

First print



New South Wales

Government Publicity Control Bill 1995

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

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 government publicity that appears to the committee to have the capacity or to be likely to have the capacity, in whole or in part, to be used for that purpose.
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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 3 months from the date of assent, unless sooner commenced by proclamation.

Clause 3 contains a brief description of the objects of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act. These include *government publicity* (which is defined to include all methods of publicising governmental activities, programs or initiatives for public authorities that are paid for with public money) and *public authority* (which is defined so as to include government Departments and certain statutory bodies such as State owned corporations, but not universities or local councils). *Guidelines* are defined as the guidelines for government publicity set out in Schedule 2. These are that government publicity should be accurate, factual and truthful, it should be fair, honest and impartial, and lawful and proper.

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 Ombudsman and a part-time member to be appointed by the Premier. The appointed member is to be a person having knowledge and experience in advertising and is to be selected from a list of persons nominated by the Advertising Standards Council of Australia.

Clause 6 provides for the Committee to review government publicity that appears to the Committee to be government publicity for political purposes and to determine whether it should make an order regarding the government publicity under clause 9. *Government publicity for political purposes* is government publicity that promotes governmental activities, programs or initiatives in such a partisan or biased manner that it has the capacity, or is 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. The Committee may carry out a review on its own initiative or if a complaint is made to it under the proposed Act. The Committee may also provide advice, at the request of a public authority, concerning publicity on which it proposes to incur expenditure that may be outside the guidelines. In

exercising these functions, the Committee is to have regard to the guidelines for government publicity. The guidelines are also to be followed by heads of public authorities in determining whether the public authorities should incur expenditure on government publicity (clause 9).

Clause 7 sets out the other functions of the Committee. These include monitoring and reviewing expenditure on government publicity that appears to the Committee to be for political purposes.

Clause 8 provides for the guidelines as set out in Schedule 2 to the proposed Act to be amended by regulations made on the recommendation of the Committee. The guidelines as amended may include recommendations as to the appropriate content, style, method of dissemination and cost of government publicity and for inclusion of a "termination provision" in contracts for dissemination of government publicity so that the Committee may order the dissemination to stop if the publicity does not comply with the guidelines. Regulations made under this clause may be disallowed by either House of Parliament under section 41 of the *Interpretation Act 1987*.

Clause 9 requires the head of a public authority to ensure that the public authority does not incur expenditure on government publicity that does not comply with the guidelines and that it complies with any orders made by the Committee in connection with deviations from the guidelines. It also enables the Committee to order a public authority to stop the dissemination of government publicity in certain circumstances.

Clause 10 enables the Committee to require a public authority to submit a report to it detailing expenditure on government publicity that the Committee believes may be government publicity for political purposes.

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. The Committee is required to give written reasons to a complainant if the Committee decides not to investigate a complaint.

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

Clauses 13–16 require the Committee to make an annual report to each House of Parliament and enable the Committee to make special reports to Parliament in relation to matters concerning the Committee's functions that the Committee feels should be brought to the public notice.

Part 3 Miscellaneous

Clause 17 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.

Clause 18 provides for a review of the operation of the proposed Act to be conducted by the Minister after 5 years from the date of assent.

Schedule 1 makes provision for procedural matters such as the quorum for meetings of the Committee and includes provisions relating to membership of the Committee such as alternate members for the ex officio members and deputies for the appointed member. In general, the Committee is to determine procedure but Parliament may require it to meet to consider a particular matter.

Schedule 2 sets out the guidelines for government publicity.

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New South Wales

Government Publicity Control Bill 1995

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New South Wales

Government Publicity Control Bill 1995

No. , 1995

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.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Government Publicity Control Act 1995*.

2 Commencement

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This Act commences 3 months from the date of assent, unless commenced sooner by proclamation.

3 Objects

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 10
- (b) to constitute a committee to scrutinise government publicity that appears to the committee to have the capacity or to be likely to have the capacity, in whole or in part, to be used for that purpose. 15

4 Definitions

In this Act:

candidate for election means a person nominated as a candidate at an election in accordance with the *Parliamentary Electorates and Elections Act 1912*. 20

Committee means the Government Publicity Committee constituted by this Act.

dissemination includes display.

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*). 25

exercise a function includes perform a duty.

function includes a power, authority or duty.

government publicity means any advertisement, promotional campaign, public relations campaign, announcement or means of publicising any governmental activities, programs or initiatives that is funded by public money, being public money that is paid to the person or body disseminating the publicity for a public authority. 5

government publicity for political purposes is defined in section 6.

guidelines means the guidelines for government publicity set out in Schedule 2. 10

head of a public authority is defined in section 9 (5).

