



New South Wales

# Banning Political Advertising (Make Labor Pay) Bill 2006

## Explanatory note

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

## Overview of Bill

The objects of this Bill are:

- (a) to ensure that, as far as possible, public money is not expended on government publicity for a partisan political purpose, and
- (b) to enable the Auditor-General to scrutinise government publicity that appears to the Auditor-General to have the capacity or to be likely to have the capacity to be used for that purpose.

## 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 the date of assent.

**Clause 3** contains a brief description of the objects of the proposed Act.

**Clause 4** defines certain words and expressions used in the proposed Act. These include *government publicity* (which is defined to include all methods of publicising

governmental activities, programs or initiatives for public authorities that are paid for with public money) and **public authority** (which is defined so as to include Divisions of the Government Service and certain statutory bodies such as State owned corporations, but not universities or local councils). **Guidelines** are defined as the guidelines for government publicity set out in Schedule 1. These are that government publicity should be accurate, factual and truthful, it should be fair, honest and impartial, and lawful and proper.

## **Part 2 Scrutiny of publicity and guidelines**

**Clause 5** provides that the Auditor-General:

- (a) may review any government publicity that the Auditor-General considers may be government publicity for political purposes, and
- (b) must review any government publicity on which a public authority incurs or will incur \$200,000 or more in expenditure,

in order to determine whether the Auditor-General should make an order regarding the government publicity under clause 8.

**Government publicity for political purposes** is government publicity that promotes governmental activities, programs or initiatives in such a partisan or biased manner that it has the capacity, or is likely to have the capacity, to influence public support for a political party or for candidates for election to, or members of, Parliament. The Auditor-General may carry out a review on the Auditor-General's own initiative or if a complaint is made to the Auditor-General under the proposed Act. The Auditor-General may also provide advice, at the request of a public authority, concerning publicity on which it proposes to incur expenditure that may be outside the guidelines. In exercising these functions, the Auditor-General is to have regard to the guidelines for government publicity. The guidelines are also to be followed by heads of public authorities in determining whether the public authorities should incur expenditure on government publicity (clause 8).

**Clause 6** sets out the other functions of the Auditor-General under the proposed Act. These include monitoring and reviewing expenditure on government publicity that appears to the Auditor-General to be for political purposes.

**Clause 7** provides for the guidelines as set out in Schedule 1 to the proposed Act to be amended by regulations made on the recommendation of the Auditor-General. The guidelines as amended may include recommendations as to the appropriate content, style, method of dissemination and cost of government publicity and for inclusion of a "termination provision" in contracts for dissemination of government publicity so that the Auditor-General may order the dissemination to stop if the publicity does not comply with the guidelines. Regulations made under the proposed section may be disallowed by either House of Parliament under section 41 of the *Interpretation Act 1987*.

**Clause 8** requires the head of a public authority to ensure that the public authority does not incur expenditure on government publicity that does not comply with the guidelines and that it complies with any orders made by the Auditor-General in

connection with deviations from the guidelines. It also enables the Auditor-General to order a public authority to stop the dissemination of government publicity in certain circumstances. The Auditor-General may further order that a political party pay back the amount of any expenditure on government publicity for political purposes incurred by a public authority where that party is held to be responsible for the publicity.

**Clause 9** enables the Auditor-General to require a public authority to submit a report to the Auditor-General detailing expenditure on government publicity that the Auditor-General believes may be government publicity for political purposes.

**Clause 10** enables complaints to be made to the Auditor-General in relation to government publicity and provides for the Auditor-General to inquire into such a complaint if the Auditor-General believes the complaint is justified. The Auditor-General is required to give written reasons to a complainant if the Auditor-General decides not to investigate a complaint.

**Clauses 11–13** require the Auditor-General to make an annual report to each House of Parliament and enable the Auditor-General to make special reports to Parliament in relation to matters concerning the Auditor-General's functions that the Auditor-General feels should be brought to the public notice.

### **Part 3 Miscellaneous**

**Clause 14** provides for the making of regulations. The regulations may exempt a public authority from compliance with any provision of the proposed Act but such a regulation may only be made on the recommendation of the Auditor-General.

