

GOVERNMENT ADVERTISING BILL 2011

22 June 2011 Page: 3140

Bill introduced on motion by Mr Barry O'Farrell.

Agreement in Principle

Mr BARRY O'FARRELL (Ku-ring-gai—Premier, and Minister for Western Sydney)
[12.01 p.m.]: I move:

That this bill be now agreed to in principle.

The Government is pleased to introduce the Government Advertising Bill 2011 to restore integrity to taxpayer-funded government advertising. Governments in New South Wales have long used advertising campaigns to deliver important messages to the community. Such advertising campaigns should always be designed to benefit the community—for instance, to encourage people to be healthier, to be safer on our roads, to protect our environment or to take part in civic activities. The people of New South Wales should be able to expect that each dollar spent on a campaign is spent for their benefit, and not for the benefit of politicians or political parties. There have been examples in the past of political advertising designed to make people feel good about the government of the day, sometimes featuring Ministers spruiking the achievements of their administration.

I have raised this issue a number of times in this place and sought to improve standards through legislation, including the Government Publicity Control Bill 2007. However, the former Labor Government of the day opposed that legislation—the former Labor Government that was elected to office in 1995 with a commitment to control taxpayer-funded politically motivated government advertising, but once elected for 16 years refused to take any action to stop the sorts of rorts we saw in the lead-up to the last election campaign. The tendency to politicise government advertising has coincided with a rise in the amount of public money spent on it. The Auditor-General estimates that in the decade from 1999 to 2009 total annual expenditure on government advertising ranged from approximately \$80 million to approximately \$120 million. In round figures, this puts the bill for government advertising at \$1 billion per decade. There is no prize for guessing in which year the advertising would always spike in terms of expenditure.

This Government will ensure that advertising spending is managed responsibly to ensure that it is for a proper public purpose—and this bill is a key way of achieving that. This bill delivers the Government's commitment, contained in the 100 Day Action Plan, to introduce legislation to eliminate taxpayer-funded political advertising. It stops Ministers and government agencies spending funds on advertising unless the campaign complies with the new laws. The bill restores the integrity of advertising by the New South Wales Government by: prohibiting party-political material in government advertising; prohibiting advertising campaigns designed to benefit a political party; protecting the independence of heads of government agencies authorising advertising campaigns, ensuring they are free from interference by a Minister; providing a role for the Auditor-General to scrutinise government advertising campaigns; and making governing political parties liable to pay back the costs of advertising campaigns that breach these laws.

I now turn to the features of the bill. A wide range of government agencies need to comply with the provisions of this bill. They are set out in part 1, and include public service departments, statutory bodies representing the Crown, the New South Wales Police Force, the teaching services and the New South Wales Health services. Others bodies may be prescribed by regulation. State-owned corporations, however, are not engaged in the types of businesses

and activities that lend themselves to politicised advertising—and so those corporations are not subject to arrangements in the bill. The Government will nevertheless continue to monitor the advertising practices of State-owned corporations with a view to regulating them in future if there is a need.

A key concept in the bill is the government advertising campaign, which is set out in part 1. It provides that a government advertising campaign is the public dissemination of information about matters of government or public importance, and the information is distributed under a commercial advertising agreement and paid for by or on behalf of a government agency. In practice, these are the types of advertisements that are seen and heard every day on commercial radio or television, on commercial news or entertainment websites and in newspapers. A government agency purchases time or space on a commercial advertising platform alongside other advertisers. Part 2 of the bill provides that the Premier, as Minister responsible, may augment and detail the practices for government advertising through guidelines.

The foundations of the guidelines to operate under the bill are in the existing New South Wales Government Advertising Guidelines published as Premier's Memorandum 2010-08. Those guidelines have been revised a number of times in recent years in response to shortcomings identified by the Auditor-General. While those revisions have improved the integrity standards in principle, they have not been supported by compliance machinery. This bill rectifies this shortcoming by providing the incentives for compliance. Governing political parties will need to be on guard to ensure that the provisions of the bill are not breached, at the risk of having to pay back the cost of an advertising campaign that is prohibited under the new laws. Clause 6 of the bill sets out those prohibitions concerning advertising campaigns. The first prohibition is that a government advertising campaign must not be designed to directly or indirectly influence support for a political party.

