

Scrutiny of Government Publicity Bill 2005

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Western Australia

LEGISLATIVE ASSEMBLY

(Introduced by Matt Birney)

Scrutiny of Government Publicity Bill 2005

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 Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Scrutiny of Government Publicity Act 2005*.

5 2. Commencement

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

3. Objectives

Recognizing that —

- 10 (a) it is right and proper for Governments to use public funds for publicity and advertising in order to inform the public of the Government services available to them and of their rights and obligations; and
- 15 (b) it is improper for Governments to use public funds for publicity and advertising in order to gain a partisan political advantage,
the objectives of this Act are —
- (c) to ensure that, as far as possible, public money is not
20 expended on Government publicity for a partisan political purpose; and
- (d) 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.

25 4. Definitions

In this Act, unless the contrary intention appears —

“**candidate**” for an election means a person nominated as a candidate at an election in accordance with the *Electoral Act 1907*;

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

“**declaration of compliance**” has the meaning given to that term in section 10(2)(b);

5 “**dissemination**” includes display;

“**election**” means an election of any member or members of the Legislative Assembly or the Legislative Council within the meaning of the *Electoral Act 1907*;

“**exercise**” a function includes perform a duty;

10 “**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 and includes the production of —

- 15 (a) any press, radio, cinema or television advertisements;
(b) audio visual material; or
20 (c) printed material, and

the use of —

- (d) public relations consultants;
(e) market research agencies;
(f) advertising agencies; and
25 (g) other specialist consultants.

“**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;

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“guidelines” means the guidelines for Government publicity set out in Schedule 2;

“head of a public authority” means the person who exercises the functions of chief executive officer of the authority;

5 **“Ombudsman”** means the Parliamentary Commissioner for Administrative Investigations appointed under the *Parliamentary Commissioner Act 1971*;

10 **“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 organizations having such objects or activities;

“public authority” means —

15 (a) an agency, a department, an employing authority, an organization, a public sector body or responsible authority as defined or declared under the *Public Sector Management Act 1994*;

(b) a statutory body representing the Crown;

20 (c) a department, statutory body, related body, affiliated body or subsidiary as defined in section 3 of the *Financial Administration and Audit Act 1985* or as specified in Schedule 1 to that Act;

(d) the Police Force; or

25 (e) any other authority declared by the regulations to be a public authority for the purposes of this definition, and includes a person exercising functions on behalf of such agency, department, organization, body or authority; and

30 **“termination provision”** has the meaning given to that term 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.
- 5 (2) The Committee is to consist of the following members —
- (a) the Auditor-General, who is to be the Chairperson of the Committee;
 - (b) the Ombudsman; and
 - 10 (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 Australian Association of National Advertisers.
- (3) Schedule 1 has effect with respect to the membership and procedure of the Committee.

15 **6. Review of Government publicity for political purposes**

- (1) The Committee may review any Government publicity.
- (2) For the purposes of a review under this Act, the Committee may consider whether any Government publicity constitutes Government publicity for political purposes and may determine
20 whether it should make any order regarding such publicity under section 9.
- (3) In making such a determination, the Committee is to have regard to the guidelines in Schedule 2.
- (4) The Committee may conduct a review under this section on its
25 own initiative or on receipt of a complaint under section 11.
- (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.

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7. Other functions of the Committee

The Committee also has the following functions —

- 5 (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; and
- 10 (c) to inquire into complaints made to it in accordance with section 11.

8. Amendment of guidelines

- (1) The regulations may, on the recommendation of the Committee, amend Schedule 2 by inserting, omitting or amending any guideline.
- 15 (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.
- 20

9. Compliance with guidelines

- 25 (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.

- (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 for which the authority 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; and
 - (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
 - (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.
- (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;
 - (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 the members of the Committee incur any liability by reason of that termination.

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10. Reports on expenditure

- 5 (1) 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 (2) Where a public authority is otherwise required by statute to prepare an annual report, the head of that public authority must ensure that that report includes —
- (a) a statement of —
- 15 (i) the total amount paid by or on behalf of that public authority for Government publicity; and
- (ii) the particulars of all amounts paid by or on behalf of that public authority for any Government publicity with a total production cost equal to or exceeding \$2 000 including any such payment to —
- 20 • an advertising agency;
- a market research organization;
- a polling organization;
- a direct mail organization; or
- a media advertising organization; and
- 25 (b) a declaration of compliance stating that the Government publicity particularized in accordance with the requirements of subparagraph (ii) of paragraph (a) of this subsection complies in each case with the guidelines under this Act.