**Clause 15** provides for a review of the operation of the proposed Act to be conducted by the Minister after 5 years from the date of assent.

### **Schedule 1 Guidelines for government publicity**

**Schedule 1** sets out the guidelines for government publicity.





New South Wales

# Banning Political Advertising (Make Labor Pay) Bill 2006

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New South Wales

# **Banning Political Advertising (Make Labor Pay) Bill 2006**

No , 2006

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## **A Bill for**

An Act to provide for the scrutiny of, and guidelines for, government publicity which has or is likely to have the capacity to influence public support for a political party or for candidates for election to, or members of, Parliament; and for other purposes.

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**The Legislature of New South Wales enacts:** 1

**Part 1 Preliminary** 2

**1 Name of Act** 3

This Act is the *Banning Political Advertising (Make Labor Pay) Act 2006*. 4  
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**2 Commencement** 6

This Act commences on the date of assent. 7

**3 Objects** 8

The objects of this Act are: 9

(a) to ensure that, as far as possible, public money is not expended on government publicity for a partisan political purpose, and 10  
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(b) to enable the Auditor-General to scrutinise government publicity that appears to the Auditor-General to have the capacity or to be likely to have the capacity to be used for that purpose. 12  
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**4 Definitions** 15

In this Act: 16

*candidate* for election means a person nominated as a candidate at an election in accordance with the *Parliamentary Electorates and Elections Act 1912*. 17  
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*dissemination* includes display. 20

*election* means an election of any member or members of the Legislative Assembly or a periodic Council election (within the meaning of section 3 of the *Constitution Act 1902*). 21  
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*exercise* a function includes perform a duty. 24

*function* includes a power, authority or duty. 25

*government publicity* means any advertisement, promotional campaign, public relations campaign, announcement or means of publicising any governmental activities, programs or initiatives that is funded by public money, being public money that is paid to the person or body disseminating the publicity for a public authority. 26  
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*government publicity for political purposes*—see section 5 (1). 31

*guidelines* means the guidelines for government publicity set out in Schedule 1. 32  
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*head of a public authority*—see section 8 (6). 34



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<b>party</b> 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, and includes any coalition of bodies or organisations having such objects or activities.	1 2 3 4 5
<b>public authority</b> means:	6
(a) a Division of the Government Service within the meaning of the <i>Public Sector Employment and Management Act 2002</i> , or	7 8
(b) any State owned corporation, or	9
(c) a NSW Government agency, or	10
(d) any other authority declared by the regulations to be a public authority for the purposes of this definition,	11 12
and includes a person exercising functions on behalf of the Division, corporation, agency or authority.	13 14
<b>termination provision</b> —see section 7 (3).	15

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<b>Part 2</b>	<b>Scrutiny of publicity and guidelines</b>	1
<b>5</b>	<b>Review of government publicity for political purposes</b>	2
(1)	In this Act:	3
	<i>government publicity for political purposes</i> means government publicity that promotes governmental activities, programs or initiatives in such a partisan or biased manner that it has the capacity, or is likely to have the capacity, to influence public support for a political party or for candidates for election to, or members of, Parliament.	4 5 6 7 8
(2)	The Auditor-General:	9
(a)	may review any government publicity that the Auditor-General considers may be government publicity for political purposes, and	10 11 12
(b)	must review any government publicity on which a public authority incurs or will incur \$200,000 or more in expenditure, to determine whether the Auditor-General should make any order regarding the publicity under section 8.	13 14 15 16
(3)	In making such a determination, the Auditor-General is to have regard to the guidelines.	17 18
(4)	The Auditor-General may conduct a review under this section on the Auditor-General's own initiative or on receipt of a complaint under section 10.	19 20 21
(5)	Nothing in this section prevents the Auditor-General from providing advice at the request of a public authority concerning proposed expenditure by the authority on government publicity that may be outside the guidelines.	22 23 24 25
<b>6</b>	<b>Other functions of Auditor-General</b>	26
	The Auditor-General also has the following functions under this Act:	27
(a)	to monitor and review expenditure by public authorities on government publicity that appears to the Auditor-General to be government publicity for political purposes,	28 29 30
(b)	to examine and review the practices and procedures of public authorities relating to the dissemination of government publicity,	31 32
(c)	to inquire into complaints made to the Auditor-General in accordance with section 10.	33 34
<b>7</b>	<b>Amendment of guidelines</b>	35
(1)	The regulations may, on the recommendation of the Auditor-General, amend Schedule 1 by inserting, omitting or amending any guideline.	36 37

