

Second Reading

The Hon. MICHAEL GALLACHER (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [11.08 a.m.]: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Government Advertising Bill 2011 to restore integrity to 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 advertisements reach citizens in many ways, but principally through television, radio, the internet, newspapers and magazines. 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. In opposition the Coalition parties sought to improve the standards for government advertising, including through the introduction in the other place of the Government Publicity Control Bill 2007. However, the Government of the day opposed the bill.

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 around \$80 million to around \$120 million. In round figures this put the cost of government advertising at \$1 billion per decade. This Government will ensure that advertising spending is managed responsibly to ensure that it is for proper public purpose and this bill is a key way of achieving that.

The bill delivers the Government's commitment contained in its 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, one, prohibiting party-political material in government advertising; two, prohibiting advertising campaigns designed to benefit a political party; three, protecting the independence of heads of government agencies authorising advertising campaigns, ensuring they are free from interference by a Minister; four, providing a role for the Auditor-General to scrutinise government advertising campaigns and; five, making governing political parties liable to pay back the costs of advertising campaigns that breach these laws.

I will now turn to features of the bill. A wide range of government agencies need to comply with the provisions of the 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 service and the New South Wales Health Service. Other bodies may be prescribed by regulation. State-owned corporations, however, are not engaged in the types of businesses and activities that lend themselves to political advertising, so these corporations are not subject to the arrangements in the bill. Nonetheless, the Government will 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 "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. 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 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. These guidelines have been revised a number of times in recent years in response to shortcomings identified by the Auditor-General. While these 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 pack the cost of an advertising campaign that is prohibited under the new laws.

Clause 6 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 that 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 Parliament. Third, the name of any political party, its logo or slogan may not be in a government advertising campaign. There are times 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.

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. Further, 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 advertisements 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—

Dr John Kaye: Your favourite bit.

The Hon. MICHAEL GALLACHER: Of course; most certainly. These are 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 governing political party will be automatically liable to pay the costs of the campaign. This liability may arise irrespective of whether the particular advertising campaign has been the subject of an Auditor-General's report. The cost of the campaign may be recovered as a debt due to the Crown.

Clause 13 of the bill 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.

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 public services. However, it is unacceptable 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 that 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. This reform is long overdue and I commend the bill to the House.