

## 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 Explanatory note page 3

Government Advertising Bill 2011

Explanatory note

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.

Explanatory note page 4

Government Advertising Bill 2011

Explanatory note

### **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.