

Passed by both Houses



New South Wales

Government Advertising Bill 2011

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2011*



New South Wales

Government Advertising Bill 2011

Act No , 2011

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

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Government Advertising Act 2011*.

2 Commencement

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

3 Definitions

(1) In this Act:

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

- (a) research for the purposes of the campaign,
- (b) production or carrying out of the campaign,
- (c) media distribution,
- (d) evaluation of the likely or actual effectiveness of the campaign.

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

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

Government advertising campaign—see section 4.

Government advertising guidelines—see section 5.

Government agency means:

- (a) a Division of the Government Service within the meaning of the *Public Sector Employment and Management Act 2002*, or
- (b) a statutory body representing the Crown, or
- (c) a body (whether incorporated or unincorporated) established or continued for a public purpose by or under the provisions of a statutory instrument, or
- (d) the NSW Police Force, or
- (e) the Teaching Service, or
- (f) the NSW Health Service, or
- (g) a wholly-owned subsidiary of the Crown in right of the State or of a Government agency, or
- (h) a body declared to be a Government agency by a regulation under this section.

head of a Government agency means the person who is or who exercises the functions of chief executive officer of the agency.

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.

- (2) Notes included in this Act do not form part of this Act.

4 Government advertising campaigns

- (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:
- (a) is funded by or on behalf of a Government agency, and
 - (b) is disseminated under a commercial advertising distribution agreement by means of radio, television, the Internet, newspapers, billboards, cinemas or other media.
- (2) The following are not Government advertising campaigns:
- (a) the publication of a report that is required to be published by or under an Act,
 - (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.
- (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.
- (4) For the purposes of this Act, a Government advertising campaign commences when information is first disseminated for the purposes of the campaign.
- (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.

Part 2 Government advertising campaigns

5 Guidelines for Government advertising campaigns

- (1) The Minister is to prepare guidelines for Government advertising campaigns (the *Government advertising guidelines*).
- (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.
- (3) The Government advertising guidelines may include the following matters:
 - (a) requirements relating to style and content, dissemination of information and the cost of Government advertising campaigns,
 - (b) any other matter the Minister thinks fit.
- (4) The Government advertising guidelines must not be inconsistent with this Act or the regulations.

6 Prohibitions on political advertising

- (1) A Government advertising campaign must not be designed so as to influence (directly or indirectly) support for a political party.
- (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 *Parliamentary Electorates and Elections Act 1912*.
- (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.
- (4) The regulations may make provision for or with respect to the following matters:
 - (a) matters that may be taken into account in determining whether a Government advertising campaign complies with this section,
 - (b) circumstances in which a Government advertising campaign is taken to comply with subsection (1).
- (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.

7 Cost benefit analysis and peer review required

- (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) 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.
- (3) The Government advertising guidelines may include requirements for cost benefit analyses and peer reviews carried out under this section.
- (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.

8 Advertising compliance certificates

- (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.
- (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:
 - (a) complies with this Act, the regulations and the Government advertising guidelines, and
 - (b) contains accurate information, and
 - (c) is necessary to achieve a public purpose and is supported by analysis and research, and
 - (d) is an efficient and cost effective means of achieving that public purpose.
- (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.

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Part 2 Government advertising campaigns

9 Independent role of heads of Government agencies

- (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:
 - (a) determining or approving the method, medium or volume of any Government advertising campaign of the agency,
 - (b) determining whether to issue an advertising compliance certificate,
 - (c) determining whether to take debt recovery action and the taking of debt recovery action against a governing party under Part 3.
- (2) This section does not apply to functions relating to the determination of budgetary or other financial limits for Government advertising campaigns.

10 Restrictions on Government advertising campaigns during pre-election period

- (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.
- (2) This section does not apply to Government advertising campaigns relating to the following matters:
 - (a) public health or safety matters,
 - (b) service announcements or including (but not limited to) service announcements containing electoral information,
 - (c) notices required to be published under a law,
 - (d) job advertisements,
 - (e) tender advertising.

Part 3 Enforcement of Government advertising requirements

11 Breaches of prohibitions on political advertising

- (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.
- (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.
- (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.
- (4) This section is subject to section 13.

12 Arrangements for payment of recoverable cost

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 *Election Funding, Expenditure and Disclosures Act 1981* or any other Act.

13 Supreme Court review of liability for campaign costs

- (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.
- (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.
- (3) On an application under this section, the Court may do any of the following:
 - (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,
 - (b) determine the cost of the Government advertising campaign,

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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,
- (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.

Part 4 Miscellaneous

14 Auditor-General to conduct performance audit

- (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.
- (2) A performance audit is to be carried out within the period (if any) prescribed by the regulations.
- (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.
- (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.
- (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.
- (6) The Auditor-General may determine, at the Auditor-General's discretion, the Government agencies to be audited under this section.
- (7) The performance audit is to be carried out under Division 2A of Part 3 of the *Public Finance and Audit Act 1983*.
- (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 *Public Finance and Audit Act 1983*.
- (9) This section does not limit any other function of the Auditor-General under any other law.

15 Regulations

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.

16 Review of Act

- (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.

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Part 4 Miscellaneous

- (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.
- (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.

Schedule 1 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (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.
- (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:
 - (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
 - (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.

Part 2 Provisions consequent on enactment of this Act

2 Application to current Government advertising campaigns

This Act does not apply to or in respect of a Government advertising campaign commenced before the commencement of this Act.

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

Clause 3 Additional open access information

Insert before the note to clause 3:

- (2) An advertising compliance certificate issued by the head of a Government agency under the *Government Advertising Act 2011* is prescribed as open access information of that agency.