



New South Wales

Government Advertising Bill 2011

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to regulate Government advertising campaigns by:

- (a) providing for Government advertising guidelines, and
- (b) prohibiting Government advertising campaigns and other material that could influence support for a political party, and
- (c) requiring cost benefit analyses and peer reviews of Government advertising campaigns to be carried out for campaigns costing more than a specified amount, and an advertising compliance certificate to be given, before a campaign is commenced, and
- (d) requiring a political party, whose parliamentary representatives are Ministers in the Government of this State (a *governing party*), to pay the costs of Government advertising that contravenes the prohibitions relating to political advertising, and
- (e) providing a right to seek a Supreme Court review of the liability to pay those costs, and
- (f) requiring the Auditor-General to audit Government advertising activities of Government agencies and to report the findings to Parliament, and

- (g) requiring advertising compliance certificates to be made publicly available as open access information.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act. For the purposes of the proposed Act, a **Government agency** will include public service Departments, statutory bodies representing the Crown, the NSW Police Force, the Teaching Service, the NSW Health Service and other public bodies prescribed by regulations made under the proposed Act.

Clause 4 defines **Government advertising campaign** to mean the dissemination to members of the public of information about a government program, policy or initiative or any public health or safety or other matter that is funded by or on behalf of a Government agency and is disseminated under a commercial advertising distribution agreement by means of radio, television, the Internet, newspapers, billboards, cinemas or other media. Reports required to be published by Acts and private campaigns sponsored by Government agencies will not be Government advertising campaigns. Regulations will be able to be made exempting Government advertising campaigns, or classes of Government advertising campaigns, from the whole or specified provisions of the proposed Act or regulations made under the proposed Act.

Part 2 Government advertising campaigns

Clause 5 requires the Minister to prepare Government advertising guidelines and to publish them in the Government Gazette and make them publicly available on a Government website. The guidelines must not be inconsistent with the proposed Act or regulations made under the proposed Act.

Clause 6 prohibits a Government advertising campaign from being designed so as to influence (directly or indirectly) support for a political party. It also prohibits Government advertising from containing the name, or giving prominence to the voice or image, of a Minister or other member of Parliament or a candidate for election, as well as prohibiting the use of the name, logo or slogan of a political party. Service announcements or other information required for the purposes of a State election will not be subject to the proposed section.

Clause 7 requires the head of a Government agency to ensure that a cost benefit analysis is carried out of a proposed Government advertising campaign of the agency if its cost is likely to exceed \$1,000,000 and a peer review is carried out of any such proposed campaign if its cost is likely to exceed \$50,000. A cost benefit analysis or

peer review may be given after commencement of the campaign in the case of urgent public health or safety matters or other urgent circumstances.

Clause 8 requires the head of a Government agency to issue an advertising compliance certificate for a Government advertising campaign of the agency before the campaign commences. The advertising compliance certificate is a certificate that the campaign complies with the proposed Act, regulations under the proposed Act and the Government advertising guidelines, contains accurate information, is necessary to achieve a public purpose, is supported by analysis and research and is an efficient and cost effective means of achieving that public purpose. A certificate may be given after commencement of the campaign in the case of urgent public health or safety matters or other urgent circumstances.

Clause 9 provides that the head of a Government agency is not subject to Ministerial control when determining or approving the method, medium or volume of a Government advertising campaign or determining whether to issue an advertising compliance certificate. This will not apply to budgetary or financial limits on campaigns. The head of a Government agency is also not to be subject to Ministerial control in relation to the taking of debt recovery action against a governing party under proposed Part 3.

Clause 10 prohibits Government advertising campaigns from being conducted after Australia Day and before election day in a year in which a State election is to be held. Advertising for public health or safety matters, service announcements or information, legal notices, jobs or tenders will be permitted.

Part 3 Enforcement of Government advertising requirements

Clause 11 provides that, if the content or other circumstances of a Government advertising campaign constitute a breach of proposed section 6 or regulations under that section, the amount of the cost of the campaign may be recovered as a debt due to the Crown and, in the case of a coalition of governing parties, each party is jointly and severally liable for the debt. Each governing party may recover amounts paid from other governing parties, according to the number of seats held by each party in the Legislative Assembly.

Clause 12 enables regulations to be made with respect to arrangements under which a governing party liable to pay the cost of a Government advertising campaign may offset the liability against amounts that would otherwise be paid to the party under the *Election Funding, Expenditure and Disclosures Act 1981* or any other Act.

