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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Government Advertising (Prohibiting  
use of taxpayers' money on party  
political advertising) Bill 2005**

**No.      , 2005**

*(Mr K J Thomson)*

**A Bill for an Act to regulate government  
advertising, and for related purposes**

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1 **A Bill for an Act to regulate government**  
2 **advertising, and for related purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Preliminary**  
5

6 **1 Short title**

7 This Act may be cited as the *Government Advertising (Prohibiting*  
8 *use of taxpayers' money on party political advertising) Act 2005.*

1       **2 Commencement**

2                       This Act commences on the day on which it receives the Royal  
3                       Assent.

4       **3 Definitions**

5                       In this Act, unless the contrary intention appears:

6                       **Chief Executive** means:

- 7                       (a) for a Department of State—the person who is the Secretary  
8                       of the Agency for the purposes of the *Public Service Act*  
9                       1999; or  
10                      (b) for a prescribed Agency—the person identified by  
11                      regulations under the *Financial Management and*  
12                      *Accountability Act 1997* as the Chief Executive of the  
13                      Agency; or  
14                      (c) for a Commonwealth authority—the person who is the Chief  
15                      Executive of the authority; or  
16                      (d) for a Commonwealth company—the person who is the Chief  
17                      Executive of the company.

18                      **Commonwealth agency** means:

- 19                      (a) a Department of State; or  
20                      (b) a prescribed Agency; or  
21                      (c) a Commonwealth authority having the same meaning as in  
22                      the *Commonwealth Authorities and Companies Act 1997*; or  
23                      (d) a Commonwealth company having the same meaning as in  
24                      the *Commonwealth Authorities and Companies Act 1997*.

25                      **Commissioner** means the Public Service Commissioner or the  
26                      Acting Public Service Commissioner.

27                      **GST** has the meaning as in the *A New Tax System (Goods and*  
28                      *Services Tax) Act 1999*.

29                      **Guidelines** means the Principles and Guidelines for Government  
30                      Advertising Campaigns set out in Schedule 2.

31                      **official** means a person who is in a Commonwealth agency or is  
32                      part of a Commonwealth Agency.

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**responsible Minister** means:

- (a) in relation to a Department of State—the Minister who is responsible for the department; or
- (b) in relation to a prescribed agency—the Minister who is responsible for the agency; or
- (c) in relation to a Commonwealth authority or any of its subsidiaries—the Minister who is responsible for the authority; or
- (d) in relation to a Commonwealth company or any of its subsidiaries:
  - (i) the Minister who is prescribed by regulations under the *Commonwealth Authorities and Companies Act 1997* as the Minister responsible for the company; or
  - (ii) if no Minister is prescribed—the Minister who is responsible for the Commonwealth company.

#### 16 **4 Objects**

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The objects of this Act are:

- (a) to require government advertising to meet minimum standards of objectivity, fairness and accountability; and
- (b) to prohibit the misuse of government advertising for party political purposes.

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## Part 2—Government Advertising Campaigns

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### 5 Principles and Guidelines for Government Advertising Campaigns

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(1) The Principles and Guidelines for Government Advertising Campaigns are set out in Schedule 2.

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(2) A Minister, a Commonwealth agency or an official must not take any action that is contrary to the Guidelines.

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### 6 Chief Executive's obligation to report to the Public Service Commissioner

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(1) For each advertising project proposed by each Commonwealth agency when the cost of the project is estimated to be \$250,000 or more (inclusive of GST), the Chief Executive must give the Commissioner a statement in accordance with subsection (2).

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(2) The statement must include:

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(a) details of the purpose and nature of the proposed project;

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(b) details of the intended recipients of the information to be communicated by the proposed project;

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(c) details of the type of media to be used for the proposed project;

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(d) whether the proposed project is to be carried out under a contract;

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23

(e) whether the contract is to be let by tender;

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(f) the estimated cost of the proposed project;

25

(g) whether every part of the proposed project conforms with the Guidelines; and

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27

(h) if the project in any part does not conform with the

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Guidelines, the extent of, and reasons for, the nonconformity.

29

(3) The statement must be given to the Commissioner before the proposed project is approved by the responsible Minister.

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1 **7 Public Service Commissioner to assess compliance with the**  
2 **Guidelines**

- 3 (1) As soon as practicable after the Commissioner receives a statement  
4 under section 6, he or she is to complete an assessment of whether  
5 the proposed advertising project complies with the Guidelines.