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. 15

public authority means:

- (a) a Department or declared authority within the meaning of the *Public Sector Management Act 1988*, and 20
- (b) any State owned corporation, and
- (c) any statutory body representing the Crown, and
- (d) any other authority declared by the regulations to be a public authority for the purposes of this definition, 25

and includes a person exercising functions on behalf of the Department, corporation, body or authority.

termination provision is defined in section 8 (3).

Part 2 Scrutiny of publicity and guidelines

5 Government Publicity Committee

- (1) There is constituted by this Act a Government Publicity Committee.
- (2) The Committee is to consist of the following members: 5
 - (a) the Auditor-General, who is to be the Chairperson of the Committee,
 - (b) the Ombudsman,
 - (c) one part-time member, who is to be a person having knowledge and experience in advertising appointed by the Premier from a list of 3 persons nominated by the Advertising Standards Council of Australia. 10
- (3) Schedule 1 has effect with respect to the membership and procedure of the Committee.

6 Review of government publicity for political purposes 15

- (1) In this Act:

government publicity for political purposes means government publicity that promotes governmental activities, programs or initiatives in such a partisan or biased manner that it has the capacity, or is 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. 20
- (2) The Committee may review any government publicity that it considers may be government publicity for political purposes to determine whether it should make any order regarding the publicity under section 9. 25
- (3) In making such a determination, the Committee is to have regard to the guidelines.
- (4) The Committee may conduct a review under this section on its own initiative or on receipt of a complaint under section 11. 30

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- (5) Nothing in this section prevents the Committee from providing advice at the request of a public authority concerning proposed expenditure by the authority on government publicity that may be outside the guidelines.

7 Other functions of Committee

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The Committee also has the following functions:

- (a) to monitor and review expenditure by public authorities on government publicity that appears to the Committee to be government publicity for political purposes,
- (b) to examine and review the practices and procedures of public authorities relating to the dissemination of government publicity,
- (c) to inquire into complaints made to it in accordance with section 11.

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8 Amendment of guidelines

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- (1) The regulations may, on the recommendation of the Committee, amend Schedule 2 by inserting, omitting or amending any guideline.
- (2) A guideline may include recommendations regarding the appropriate content and style, method of dissemination and cost of government publicity.
- (3) A guideline may recommend that any contract entered into by a public authority for the dissemination of government publicity include a provision (in this Act called a *termination provision*) for termination of the contract if the guidelines are not complied with.

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9 Compliance with guidelines

- (1) The head of a public authority must ensure that the public authority:
- (a) does not incur expenditure on government publicity that does not comply with the guidelines, and
- (b) complies with any order made by the Committee under this Act.

30

- (2) The Committee may order a public authority to do any one or more of the following:
- (a) subject to subsection (3), to immediately stop the dissemination of any government publicity that is for political purposes and that does not comply with the guidelines and for which the authority has incurred or will incur expenditure, 5
 - (b) to modify the content, style or method of dissemination of any such government publicity so that it will comply with the guidelines, 10
 - (c) to stop expenditure on any such government publicity or to limit expenditure on any such government publicity so that it will comply with the guidelines.
- (3) An order under subsection (2) may not be made so as:
- (a) to require a public authority to stop payment to any person or body for government publicity already disseminated by that person or body, or 15
 - (b) to affect any liability incurred by the public authority under a contract for future dissemination of such publicity unless the contract includes a termination provision. 20
- (4) If a 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 25
 - (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 30
 - (c) neither the Crown nor the members of the Committee incur any liability by reason of that termination.
- (5) For the purposes of this Act, the *head of a public authority* for:
- (a) a government Department—is the appropriate Department head, and 35
 - (b) a public authority that is an individual—is the individual, and

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- (c) a public authority that 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.

10 Reports on expenditure

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The Committee may require a public authority to prepare and submit to the Committee, by such a date as may be specified by the Committee, a report detailing its expenditure on government publicity that the Committee believes may be government publicity for a political purpose and the purposes of that publicity.

10

11 Complaints

- (1) Any person may complain to the Committee that a public authority has, in the opinion of the complainant, improperly incurred expenditure on government publicity because it is government publicity for a political purpose and does not comply with the guidelines. 15
- (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: 20
 - (a) the government publicity is not government publicity for a political purpose or is government publicity that complies with the guidelines, or
 - (b) the complaint is frivolous or vexatious, or
 - (c) the subject-matter of the complaint is trivial, or 25
 - (d) the conduct complained of occurred too long before the complaint to justify investigation, or
 - (e) it would for any other reason be inappropriate to do so.
- (4) The Committee is to advise a complainant in writing within 30 days of deciding not to inquire into a complaint and of the reasons for its decision. 30
- (5) The Committee is to notify the head of the public authority concerned before it conducts an inquiry into a complaint against the public authority.