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| (2) | A guideline may include recommendations regarding the appropriate content and style, method of dissemination and cost of government publicity.   | 1<br>2<br>3      |
| (3) | A guideline may recommend that any contract entered into by a public authority for the dissemination of government publicity include a provision (in this Act called a <i>termination provision</i> ) for termination of the contract if the guidelines are not complied with. | 4<br>5<br>6<br>7 |

**8 Compliance with guidelines** 8

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| (1) | The head of a public authority must ensure that the public authority:  | 9                          |
| (a) | does not incur expenditure on government publicity that does not comply with the guidelines, and   | 10<br>11                   |
| (b) | complies with any order made by the Auditor-General under this Act.  | 12<br>13                   |
| (2) | The Auditor-General may order a public authority to do any one or more of the following:   | 14<br>15                   |
| (a) | subject to subsection (3), to immediately stop the dissemination of any government publicity that is for political purposes and that does not comply with the guidelines and for which the authority has incurred or will incur expenditure,   | 16<br>17<br>18<br>19       |
| (b) | to modify the content, style or method of dissemination of any such government publicity so that it will comply with the guidelines,   | 20<br>21<br>22             |
| (c) | to stop expenditure on any such government publicity or to limit expenditure on any such government publicity so that it will comply with the guidelines.  | 23<br>24<br>25             |
| (3) | An order under subsection (2) may not be made so as:   | 26                         |
| (a) | to require a public authority to stop payment to any person or body for government publicity already disseminated by that person or body, or   | 27<br>28<br>29             |
| (b) | to affect any liability incurred by the public authority under a contract for future dissemination of such publicity unless the contract includes a termination provision.   | 30<br>31<br>32             |
| (4) | The Auditor-General may order a party that the Auditor-General considers is responsible for any government publicity that is the subject of any order under subsection (2) to pay into such fund or account specified by the Auditor-General the amount of any expenditure incurred by the public authority in relation to that publicity. | 33<br>34<br>35<br>36<br>37 |

(5)	If a contract is terminated in accordance with a termination provision:	1
(a)	the termination does not affect a right acquired, or a liability incurred, before that termination by a person who was a party to the contract, as a result of the performance before that termination of any obligation imposed by the contract, and	2 3 4 5
(b)	no liability for breach of contract is incurred by a person who was a party to the contract by reason only of that termination, and	6 7
(c)	neither the Crown nor the Auditor-General incurs any liability by reason of that termination.	8 9
(6)	For the purposes of this Act, the <i>head of a public authority</i> for:	10
(a)	a Division of the Government Service—is the appropriate Division Head, and	11 12
(b)	a public authority that is an individual—is the individual, and	13
(c)	a public authority that is a corporation sole—is the corporation sole, and	14 15
(d)	any other public authority—is the person who exercises the functions of chief executive officer of the authority.	16 17
<b>9</b>	<b>Reports on expenditure</b>	18
	The Auditor-General may require a public authority to prepare and submit to the Auditor-General, by such a date as may be specified by the Auditor-General, a report detailing its expenditure on government publicity that the Auditor-General believes may be government publicity for a political purpose and the purposes of that publicity.	19 20 21 22 23
<b>10</b>	<b>Complaints</b>	24
(1)	Any person may complain to the Auditor-General that a public authority has, in the opinion of the complainant, improperly incurred expenditure on government publicity because it is government publicity for a political purpose and does not comply with the guidelines.	25 26 27 28
(2)	A complaint must be in writing.	29
(3)	The Auditor-General need not inquire into a complaint made to the Auditor-General if, in the opinion of the Auditor-General:	30 31
(a)	the government publicity is not government publicity for a political purpose or is government publicity that complies with the guidelines, or	32 33 34
(b)	the complaint is frivolous or vexatious, or	35
(c)	the subject-matter of the complaint is trivial, or	36
(d)	the conduct complained of occurred too long before the complaint to justify investigation, or	37 38