Clause 13 gives a governing party the right to apply to the Supreme Court for a review of its liability to pay the whole or part of the cost of a campaign. On an application, the Supreme Court may determine whether there has been such a breach and determine the cost and may relieve the governing party of the obligation to pay the whole or part of the cost.

Part 4 Miscellaneous

Clause 14 requires the Auditor-General to carry out an annual performance audit of the activities of one or more Government agencies in relation to their Government advertising campaigns in order to determine whether the agencies have carried them out effectively and have done so economically and efficiently and in compliance with the proposed Act, regulations under the proposed Act, other laws and the Government advertising guidelines. The Auditor-General may determine, when reporting on a performance audit, that the content or other circumstances of a Government advertising campaign constitute a breach of proposed section 6 or regulations under that section (which relate to political advertising) and must, in such a case, specify the cost of the campaign.

Clause 15 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 16 provides for the review of the proposed Act in 5 years.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Government Information (Public Access) Regulation 2009

Schedule 2 amends the *Government Information (Public Access) Regulation 2009* to make advertising compliance certificates information that is open access information under the *Government Information (Public Access) Act 2009*. The effect of this is that the certificates will be required to be made publicly available and free of charge on a website of the agency concerned.



New South Wales

Government Advertising Bill 2011

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New South Wales

Government Advertising Bill 2011

No. , 2011

A Bill for

An Act to regulate Government advertising; and for other purposes.

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Government Advertising Act 2011*. 4

2 Commencement 5

This Act commences on a day or days to be appointed by proclamation. 6

3 Definitions 7

(1) In this Act: 8

cost of a Government advertising campaign includes the amount paid or payable by or on behalf of a Government agency for the following: 9

(a) research for the purposes of the campaign, 11

(b) production or carrying out of the campaign, 12

(c) media distribution, 13

(d) evaluation of the likely or actual effectiveness of the campaign. 14

function includes a power, authority or duty, and *exercise* a function includes perform a duty. 15

governing party means a political party whose parliamentary representatives are Ministers in the Government of New South Wales. 16

Government advertising campaign—see section 4. 17

Government advertising guidelines—see section 5. 18

Government agency means: 19

(a) a Division of the Government Service within the meaning of the *Public Sector Employment and Management Act 2002*, or 20

(b) a statutory body representing the Crown, or 21

(c) a body (whether incorporated or unincorporated) established or continued for a public purpose by or under the provisions of a statutory instrument, or 22

(d) the NSW Police Force, or 23

(e) the Teaching Service, or 24

(f) the NSW Health Service, or 25

(g) a wholly-owned subsidiary of the Crown in right of the State or of a Government agency, or 26

(h) a body declared to be a Government agency by a regulation under this section. 27

head of a Government agency means the person who is or who exercises the functions of chief executive officer of the agency. 1
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political party means a body or organisation, incorporated or unincorporated, having as one of its objects or activities the promotion of the election to Parliament of a candidate or candidates endorsed by it or by a body or organisation of which it forms part. 3
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(2) Notes included in this Act do not form part of this Act. 7

4 Government advertising campaigns 8

(1) In this Act, *Government advertising campaign* means the dissemination to members of the public of information about a government program, policy or initiative, or about any public health or safety or other matter, that: 9
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(a) is funded by or on behalf of a Government agency, and 13

(b) is disseminated under a commercial advertising distribution agreement by means of radio, television, the Internet, newspapers, billboards, cinemas or other media. 14
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(2) The following are not Government advertising campaigns: 17