11. Complaints

- 30 (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.

(2) A complaint must be in writing.

5 (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 Government publicity for a political purpose or is Government publicity that complies with the guidelines;

(b) the complaint is frivolous or vexatious;

10 (c) the subject-matter of the complaint is trivial;

(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.

15 (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.

(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.

20 **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

25 (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.

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(2) A report is to include the following —

- 5 (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;
- (b) a description of any such Government publicity that was the subject of complaint to and inquiry by the Committee; and
- 10 (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.

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

20 **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.
- 25 (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.
- 30 (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.
- 5 (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.
- 10 (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

- 5 (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) In particular, the regulations may make provision for or with respect to —
- 10 (a) requiring the making, keeping and auditing of records of expenditure by public authorities on Government publicity;
- (b) requiring or otherwise providing for the production, examination and copying of those records;
- 15 (c) the exemption of any public authority or of any act, matter or thing from all or any of the provisions of this Act;
- (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
- 20 (e) the procedure of the Committee.

18. Review of Act

- 25 (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.
- (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.
- 30 (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.

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

- 10 (1) For the purposes of section 5, the Premier may require the Australian
 Association of National Advertisers to furnish a list of nominees
 within a time specified by the Premier.
- (2) In default of the Association 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
15 functions of a member of the Committee.

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.

5. Acting appointed member

- 25 (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.
- (2) A person while acting in the place of an appointed member is entitled
30 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;
- 10 (b) completes a term of office and is re-appointed;
- (c) resigns the office by instrument in writing addressed to the Premier;
- (d) is removed from office by the Premier under this clause or by
15 the Governor under section 77 of the *Public Sector Management Act 1994*;
- (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
20 been absent from those meetings;
- (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;
- 25 (g) becomes a mentally incapacitated person; or
- (h) is convicted in Western Australia of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in Western Australia of an offence that, if committed in Western Australia, would be an offence
30 so punishable.

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

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.
- 5 (2) For the purposes of this clause, an appropriate officer for —
- (a) the Auditor-General — is a senior officer in the Office of the Auditor-General; and
- (b) the Ombudsman — is a senior officer in the Ombudsman's Office.

10 **8. Effect of certain other Acts**

- (1) Part 3 of the *Public Sector Management Act 1994* does not apply to or in respect of the appointment of an appointed member.
- (2) If by or under any Act provision is made —
- 15 (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
- (b) prohibiting the person from engaging in employment outside the duties of that office,
- 20 the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from excepting and retaining any remuneration payable to the person under this Act as an appointed member.

Part 2 — Procedure of Committee

9. General procedure

- 25 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.

10. Quorum

- 30 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.

13. First meeting

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

10 **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.

15. Member with interest in Government publicity

20 (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 Committee.

Schedule 2 — Guidelines for Government Publicity

[Sections 4, 6, 8 & 9]

1. Government publicity should be accurate, factual and truthful

- 5 (1) 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.
- 10 (2) For the purposes of this Act, for material to be accurate, factual and
 truthful it should conform to the ordinary meaning of the words used
 in that material. That which is held out to be the truth should be
 founded upon ascertainable facts, carefully and precisely expressed in
 conformity with those facts. No claim or statement should be made
 which cannot be substantiated.

2. Government publicity should be fair, honest and impartial

- 15 (1) The material should be presented in unbiased and objective language,
 and in a manner free from partisan promotion of Government policy
 and political argument.
- 20 (2) For the purposes of this Act, for material to be fair and impartial, it
 should be complete in itself and presented in an unbiased and
 equitable manner. Specifically —
- (a) the recipient of the information should be able to distinguish
 easily between facts on the one hand, and comment, opinion
 and analysis on the other;
- (b) where an advertisement presents a comparison it should not
 mislead the recipient; and
- 25 (c) material may include a response to, but should not be aimed
 solely at attacking or rebutting, the arguments of others.

3. Government publicity should be lawful and proper

- (1) The material should comply with the law.
- 30 (2) For the purposes of this Act, material is legal and proper where —
- (a) it complies with the law;
- (b) it is suitable for the purpose and is consistent with community
 standards; and

- (c) it avoids language with partisan connotations including political slogans.

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