

LEGISLATIVE COUNCIL

Government Advertising Bill 2011

First Print

Proposed amendments

- No. 1 Page 2, clause 3 (1). Insert after line 19:
Government Advertising Committee—see section 15.
- No. 2 Page 5, clause 7. Insert after line 10:
- (3) The head of a Government agency must ensure that a review of a Government advertising campaign of the agency is carried out by the Government Advertising Committee before the campaign commences if the cost of that campaign is likely to exceed \$200,000.
- No. 3 Page 5, clause 7, line 12. Omit “peer”.
- No. 4 Page 5, clause 7, line 13. Omit “peer”.
- No. 5 Page 5, clause 7. Insert after line 17:
- (5) Every peer review that is carried out for the purposes of this section is to include a reviewer who is independent of the public sector.
- No. 6 Page 7, clause 11. Insert after line 18:
- (4) The Government Advertising Committee may make the following recommendations if the Committee is of the opinion 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:
 - (a) that the head of the Government agency concerned immediately stop the campaign,
 - (b) that the head of the Government agency concerned ensure that the campaign is modified, or expenditure is limited, so that the campaign complies with section 6 and regulations made under that section,
 - (c) that a governing party pay the costs of the campaign in accordance with this section.
 - (5) The Government Advertising Committee may make a recommendation following a review under section 7 or following a determination by the Auditor-General on a performance audit.

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- (6) A recommendation is to be notified in writing to the Minister and the head of the Government agency concerned.
 - (7) The head of a Government agency must comply with a recommendation of the Government Advertising Committee under this section.
 - (8) A recommendation to stop or modify a Government advertising campaign does not:
 - (a) require a Government agency to stop payment to any person or body for work already done or services already provided for the purposes of the campaign, or
 - (b) affect any liability incurred by the Government agency under a contract for future work or services related to the campaign unless the contract for that work or services includes a termination provision.
 - (9) If any such contract is terminated in accordance with a termination provision:
 - (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
 - (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
 - (c) neither the Crown nor any member of the Government Advertising Committee incurs any liability by reason of that termination.

No. 7 Page 9. Insert after line 28:

15 Government Advertising Committee

- (1) The Minister is to appoint a Government Advertising Committee.
- (2) The Committee is to consist of the following members:
 - (a) the Information Commissioner,
 - (b) 2 persons who have knowledge or experience relevant to advertising.
- (3) The Information Commissioner is to be the Chairperson of the Committee.
- (4) Schedule 2 has effect with respect to the constitution and procedure of the Committee.

No. 8 Page 11. Insert after line 23:

Schedule 2 Constitution and procedure of Government Advertising Committee

(Section 15)

Part 1 General

1 Definitions

In this Schedule:

appointed member means a person who is appointed by the Minister as a member of the Committee.

Chairperson means the Chairperson of the Committee.

Committee means the Government Advertising Committee.

member means any member of the Committee.

Part 2 Constitution

2 Terms of office of appointed members

Subject to this Schedule and the regulations, an appointed member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

3 Part-time appointments

Members hold office as part-time members.

4 Remuneration

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

5 Deputies

- (1) A member may, from time to time, appoint a person to be the deputy of the member, and may revoke any such appointment.
- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.

6 Vacancy in office of member

- (1) The office of an appointed member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause, or
 - (e) is absent from 3 consecutive meetings of the Committee of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an

offence that, if committed in New South Wales, would be an offence so punishable.

- (2) The Minister may remove an appointed member from office at any time.

7 Filling of vacancy in office of appointed member

If the office of any appointed member becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.

8 Disclosure of pecuniary interests

- (1) If:
- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Committee, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
- the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Committee.
- (2) A disclosure by a member at a meeting of the Committee that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Committee.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Committee otherwise determines:
- (a) be present during any deliberation of the Committee with respect to the matter, or
 - (b) take part in any decision of the Committee with respect to the matter.
- (5) For the purposes of the making of a determination by the Committee under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Committee for the purpose of making the determination, or
 - (b) take part in the making by the Committee of the determination.

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- (6) A contravention of this clause does not invalidate any decision of the Committee.
 - (7) This clause applies to a member of a committee of the Committee and the committee in the same way as it applies to a member of the Committee and the Committee.

9 Effect of certain other Acts

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of an appointed member.
- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

10 Personal liability

A matter or thing done or omitted to be done by the Committee, a member of the Committee or a person acting under the direction of the Committee does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

Part 3 Procedure

11 General procedure

The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Committee.

12 Quorum

The quorum for a meeting of the Committee is a majority of its members for the time being.

13 Presiding member

- (1) The Chairperson (or, in the absence of the Chairperson, a person elected by the members of the Committee who are present at a meeting of the Committee) is to preside at a meeting of the Committee.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

14 Voting

A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present is the decision of the Committee.

15 Transaction of business outside meetings or by telephone

- (1) The Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Committee.
- (2) The Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Committee.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Committee.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

16 First meeting

The Minister may call the first meeting of the Committee in such manner as the Minister thinks fit.