

FIRST PRINT

## GOVERNMENT PUBLICITY CONTROL BILL 1992

NEW SOUTH WALES



### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

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 constitute a committee to scrutinise, and formulate guidelines for, government publicity which appears to the committee to have the capacity, in whole or in part, of being used for that purpose.

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### PART 1—PRELIMINARY

Clause 1 specifies 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 the expressions used in the proposed Act. These include "government publicity" (which is defined to include all methods of publicising governmental activities, programs and initiatives that are funded by public money) and "public authority" (which is defined to include not only government departments but also statutory bodies such as state owned corporations, universities and local councils).

### PART 2—SCRUTINY OF PUBLICITY AND GUIDELINES

Clause 5 provides for the constitution of the Government Publicity Committee. The Committee is to consist of the Auditor-General, the Electoral Commissioner and the Ombudsman.

Clause 6 requires the Committee to identify government publicity which appears to the Committee to have the capacity or to be likely to have the capacity, in whole or in part, to influence public support for a State political party, candidate for election or member of a House of Parliament.

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Clause 7 sets out the other functions of the Committee. These include the formulation of guidelines for government publicity and the scrutiny of expenditure on government publicity.

Clause 8 specifies the matters which may be covered by the guidelines. The Committee is authorised to include recommendations as to the appropriate content, style, method of dissemination and cost of government publicity. The guidelines are to be published in the Government Gazette.

Clause 9 requires the head of a public authority to ensure that the public authority complies with the guidelines and any orders made by the Committee in connection with deviations from the guidelines.

Clause 10 enables the Committee to require a public authority to submit a report to it detailing expenditure on government publicity and the purposes of that publicity.

Clause 11 enables complaints to be made to the Committee in relation to government publicity and provides for the Committee to inquire into such a complaint if the Committee believes the complaint is justified.

Clause 12 enables the Committee to use the services of the staff or facilities of a public authority.

Clause 13 enables members of the Committee to nominate senior officers within their own authorities as their alternates on the Committee.

Clauses 14–17 require the Committee to make an annual report to each House of Parliament and enable it to make special reports to Parliament in relation to matters concerning its functions which it feels should be brought to the public notice.

Clause 18 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 Committee.

Schedule 1 makes provision for procedural matters such as the quorum for meetings of the Committee.

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GOVERNMENT PUBLICITY CONTROL BILL 1992

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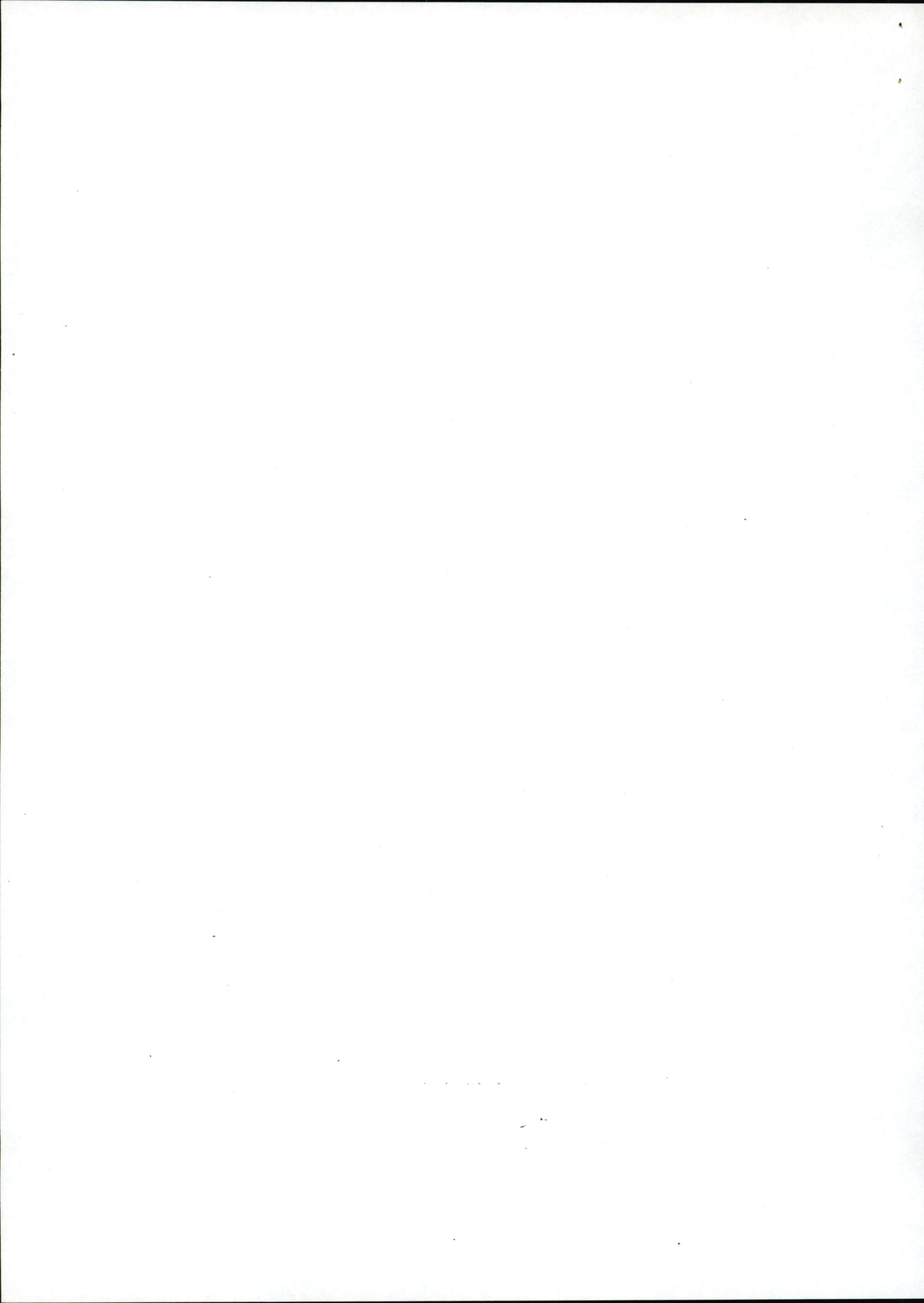
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GOVERNMENT PUBLICITY CONTROL BILL 1992