12 Use of staff

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

13 Annual report of Committee to Parliament 5

- (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: 10
 - (a) a description of any expenditure on government publicity that, in the opinion of the Committee, was improperly incurred by a public authority because it was government publicity for political purposes and did not comply with the guidelines, 15
 - (b) a description of any such government publicity that was the subject of complaint to and inquiry by the Committee,
 - (c) a description of any government publicity that the Committee is satisfied does not comply with the guidelines or that has been disseminated in disregard of any order of the Committee. 20

14 Special report

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 that, in the opinion of the Committee, should be brought to the attention of Parliament. 25

15 Provisions relating to reports

- (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. 30

- (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. 5
- (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.

16 References to Presiding Officer

- (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. 10
- (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. 15
- (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.

Part 3 Miscellaneous

17 Regulations

- (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. 5
- (2) In particular, the regulations may 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 10
 - (b) requiring or otherwise providing for the production, examination and copying of those records, and
 - (c) the exemption of any public authority or of any act, matter or thing from all or any of the provisions of this Act, and 15
 - (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, and
 - (e) the procedure of the Committee. 20
- (3) A regulation under subsection (2) (c) may be made only on the recommendation of the Committee.

18 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. 25
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years. 30

Schedule 1 Membership and procedure of Committee

(Section 5 (3))

Part 1 Membership of Committee

- 1 Definition** 5
- In this Part:
- appointed member* means the member of the Committee appointed by the Premier.
- 2 Nominations for appointed member**
- (1) For the purposes of section 5, the Premier may require the Advertising Standards Council of Australia to furnish a list of nominees within a time specified by the Premier. 10
- (2) In default of the Council complying with the requirement, the Premier may appoint a person who, in the opinion of the Premier, has appropriate knowledge and experience in advertising to carry out the functions of a member of the Committee. 15
- 3 Term of office of appointed member**
- 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. 20
- 4 Remuneration**
- An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Premier may from time to time determine in respect of the member. 25
- 5 Acting appointed member**
- (1) The Premier may, from time to time, appoint a person to act in the office of an appointed member during the illness or absence of the appointed member, and the person while so acting has all the functions of the appointed member. 30

- (2) A person while acting in the place of an appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Premier may from time to time determine in respect of the person.
- (3) For the purposes of this clause, a vacancy in the office of an appointed member is taken to be an absence of the member. 5
- (4) An acting appointed member is to have similar qualifications to those of the member in whose place he or she is acting.

6 Vacancy in office of appointed 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 Premier, or 15
 - (d) is removed from office by the Premier under this clause or by the Governor under Part 8 of the *Public Sector Management Act 1988*, or
 - (e) is absent from 4 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 Premier or unless the member is excused by the Premier for having been absent from those meetings, or 20
 - (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 25
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence that is punishable by penal servitude or 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. 30
- (2) The Premier may remove an appointed member from office at any time. 35

7 Alternate members

- (1) A member of the Committee (other than an appointed member) may nominate an appropriate officer to exercise the functions of the member under this Act.
- (2) For the purposes of this clause, an *appropriate officer* for: 5
 - (a) the Auditor-General—is a senior officer in The Audit Office, and
 - (b) the Ombudsman—is a senior officer in the Ombudsman's Office.

8 Effect of certain other Acts 10

- (1) Part 2 of the *Public Sector Management Act 1988* 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 the office, or 15
 - (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 an appointed member or from accepting and retaining any remuneration payable to the person under this Act as an appointed member. 20

Part 2 Procedure of Committee

9 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, to be as determined by the Committee. 25

10 Quorum

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

11 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. 5

12 Presiding member

The Chairperson has a deliberative vote and, in the event of an equality of votes, has a second or casting vote. 10

13 First meeting

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

14 Meetings

(1) Without limiting the number of meetings that may be held, a meeting is to be held as soon as practicable after the commencement of each session of Parliament and at such other times as is required by resolution of each of both Houses of Parliament. 15

(2) Such a resolution may specify a particular matter relating to government publicity or the functions of the Committee that the Committee is to consider at the meeting. 20

15 Member with interest in government publicity

(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. 25

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

Schedule 2 Guidelines for government publicity

(Sections 4 and 8)

1 Government publicity should be accurate, factual and truthful

Factual information should be outlined clearly and accurately. Comment on and the analysis of that information, to amplify its meaning, should be indicated as such.

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2 Government publicity should be fair, honest and impartial

The material should be presented in unbiased and objective language, and in a manner free from partisan promotion of Government policy and political argument.

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3 Government publicity should be lawful and proper

The material should comply with the law.

