



Auditor-General for the Northern Territory
Auditing for Parliament

Public Information Act Review of Public Information Referred to Auditor-General March 2011



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Northern Territory Auditor-General's Office

Auditing for Parliament

The Honourable the Speaker of the Legislative
Assembly of the Northern Territory
Parliament House
Darwin NT 0800

29 March 2011

Dear Madam Speaker,

Accompanying this letter is a report to the Legislative Assembly pursuant to section 7 of the *Public Information Act*. That report outlines the results of a review of the content of an advertisement that was published as part of publicity for the *Environment Protection (Beverage Containers and Plastic Bags) Bill*, and followed a request from a Member of the Legislative Assembly, submitted in accordance with section 6 of the Act.

I request that you table the report in the Legislative Assembly within six sitting days of its receipt by you.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'F. McGuinness'.

F McGuinness
Auditor-General for the Northern Territory

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Matter Referred to Auditor-General Pursuant to Section 6 of Public Information Act

Background

The *Public Information Act*, which came into effect on 1 August 2010, seeks to achieve a transparent and accountable mechanism for the review of public information produced by public authorities.

A public authority is defined in section 6 of the Act and that definition is broad, capturing any:

- Member of the Legislative Assembly or the holder of any office of the Legislative Assembly;
- Agency or body corporate established under a law of the Territory;
- body corporate that is held to be controlled by a public authority;
- person appointed or engaged to perform work for a public authority.

Excluded from the definition are:

- holders or occupiers of:
 - judicial office;
 - an office as a member of a tribunal established under a law of the Territory;
 - the office of Auditor-General;
- a council constituted pursuant to the *Local Government Act*;
- the Territory Insurance Office;
- the Power and Water Corporation; and
- a person or body prescribed by regulation.

The definition of what constitutes public information is equally broad and is defined as “*information given by a public authority to the public by using money or other property of the Territory...*”. Exemptions from this definition are:

- information provided by a Member of the Legislative Assembly to members of his or her electorate if the preparation and giving of the information is funded by an allowance payable to the member for the electorate under a law of the Territory;
- a media release of a Member of the Legislative Assembly; and
- information prescribed by regulation.

Section 6(1) of the Act provides that the Auditor-General must, upon the receipt of a written request of a Member of the Legislative Assembly, conduct a review of that information to determine whether the provisions of the Act have been contravened.

The Auditor-General may determine that the Act has been contravened if the material that is the subject of the review contravenes section 6(2) of the Act in that it:

- promotes particular party interests;
- includes statements that are misleading or factually inaccurate; or
- does not clearly distinguish a statement of facts from a statement of comments.

Information Guidelines

Section 9 of the Act permits the Minister to make guidelines to provide for the matters to be taken into account by the Auditor-General in making a determination under the Act. Those guidelines have been duly made and Gazetted.

I have referred to those Guidelines as part of my consideration of the request made to me pursuant to section 6 of the Act and which is the subject of this report.

What the Guidelines Permit

The Guidelines set out standards for communication. These include:

- The requirement to ensure that all facts, statistics, comparisons and other arguments be presented accurately and objectively, ensuring that the source of all data is indicated or that a means for identifying the data source is provided with the communication.
- The requirement to not attack the views, policies or actions of a political party or politician. In addition, public authorities may not comment on the views, policies or actions of a political party or politician.

The Referral of a Complaint to the Auditor-General

On 2 February 2011 a Member of the Legislative Assembly referred to me, pursuant to section 6(1) of the Act, a copy of an advertisement that appeared in the NT News on 29 January 2011. The Member submitted that the advertisement breached the principles laid down in section 6(2) of the Act. A copy of the advertisement is reproduced at the end of this report.

Review of the Allegations

The advertisement in question was intended to promote *the Environment Protection (Beverage Containers and Plastic Bags) Bill* that was debated in the February 2011 sittings of the Legislative Assembly.

A sub-heading in the advertisement contained the words “Cash for Containers – Just the facts”. That was followed by five separate statements, each of which is dealt with in the following paragraphs.

The Territory Government’s Cash for Containers initiative will be introduced later this year. Based on the evidence provided to me, I accepted that this statement was factual.

Cash for Containers is not a tax. Based on the evidence provided to me, I accepted that this statement was factual.

Cash for Containers has been in place in South Australia for over 35 years. It works. While this statement was put forward as a statement of fact, any assessment of whether the South Australian program “works” should, in my opinion, have been made after considering the objectives of that program. In the case of South Australia, I understand the objective of the original *Beverage Container Act 1975* was to control the proliferation of container litter. There appears to be acceptance in South Australia that the legislation has led to a reduction in the volume of container litter and an accompanying reduction in containers being disposed in land-fill. On that basis I have concluded that the statement is factual. However, I also concluded that the statement contravened the provisions of the Act in that the source of data in support of the statement was not disclosed as required by the Guidelines issued pursuant to the Act.

Grocery and beverage prices are not more expensive in South Australia under Cash for Containers. There is no reason why prices should increase in the Territory. While this statement is put forward as a statement of fact I believe it to be a statement of comment and thus inconsistent with the sub-heading referred to above. It is arguable that retail prices are affected by a range of factors including the extent and nature of competition for the supply of beverages. No evidence was provided in support of the statement that prices are no more expensive in South Australia and the suggestion that prices in the Territory should not increase may rest upon a range of assumptions that are not disclosed. Given this, I determined that the Act was contravened in that this statement was not clearly distinguished as being a statement of comment rather than of fact.