NEW SOUTH WALES



No. , 1992

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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, in whole or in part, to influence public support for a political party or its candidates or for a member of a House of Parliament; and for other purposes.

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The Legislature of New South Wales enacts:

**PART 1—PRELIMINARY**

**Short title**

1. This Act may be cited as the Government Publicity Control Act 1992.

**Commencement**

2. This Act commences on the date of assent.

**Objects**

3. The objects of this Act 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 constitute a committee to scrutinise, and formulate guidelines for, government publicity which appears to the committee to have the capacity or to be likely to have the capacity, in whole or in part, of being used for that purpose.

**Definitions**

4. (1) In this Act:

“candidate”, in relation to an election, means a person nominated as a candidate at the election in accordance with the Parliamentary Electorates and Elections Act 1912;

“Committee” means the Government Publicity Committee constituted by this Act;

“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);

“Electoral Commissioner” means the Electoral Commissioner for New South Wales appointed under the Parliamentary Electorates and Elections Act 1912 and includes a person duly acting as the Electoral Commissioner;

“government publicity” means any advertisement, promotional campaign, public relations campaign, announcement or means of publicising any governmental activities, programs or initiatives which is funded by public money;

“guideline” means a guideline formulated under section 7;

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“party” 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;

“public authority” means a public or local authority constituted by or under any Act, a government department or a statutory body representing the Crown or subject to the control and direction of a Minister, and includes a person exercising functions on behalf of the authority, department or body.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty;
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

## **PART 2—SCRUTINY OF PUBLICITY AND GUIDELINES**

### **Government Publicity Committee**

5. (1) There is constituted by this Act a Government Publicity Committee.

(2) The Committee is to consist of:

- (a) the Auditor-General, who is to be Chairperson of the Committee; and
- (b) the Electoral Commissioner; and
- (c) the Ombudsman.

(3) Schedule 1 has effect with respect to the procedure of the Committee.

### **Identification of government publicity for political purposes**

6. The Committee is to identify government publicity which appears to the Committee to have the capacity or to be likely to have the capacity, in whole or in part, to influence public support for a political party, a candidate for election or a member of a House of Parliament.

### **Other functions of Committee**

7. The Committee also has the following functions:

- (a) to formulate guidelines for government publicity;

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- (b) to provide advice, at the request of a public authority, as to whether any publicity on which it proposes to incur expenditure meets the guidelines;
- (c) to monitor and review expenditure by public authorities on government publicity;
- (d) to examine and review the practices and procedures of public authorities in securing government publicity;
- (e) to inquire into any complaint made to it that expenditure has been incurred by a public authority on government publicity that is outside the guidelines.

**Content of guidelines**

8. (1) The guidelines are to recommend the matters to be taken into account by public authorities in determining whether to incur expenditure on government publicity.

(2) The guidelines may include recommendations regarding the appropriate content and style, method of dissemination and cost of government publicity.

(3) The Committee may amend the guidelines.

(4) The guidelines and any amendments to the guidelines are to be published in the Gazette.

**Compliance with guidelines**

9. (1) The head of a public authority must ensure that the public authority complies with the guidelines and with any order made by the Committee under this Act.

(2) The Committee may order a public authority to do any one or more of the following:

- (a) to stop the dissemination of any government publicity that does not comply with the guidelines and for which it has incurred or will incur expenditure;
- (b) to modify the content, style or method of dissemination of any such government publicity so that it will comply with the guidelines;
- (c) to limit expenditure on any such government publicity so that it will comply with the guidelines.