(a) the publication of a report that is required to be published by or under an Act, 18
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(b) advertising for the purposes of a person or body (other than a political organisation) that is not a Government agency or other public authority and that is wholly or partly sponsored by a Government agency. 20
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(3) In this Act, a reference to a *Government advertising campaign of a Government agency* is a reference to a campaign funded by money paid by or on behalf of the agency. 24
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(4) For the purposes of this Act, a Government advertising campaign commences when information is first disseminated for the purposes of the campaign. 27
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(5) The regulations may exempt a Government advertising campaign, or a class of Government advertising campaigns, from this Act or the regulations or a provision of this Act or the regulations. An exemption may be unconditional or subject to conditions. 30
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Part 2	Government advertising campaigns	1
5	Guidelines for Government advertising campaigns	2
(1)	The Minister is to prepare guidelines for Government advertising campaigns (the <i>Government advertising guidelines</i>).	3 4
(2)	The Minister must publish the Government advertising guidelines in the Government Gazette and must ensure that the guidelines are publicly available free of charge on a website maintained by a Government agency.	5 6 7 8
(3)	The Government advertising guidelines may include the following matters:	9 10
(a)	requirements relating to style and content, dissemination of information and the cost of Government advertising campaigns,	11 12
(b)	any other matter the Minister thinks fit.	13
(4)	The Government advertising guidelines must not be inconsistent with this Act or the regulations.	14 15
6	Prohibitions on political advertising	16
(1)	A Government advertising campaign must not be designed so as to influence (directly or indirectly) support for a political party.	17 18
(2)	Material that is part of a Government advertising campaign must not contain the name, or give prominence to the voice or any image, of a Minister, any other member of Parliament or a candidate nominated for election to Parliament under the <i>Parliamentary Electorates and Elections Act 1912</i> .	19 20 21 22 23
(3)	Material that is part of a Government advertising campaign must not contain the name, logo or any slogan of, or any other reference relating to, a political party.	24 25 26
(4)	The regulations may make provision for or with respect to the following matters:	27 28
(a)	matters that may be taken into account in determining whether a Government advertising campaign complies with this section,	29 30
(b)	circumstances in which a Government advertising campaign is taken to comply with subsection (1).	31 32
(5)	This section does not apply to service announcements containing electoral information or other information required to be published for the purposes of a State election.	33 34 35

7	Cost benefit analysis and peer review required	1
(1)	The head of a Government agency must ensure that a cost benefit analysis of a Government advertising campaign of the agency is carried out before the campaign commences if the cost of that campaign is likely to exceed \$1,000,000 or such other amount as may be prescribed by the regulations.	2 3 4 5 6
(2)	The head of a Government agency must ensure that a peer review of a Government advertising campaign of the agency is carried out before the campaign commences if the cost of that campaign is likely to exceed \$50,000 or such other amount as may be prescribed by the regulations.	7 8 9 10
(3)	The Government advertising guidelines may include requirements for cost benefit analyses and peer reviews carried out under this section.	11 12
(4)	A cost benefit analysis or peer review may be carried out after a Government advertising campaign commences if the head of the Government agency concerned is satisfied that the campaign relates to an urgent public health or safety matter or is required in other urgent circumstances.	13 14 15 16 17
8	Advertising compliance certificates	18
(1)	A Government advertising campaign of a Government agency must not be commenced unless the head of the agency has given an advertising compliance certificate for the campaign.	19 20 21
(2)	An advertising compliance certificate is a certificate certifying that, in the opinion of the head of the Government agency, the proposed Government advertising campaign:	22 23 24
(a)	complies with this Act, the regulations and the Government advertising guidelines, and	25 26
(b)	contains accurate information, and	27
(c)	is necessary to achieve a public purpose and is supported by analysis and research, and	28 29
(d)	is an efficient and cost effective means of achieving that public purpose.	30 31
(3)	An advertising compliance certificate may be given after a Government advertising campaign commences if the head of the Government agency concerned is satisfied that the campaign relates to an urgent public health or safety matter or is required in other urgent circumstances.	32 33 34 35

Clause 9	Government Advertising Bill 2011
Part 2	Government advertising campaigns