6 *Assessment may include recommendations*

- 7 (2) The assessment may include any recommendations the  
8 Commissioner considers appropriate.

- 9 (3) Without limiting subsection (2), the kinds of recommendations the  
10 Commissioner may make include the following:

11 (a) a recommendation that the proposed advertising project be  
12 approved; or

13 (b) a recommendation that the proposed advertising project not  
14 be approved; and

15 (c) general recommendations relating to accountability.

- 16 (4) As soon as practicable after completing the report on an assessment  
17 under this section, the Commissioner must:

18 (a) cause a copy to be tabled in each House of the Parliament;  
19 and

20 (b) give a copy to the responsible Minister.

- 21 (5) The Commissioner may give a copy of the report to any other  
22 Minister who, in the Commissioner's opinion, has a special interest  
23 in the matter.

- 24 (6) The responsible Minister must take into account any  
25 recommendations that the Commissioner makes.

- 26 (7) Except as provided in subsection (8), the responsible Minister must  
27 not approve a proposed advertising project that is subject to report  
28 by the Commissioner under this section, until the Commissioner  
29 has reported under this section.

- 30 (8) The responsible Minister may approve a proposed advertising  
31 project subject to report by the Commissioner under this section,  
32 before the Commissioner has reported under this section, where the

1 proposed project addresses major issues of public health, public  
2 safety or public order that have arisen at short notice.

### 3 **8 Application of *Public Service Act 1999***

4 (1) The Public Service Commissioner's functions include the functions  
5 conferred on the Commissioner by this Part.

6 (2) An assessment and report that is conducted by the Commissioner  
7 for the purposes of section 7 of this Act, is a *special inquiry* for the  
8 purpose of section 43 of the *Public Service Act 1999*.

### 9 **9 Annual Report**

10 (1) As soon as practicable after 30 June each year, the Minister must:  
11 (a) prepare a report on government advertising during that year;  
12 and  
13 (b) cause a copy of the report to be tabled in each House of the  
14 Parliament.

15 (2) A report prepared under subsection (1) must include:  
16 (a) details of expenditure on government advertising during that  
17 year (inclusive of GST);  
18 (b) details of expenditure by Commonwealth agency during that  
19 year (inclusive of GST);  
20 (c) details of expenditure by media type during that year  
21 (inclusive of GST);  
22 (d) details of expenditure during that year (inclusive of GST) for  
23 each contract of \$100,000 or more (inclusive of GST) let:  
24 (i) during that year; or  
25 (ii) where there was expenditure pursuant to a contract  
26 during that year, during a previous year;  
27 (e) in relation to each contract referred to in paragraph (d), the  
28 name of the:  
29 (i) consultant;  
30 (ii) contractor; or  
31 (iii) advertising agency;  
32 (f) for each advertising project approved during that year with an  
33 estimated cost of \$250,000 or more (inclusive of GST):

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- 1 (i) details of the purpose of the project;  
2 (ii) details of the intended recipients of the information  
3 to be communicated by the project;  
4 (iii) details of the type of media used for the project;  
5 (iv) for each contract let during that year for the project,  
6 the name of the:  
7 (A) consultant,  
8 (B) contractor; or  
9 (C) advertising agency; and  
10 the value of the contract;  
11 (v) the estimated cost of the project;  
12 (vi) whether the Commissioner assessed the project as  
13 complying with the Guidelines; and  
14 (vii) the name of the person who approved the project;  
15 and  
16 (g) for each advertising campaign with a cost of \$1,000,000 or  
17 more (inclusive of GST) for which a post advertising  
18 evaluation has been completed during that year, an outline of  
19 the results that the campaign achieved.

20 Note A post advertising evaluation is to be conducted for all  
21 Government advertising projects with a cost of \$1,000,000 or  
22 more (inclusive of GST). The evaluation is to be completed as  
23 soon as practicable after the conduct of the advertising.

24 Note The effect of section 19A of the *Acts Interpretation Act 1901* is that the Minister refers  
25 to the Minister who administers this section. The administration of Acts or particular  
26 provisions of Acts is allocated by Administrative Arrangements Orders made by the  
27 Governor-General.

1 **Part 3—Miscellaneous**  
2

3 **10 Schedule(s)**

4 Each Act that is specified in a Schedule to this Act is amended or  
5 repealed as set out in the applicable items in the Schedule  
6 concerned, and any other items in a Schedule to this Act has effect  
7 according to its terms.

