined advertising, its legality and expenditure and noted again that there was—

*“inadequate guidance available to MP’s and parliamentary parties about what constitutes appropriate advertising, particularly in the pre-election period ...*

He went on to note that the—

*“current framework for administering parliamentary advertising needs to be revised and strengthened to provide a long-term solution that balances the need for a dialogue between elected representatives and the public with the need for prudent management of public money”.<sup>33</sup>*

<sup>33</sup> New Zealand, Controller and Auditor-General, Advertising Expenditure incurred in the parliamentary Service in the three months before the 2005 General Election. October 2006 p8

A Submission to the (Commonwealth) by the Australasian Council of Auditors-General entitled 'Government Information and Advertising Arrangements' highlighted a number of underlying principles in relation to appropriate guidelines for advertising for governments. In formulating principles for expenditure of public money which are appropriate for parliamentary parties and members of parliament this submission may also provide some guidance for consideration.

In 2000 the Commonwealth Joint Committee of Public Accounts and Audit to which the above submission was presented tabled a report Guidelines for Government Advertising which included the note that any guidelines should clearly define and articulate characteristics between government and party political advertising.

## **RECOMMENDATIONS**

**The Committee recommends that—**

- **a set of guidelines, definitions and instructions applicable to all Members of Parliament and political parties in relation to the appropriate expenditure of public funds be developed and provided to all Members of Parliament;**
- **the Auditor-General be requested to develop such instructions, guidelines and processes;**
- **the Government examine and review the process applying to the recording of conflict of interest declarations within all Agencies and government bodies;**
- **all Members of Parliament should make themselves aware of the procedures surrounding the spending of public funds; and**
- **that structured training about the provisions of expenditure of public money including Conflict of Interest be made available for Members of Parliament and their staff.**

**Jim Wilkinson MLC  
CHAIRMAN**

**Parliament House, Hobart  
26 August 2008**

## APPENDIX 1

### Parliamentary Standing Committee of Public Accounts

#### Inquiry into Television Advertisements by the Tasmanian Greens

##### Documents received and taken into Evidence

1.	Mr D T Pearce Clerk of Legislative Council	Copy of Motion 20 November 2007 moved by the Hon P Harriss MLC with Terms of Reference
2.	Mr M Blake Auditor-General	Correspondence dated 11 December 2007 – with references to advertising.
3.	Ms M A Putt MP Leader Tasmanian Greens	Correspondence dated 21 December 2007 with 2 attachments
4.	Hon P A Lennon MP Premier	Correspondence dated 28 February 2008 with 8 attachments
5.	Ms R Burton Acting Secretary Department of Premier and Cabinet	Peter Wright – Opinion including Extract from Treasury’s Website on Advertising – Television (Master Ordering Arrangement) tabled on 2 April 2008.
6.	Ms M A Putt MP Leader Tasmanian Greens	Tasmanian Greens advertisement – the subject of the Inquiry tabled 11 April 2008 (on CD).
7.	Hon P A Lennon MP Premier	Additional information dated 23 April 2008 – Inquiry into Television Advertising.
8.	Hon M A Aird MLC Treasurer	Additional information dated 23 April 2008 – Inquiry into Television Advertising.
9.	Ms Peg Putt MP Leader Tasmanian Greens	Additional information dated 23 April 2008 – Inquiry into Television Advertising.
10.	Ms R Burton Acting Secretary Department of Premier and Cabinet	Further additional information dated 6 May 2008 - with copy of Members Handbook – Inquiry into Television Advertising.

## APPENDIX 2

### Parliamentary Standing Committee of Public Accounts

#### Inquiry into Television Advertisements by the Tasmanian Greens

##### Witnesses – Transcripts of Evidence

Ms Rebekah Burton	Deputy Secretary Department of Premier and Cabinet	2 April 2008
Mr Jeff Reeve	Director Corporate Services Department of Premier and Cabinet	2 April 2008
Mr Phil Foulston	Director Executive Division Department of Premier and Cabinet	2 April 2008
Ms Mandy Smith	Communications and Marketing Manager Department of Premier and Cabinet	2 April 2008
Ms Kim Hudson	Assistant Director Department of Treasury and Finance	11 April 2008
Mr Tony Ferrall	Deputy Secretary Department of Treasury and Finance	11 April 2008
Ms Peg Putt MP	Leader of the Tasmanian Greens	11 April 2008
Mr Andrew Wilson	Creative Producer Zoot Film Tasmania	16 April 2008