9	Independent role of heads of Government agencies	1
(1)	The head of a Government agency is not subject to the direction or control of any Minister in the exercise of the following functions:	2
	(a) determining or approving the method, medium or volume of any Government advertising campaign of the agency,	3
	(b) determining whether to issue an advertising compliance certificate,	4
	(c) determining whether to take debt recovery action and the taking of debt recovery action against a governing party under Part 3.	5
(2)	This section does not apply to functions relating to the determination of budgetary or other financial limits for Government advertising campaigns.	6
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10	Restrictions on Government advertising campaigns during pre-election period	10
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(1)	A Government advertising campaign must not be carried out after 26 January in the calendar year in which the Legislative Assembly is due to expire and before the election for the Legislative Assembly in that year.	13
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(2)	This section does not apply to Government advertising campaigns relating to the following matters:	19
	(a) public health or safety matters,	20
	(b) service announcements or including (but not limited to) service announcements containing electoral information,	21
	(c) notices required to be published under a law,	22
	(d) job advertisements,	23
	(e) tender advertising.	24
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Part 3	Enforcement of Government advertising requirements	1
		2
11	Breaches of prohibitions on political advertising	3
(1)	If the content or other circumstances of a Government advertising campaign constitute a breach of the requirements of section 6 or regulations made under that section, the cost of the campaign is payable by the governing party at the time the campaign commenced and may be recovered in any court of competent jurisdiction as a debt due to the Crown.	4 5 6 7 8 9
(2)	If there was more than one governing party at that time each party is jointly and severally liable for the cost. However, as between themselves they are each liable only for the part of the cost that is proportionate to the proportion that the number of seats each party holds in the Legislative Assembly bears to the total number of seats held in the Legislative Assembly by all the governing parties.	10 11 12 13 14 15
(3)	A governing party that pays more than its proportionate part of the cost of a Government advertising campaign has the right to recover the excess from another governing party.	16 17 18
(4)	This section is subject to section 13.	19
12	Arrangements for payment of recoverable cost	20
	The regulations may make provision for or with respect to arrangements under which a governing party that is liable to pay the cost of a Government advertising campaign may offset that liability against amounts that would otherwise be paid to the party under the <i>Election Funding, Expenditure and Disclosures Act 1981</i> or any other Act.	21 22 23 24 25
13	Supreme Court review of liability for campaign costs	26
(1)	A governing party may apply to the Supreme Court for a review of its liability to pay the whole or part of the cost of a Government advertising campaign.	27 28 29
(2)	An application must be made within the period (if any) prescribed by the regulations or within such further period as the Court may allow.	30 31
(3)	On an application under this section, the Court may do any of the following:	32 33
(a)	determine that the content or other circumstances of the Government advertising campaign do or do not constitute a breach of the requirements of section 6 or regulations made under that section,	34 35 36 37
(b)	determine the cost of the Government advertising campaign,	38

Clause 13 Government Advertising Bill 2011

Part 3 Enforcement of Government advertising requirements

- (c) having regard to the circumstances of the case, order that a governing party is not required to pay the whole or part of the cost of the Government advertising campaign, 1
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- (d) order that the whole or part of the cost is required to be paid by a specified governing party in a specified manner or within a specified period. 4
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Part 4	Miscellaneous	1
14	Auditor-General to conduct performance audit	2
(1)	The Auditor-General must conduct a performance audit of the activities of one or more Government agencies in relation to Government advertising campaigns of the agency in each financial year.	3 4 5
(2)	A performance audit is to be carried out within the period (if any) prescribed by the regulations.	6 7
(3)	Without limiting subsection (1), the Auditor-General must determine whether a Government agency is carrying out activities in relation to Government advertising campaigns effectively and doing so economically and efficiently and in compliance with this Act, the regulations, other laws and the Government advertising guidelines.	8 9 10 11 12
(4)	The Auditor-General may determine that the content or other circumstances of a Government advertising campaign constitute a breach of the requirements of section 6 or regulations made under that section.	13 14 15 16
(5)	The Auditor-General must include any such determination in the report of the performance audit and must also specify the cost of the Government advertising campaign concerned.	17 18 19
(6)	The Auditor-General may determine, at the Auditor-General's discretion, the Government agencies to be audited under this section.	20 21
(7)	The performance audit is to be carried out under Division 2A of Part 3 of the <i>Public Finance and Audit Act 1983</i> .	22 23
(8)	The Auditor-General may report on one or more performance audits under this section in a report under Division 2A of Part 3 of the <i>Public Finance and Audit Act 1983</i> .	24 25 26
(9)	This section does not limit any other function of the Auditor-General under any other law.	27 28
15	Regulations	29
	The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	30 31 32 33
16	Review of Act	34
(1)	The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.	35 36 37

Clause 16 Government Advertising Bill 2011

Part 4 Miscellaneous

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| (2) | The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act. | 1 |
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| (3) | A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years. | 3 |
| | | 4 |

Schedule 1	Savings, transitional and other provisions	1
		2
Part 1	General	3
1	Regulations	4
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: this Act	5 6 7
(2)	Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	8 9
(3)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:	10 11 12
(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	13 14 15
(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	16 17 18
Part 2	Provisions consequent on enactment of this Act	19 20
2	Application to current Government advertising campaigns	21
	This Act does not apply to or in respect of a Government advertising campaign commenced before the commencement of this Act.	22 23

Schedule 2	Amendment of Government Information (Public Access) Regulation 2009	1
		2
Clause 3	Additional open access information	3
	Insert before the note to clause 3:	4
(2)	An advertising compliance certificate issued by the head of a Government agency under the <i>Government Advertising Act 2011</i> is prescribed as open access information of that agency.	5 6 7