(3) For the purposes of this Act, the “**head of a public authority**” for:

- (a) a government Department—is the appropriate Department head; and
- (b) a public authority which is an individual—is the individual; and



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- (c) a public authority which is a corporation sole—is the corporation sole; and
- (d) any other public authority—is the person who exercises the functions of chief executive officer of the authority.

#### **Reports on expenditure**

10. The Committee may require a public authority to prepare and submit to the authority a report detailing its expenditure on government publicity and the purposes of that publicity.

#### **Complaints**

11. (1) Any person may complain to the Committee that a public authority has improperly incurred expenditure on government publicity.

(2) A complaint must be in writing.

(3) The Committee need not inquire into a complaint made to it if, in the opinion of the Committee:

- (a) the government publicity is not of a kind identified by it under section 6; or
- (b) the complaint is frivolous or vexatious; or
- (c) the subject-matter of the complaint is trivial; or
- (d) the conduct complained of occurred too long before the complaint to justify an inquiry; or
- (e) it would for any other reason be inappropriate to do so.

(4) The Committee is to notify the head of the public authority concerned before it conducts an inquiry into a complaint against the public authority.

#### **Use of staff**

12. The Committee may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of any public authority.

#### **Alternate members**

13. (1) A member of the Committee may nominate an appropriate officer to exercise the functions of the member under this Act.

(2) For the purposes of this section, an “**appropriate officer**” for:

- (a) the Electoral Commissioner—is a senior officer of the State Electoral Office; and

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- (b) the Auditor-General—is a senior officer in the Auditor-General's Office; and
- (c) the Ombudsman—is a senior officer of the Ombudsman's Office.

**Annual report of Committee to Parliament**

14. (1) As soon as practicable after 30 June (but not later than 31 December) in each year, the Committee is to prepare and forward to the Presiding Officer of each House of Parliament a report of its activities for the 12 months ending on 30 June in that year.

(2) A report is to include the following:

- (a) a description of any expenditure on government publicity which, in the opinion of the Committee, was improperly incurred by a public authority;
- (b) a description of any government publicity which was the subject of complaint to and inquiry by the Committee;
- (c) a description of any government publicity which the Committee is satisfied does not comply with the guidelines or that has been disseminated in disregard of any order of the Committee.

**Special report**

15. The Committee may, at any time, prepare and forward to the Presiding Officer of each House of Parliament a special report on any matter relating to the functions of the Committee which, in the opinion of the Committee, should be brought to the attention of Parliament.

**Provisions relating to reports**

16. (1) A copy of a report forwarded to the Presiding Officer of a House under this Part is to be laid before the House within 15 sitting days of the House after it is received by the Presiding Officer.

(2) The Committee may include in a report a recommendation that the report be made public as soon as possible.

(3) The Presiding Officer may make public a report including such a recommendation whether or not the House is in session and whether or not that report has been laid before the House.

(4) A report that is made public by the Presiding Officer of a House before it is laid before the House attracts the same privileges and immunities as if it had been laid before the House.

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**References to Presiding Officer**

17. (1) References in this Part to a Presiding Officer are references to the President of the Legislative Council or the Speaker of the Legislative Assembly.

(2) The reference to the President is taken to be a reference to the Clerk of the Legislative Council during a vacancy in the office of President.

(3) The reference to the Speaker is taken to be a reference to the Clerk of the Legislative Assembly during a vacancy in the office of Speaker.

**Regulations**

18. (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.

(2) The regulations authorised by this section include regulations that make provision for or with respect to:

- (a) requiring the making, keeping and auditing of records of expenditure by public authorities on government publicity; and
- (b) requiring or otherwise providing for the production, examination and copying of those records; and
- (c) the exemption of any public authority or of acts, matters or things from all or any of the provisions of this Act; and
- (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.

(3) A regulation under subsection (2) (c) may be made only on the recommendation of the Committee.

**SCHEDULE 1—PROCEDURE OF THE COMMITTEE**

(Sec. 5 (3))

**General procedure**

1. The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings is to be as determined by the Committee.

**Quorum**

2. The quorum for a meeting of the Committee is 2 members of the Committee, one of whom must be the Chairperson.

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SCHEDULE 1—PROCEDURE OF THE COMMITTEE—*continued*

**Voting**

3. 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.

**Presiding member**

4. The Chairperson has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**First meeting**

5. The Chairperson is to call the first meeting of the Committee.

**Member with interest in government publicity**

6. (1) A member of the Committee who has an interest in any government publicity of a public authority because the member is an officer of the authority must not take part in any decision of the Committee with respect to the government publicity.

(2) A contravention of this clause does not invalidate any decision of the Board.

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