Because the design of any advertising campaign involves subjective opinions, the bill provides for the circumstances in which a campaign is taken to comply with these provisions may be set out in the regulations. The second prohibition for a government advertising campaign is that it must not contain the name or give prominence to the voice or image of a Minister, a member of Parliament or a nominated candidate for election to the Parliament. Third, the name of any political party, its logo or slogan may not be in a government advertising campaign. There are times, of course, when such material must be communicated to the public of New South Wales by agencies involved in the conduct of elections, principally the Electoral Commission and the Electoral Funding Authority. Government advertising campaigns containing service announcements required for the purpose of a State election are not subject to the prohibitions in this clause, for obvious reasons.

The formal, apolitical process for developing each and every government advertising campaign will be established under this bill. The heads of government agencies will be responsible for independently managing and vouching for the integrity of the campaign. Importantly, they will not be subject to Ministerial control concerning any government advertising campaign. Clause 7 requires that the head of a government agency must ensure that a cost-benefit analysis is carried out for a proposed government advertising campaign likely to exceed \$1 million, and a peer review is required if any proposed campaign is likely to exceed \$50,000. The agency head must certify these steps have occurred prior to the government advertising campaign going to air, into print, or going-live on the internet. In exceptional circumstances, such as a civil emergency or sudden health epidemic, the peer

review or cost-benefit analysis may be undertaken and certified after the commencement of the campaign.

The Government recently took action to improve the integrity of parliamentary processes by introducing legislation that effectively means any future government will only be able to prorogue Parliament before a general State election from Australia Day. For consistency, clause 10 provides that most types of government advertising campaigns must not be carried out after the same date, that is, Australia Day before a general election. A limited number of non-contentious categories of advertisements are allowed, such as public health or safety matters, job advertisement and government tenders. As a further measure of independence of the machinery put in place by this bill, the Auditor-General will play a crucial role in monitoring government advertising campaigns and sounding the alert when the provisions in this bill are breached. The Auditor-General has been consulted in the design of these provisions.

Clause 14 specifically provides that the Auditor-General will carry out an annual performance audit of the activities of one or more government agencies in relation to their advertising campaigns. The Auditor-General will be required to determine whether an agency has carried out the campaign economically, efficiently and in compliance with the provisions in the bill and the advertising guidelines. When providing a performance audit report the Auditor-General may determine that the content or other elements of a government advertising campaign constitute a breach of the prohibited conduct provisions, that is, designing a campaign to favour a political party, including politicians in a campaign, or including party political slogans or references. An adverse finding by the Auditor-General will include the cost of the advertising campaign.

Now to the enforcement provisions of the bill, provisions that at last give teeth to the ethical regulation of government advertising in New South Wales. If a government advertising campaign breaches the requirements of clause 6, the prohibitions on political advertising, the cost of the campaign is payable by the governing political party from the time the campaign commenced. The cost of the campaign may be recovered as a debt due to the Crown. The evidence supporting the Crown's claim may include a report or finding of the Auditor-General. Clause 13 provides that a governing party may apply to the Supreme Court to review its liability to pay the whole or part of the impugned campaign. In essence, the enforcement provisions of this bill provide for a rigorous and transparent process. Political parties have access to the courts to dispute their liability to pay back advertising campaign costs but if a government breaches these guidelines the governing political party will pay. To conclude, the Government recognises the benefits of advertising as a tool to inform the people of New South Wales about important issues that affect the community, and that may affect them personally. Done properly, it is a cost-effective way of raising awareness and improving behaviour in areas of public safety, health and the engagement with other public services. It is unacceptable, however, when government advertising crosses the line into partisan politics, and public money is used to promote a party of government or its Ministers. The integrity measures in this bill mean governing political parties must take their hands off the levers that control the content of government advertising campaigns or face paying back the costs to the taxpayer.

Have no doubt about it: this is historic legislation. It has been promised for almost two decades—promised principally by those opposite prior to 1995. It was promised by us in office, and the former member for Eastwood, Andrew Tink, and I attempted to implement it. It has got nowhere. This is historic legislation. It ought to be noted by those in the media—including my friend John Stanley, who said it would never happen—that we are putting in

place limits to ensure that no longer can we see what Federal and State Labor governments do time and again, which is use taxpayer funds to promote government advertising for one purpose: their re-election.

Debate adjourned on motion by Mrs Barbara Perry and set down as an order of the day for a future day.