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(e)	it would for any other reason be inappropriate to do so.	1
(4)	The Auditor-General is to advise a complainant in writing within 30 days of deciding not to inquire into a complaint and of the reasons for the Auditor-General's decision.	2 3 4
(5)	The Auditor-General is to notify the head of the public authority concerned before it conducts an inquiry into a complaint against the public authority.	5 6 7
<b>11</b>	<b>Annual report of Auditor-General to Parliament</b>	<b>8</b>
(1)	As soon as practicable after 30 June (but not later than 31 December) in each year, the Auditor-General is to prepare and present to each House of Parliament a report of the Auditor-General's activities under this Act for the 12 months ending on 30 June in that year.	9 10 11 12
(2)	A report is to include the following:	13
(a)	a description of any expenditure on government publicity that, in the opinion of the Auditor-General, was improperly incurred by a public authority because it was government publicity for political purposes and did not comply with the guidelines,	14 15 16 17
(b)	a description of any such government publicity that was the subject of complaint to and inquiry by the Auditor-General,	18 19
(c)	a description of any government publicity that the Auditor-General is satisfied does not comply with the guidelines or that has been disseminated in disregard of any order of the Auditor-General under this Act.	20 21 22 23
(3)	If a House of Parliament is not sitting when the Auditor-General seeks to present a report to it under this section, the Auditor-General is to present the report to the Clerk of the House concerned to be dealt with in accordance with section 13.	24 25 26 27
<b>12</b>	<b>Special report</b>	<b>28</b>
(1)	The Auditor-General may, at any time, prepare and present to each House of Parliament a special report on any matter relating to the functions of the Auditor-General under this Act that, in the opinion of the Auditor-General, should be brought to the attention of Parliament.	29 30 31 32
(2)	If a House of Parliament is not sitting when the Auditor-General seeks to present a report to it under this section, the Auditor-General is to present the report to the Clerk of the House concerned to be dealt with in accordance with section 13.	33 34 35 36

Clause 13            Banning Political Advertising (Make Labor Pay) Bill 2006

Part 2                Scrutiny of publicity and guidelines

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**13    Reports presented to Clerk of House of Parliament**

A report presented to the Clerk of a House of Parliament in accordance with a provision of this Part:	1
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(a) is, on presentation and for all purposes, taken to have been laid before the House, and	4
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(b) is to be printed by authority of the Clerk of the House, and	6
(c) is, for all purposes, taken to be a document published by order or under the authority of the House, and	7
	8
(d) is to be recorded:	9
(i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and	10
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(ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,	12
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on the first sitting day of the House after receipt of the report by the Clerk.	14
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<b>Part 3</b>	<b>Miscellaneous</b>	1
<b>14</b>	<b>Regulations</b>	2
(1)	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.	3 4 5 6
(2)	In particular, the regulations may make provision for or with respect to:	7
(a)	requiring the making, keeping and auditing of records of expenditure by public authorities on government publicity, and	8 9
(b)	requiring or otherwise providing for the production, examination and copying of those records, and	10 11
(c)	the exemption of any public authority or of any act, matter or thing from all or any of the provisions of this Act, and	12 13
(d)	the disciplinary proceedings or disciplinary action that may be taken against any officer of a public authority responsible for a failure to meet the guidelines or the requirements of this Act.	14 15 16
(3)	A regulation under subsection (2) (c) may be made only on the recommendation of the Auditor-General.	17 18
<b>15</b>	<b>Review of Act</b>	19
(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.	20 21 22
(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.	23 24
(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.	25 26

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<b>Schedule 1</b>	<b>Guidelines for government publicity</b>	1
	(Sections 4 and 7)	2
<b>1</b>	<b>Government publicity should be accurate, factual and truthful</b>	3
	Factual information should be outlined clearly and accurately.	4
	Comment on and the analysis of that information, to amplify its meaning, should be indicated as such.	5
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<b>2</b>	<b>Government publicity should be fair, honest and impartial</b>	7
	The material should be presented in unbiased and objective language, and in a manner free from partisan promotion of Government policy and political argument.	8
		9
		10
<b>3</b>	<b>Government publicity should be lawful and proper</b>	11
	The material should comply with the law.	12