Cash for Containers will mean a cleaner, greener Territory. While this statement was put forward as a statement of fact I consider it to be a statement of comment and thus inconsistent with the sub-heading referred to above. Evidence from South Australia might suggest that containers that fall within the scope of the Bill will decline as a proportion of total roadside litter, for example. However, no data source was included as part of the advertisement in support of the statement and no evidence was provided that would support any assertion that the experience in South Australia will be replicated in the Territory. Accordingly, I determined that the Act was contravened in that this statement was not distinguished as being a statement of comment rather than of fact.

In summary, I concluded that the advertisement contravened section 6 of the *Public Information Act* in that:

- the advertisement did not distinguish clearly statements of fact from statements of comments; and
- statements that were purported to be statements of fact and which were included in the advertisement did not identify sources of data in support of those statements.

The Department of Natural Resources, Environment, The Arts and Sport has commented:

Message: *Cash for Containers has been in Place in South Australia for over 35 years. It works.*

Preliminary Finding: *The statement contravened the Act in that the source of data in support of the statement was not disclosed as required by the Guidelines issued under the Act.*

Department Response: *While the advertisement didn't provide a direct reference to the factual statement that Cash for Containers works in South Australia, the advertisement reads "For more facts about Cash for Containers go to www.greeningnt.nt.gov.au".*

This website contains reference for the basis of this statement and the source of the fact. This source was the Recyclers of South Australia Inc (<http://www.recyclesa.com.au>), who cited the success of Container Deposit Legislation through increased rates of recycling and less container litter.

Future Departmental advertisements will include references for similar type activities, rather than refer readers to a website for the source of the information.

Message: *Grocery and beverage prices are not more expensive in South Australia under Cash for Containers. There is no reason why prices should increase in the Territory.*

Preliminary Finding: *The statement is comment rather than fact. The Act had been contravened as the statement was not distinguishable as being a statement of comment and that the requirements set out in the Guidelines under the Act were not adhered to.*

Department Response: *This statement was based on Australian Bureau of Statistics data for Average Retail Prices of Selected Items from capital cities for the September and December quarter 2010. This data is available at:*

- <http://www.abs.gov.au/AUSSTATS/abs@.nsf/6403.0.55.001Dec>¹
- <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6403.0.55.001Sep%202010?OpenDocument>

¹ This link, as provided by the Department in its response to this report, is no longer active. It has been replaced by <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6403.0.55.001Dec%202010>

The Department of Natural Resources, Environment, The Arts and Sport comments continued:

The data shows grocery and beverage prices in Adelaide, where a Cash for Containers scheme operates are not more expensive in places where it doesn't exist i.e. Perth and Hobart. Additionally, the data shows grocery and beverage prices in Adelaide are very comparable with other capitals like Brisbane, where the scheme doesn't exist either.

From that ABS data it was deducted that grocery prices are not more expensive in South Australia under Cash for Containers, so prices in the Territory under Cash for Containers should not need to increase either.

While the advertisement didn't provide a direct reference for the statement, the advertisement reads "For more facts about Cash for Containers go to www.greeningnt.nt.gov.au". This website contains reference for the statement and source of this fact.

Future Departmental advertisements will include references for similar type activities, rather than refer readers to a website for the source of the information.

Message: *Cash for Containers will mean a cleaner, greener Territory.*

Preliminary Finding: *The statement is comment rather than fact. The Act had been contravened as the statement was not distinguishable as being a statement of comment and that the requirements set out in the Guidelines under the Act were not adhered to.*

Department Response: *This statement was used as a fact by the Department, as when cash for Containers is introduced, it will result in a notable reduction of the amount of beverage container litter in the environment. This will result in a cleaner, greener Territory.*

This premise is based off research that the Northern Territory beverage container litter items constitute approximately 10% of the national level, despite the Territory contributing only 1% of the population. South Australia, where Cash for Containers has been in place since 1977, has 7.4% of the national population and contributes only 4% of the national beverage container litter. These figures are from 2009/10 KAB National Litter Count, August 2010, McGregor Tan Research.


While the advertisement didn't provide a direct reference for the statement, that Cash for Containers will mean a cleaner, greener Territory, the advertisement reads "For more facts about Cash for Containers go to www.greeningnt.nt.gov.au". This website contains reference for the statement and source of this fact.


Future Departmental advertisements will include references for similar type activities, rather than refer readers to a website for the source of the information.





Would you like 10c back in your pocket?


Cash for Containers - Just the facts

 The Territory Government's Cash for Containers initiative will be introduced later this year.

 Cash for Containers is not a tax. It puts 10 cents into the pockets of Territorians for each container collected.

 Cash for Containers has been in place in South Australia for over 35 years - it works.

 Grocery and beverage prices are not more expensive in South Australia under Cash for Containers. There is no reason why prices should increase in the Territory.

 Cash for Containers will mean a cleaner, greener Territory.

To find out more facts about Cash for Containers visit www.greeningnt.nt.gov.au

greening the Territory
A Territory Government initiative

TERRITORY CASH FOR CONTAINERS



Saturday, January 29, 2011. NT NEWS. 15 +

www.ntnews.com.au

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