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## **Schedule 1—Amendments**

### ***Financial Management and Accountability Act 1997***

#### **1 Section 14**

Repeal the section, substitute:

#### **14 Misapplication or improper use of public money**

- (1) An official or Minister must not misapply public money or improperly dispose of, or improperly use, public money.
- (2) For the purposes of subsection (1), and without limiting the generality of that subsection, it is an improper use of public money to use or permit to be used any public money for a government information program unless that program is in accordance with the Principles and Guidelines for Government Advertising Campaigns contained in Schedule 2 of the *Government Advertising (Prohibiting use of taxpayers' money on party political advertising) Act 2005*.

Maximum penalty: Imprisonment for 7 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

1 **Schedule 2—Principles and Guidelines for**  
2 **Government Advertising Campaigns**

3 **Principles**

- 4
- 5 1.1 All members of the public have equal rights to access comprehensive  
6 information about government policies, programs and services which  
7 affect their entitlements, rights and obligations. Access to information  
8 should only be restricted where its provision would jeopardise the  
9 national interest.
- 10
- 11 1.2 Governments may legitimately use public funds for information or  
12 education campaigns authorised by an appropriation in an Act, to  
13 explain government policies, programs or services and to inform  
14 members of the public of their obligations, rights and entitlements.
- 15
- 16 1.3 No campaign should be contemplated without an identified information  
17 need by identified recipients based on appropriate market research.

18 **Guidelines**

19 **Material should be presented in an objective and fair manner**

- 20
- 21 2.1 Information campaigns should be directed at the provision of objective,  
22 factual and explanatory information. Information should be presented  
23 in an unbiased manner.
- 24
- 25 2.2 Information should be based on accurate, verifiable facts, carefully and  
26 precisely expressed in conformity with those facts. No claim or  
27 statement should be made which cannot be substantiated.
- 28
- 29 2.3 The recipient of the information should, to a practicable and reasonable  
30 extent, be able to distinguish clearly and easily between facts on the one  
31 hand, and comment, opinion and analysis on the other.
- 32
- 33 2.4 When making a comparison, the material should not attempt to mislead  
34 the recipient about the situation with which the comparison is made and  
35 it should state explicitly the basis for the comparison.

1 **Material should not be liable to misrepresentation as**  
2 **party-political**

- 3
- 4 3.1 The dissemination of information using public funds should not be  
5 directed at promoting party political interests.  
6
- 7 3.2 For the purpose of these guidelines, advertising for party political  
8 purposes is defined as any information involving the production and  
9 dissemination of material to the public which promotes activities,  
10 programs or initiatives of the Government in a politically partisan or  
11 biased manner.  
12
- 13 3.3 Dissemination of information may be perceived as being party-political  
14 because of any one of a number of factors, including:  
15
- 16 (a) what was communicated;
  - 17 (b) who communicated it;
  - 18 (c) why it was communicated;
  - 19 (d) what it was meant to do;
  - 20 (e) how, when and where it was communicated;
  - 21 (f) the environment in which it was communicated; or
  - 22 (g) the effect it is designed to have.  
23
- 24 3.4 Material should be presented in a manner free from partisan promotion  
25 of government policy and political argument, and in unbiased and  
26 objective language.  
27
- 28 3.5 Material should not directly attack or scorn the views, policies or  
29 actions of others such as the policies and opinions of opposition parties  
30 or groups.  
31
- 32 3.6 Information should avoid party-political slogans or images.  
33
- 34 3.7 Material should not be designed to influence public support for a  
35 political party, a candidate for election or a member of Parliament.  
36
- 37 3.8 Distribution of unsolicited material should be carefully controlled. All  
38 advertising material and the manner of presentation should comply with  
39 relevant law, including broadcasting, media, privacy and electoral law.
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1 **Material should be produced and distributed in an efficient,**  
2 **effective and relevant manner, with due regard to**  
3 **accountability**

4  
5 4.1 Information campaigns should be justified by a cost/benefit analysis.  
6 The nature of the campaign should be justified in terms of society's  
7 needs, efficiency and effectiveness, and there should be a clear audit  
8 train regarding decision making.

9  
10 4.2 Care should be taken to ensure that media placement of government  
11 advertising is determined on a needs basis and targeted accordingly and  
12 without favour.

13  
14 4.3 Existing purchasing/procurement policies and procedures for the  
15 tendering and commissioning of services and the employment of  
16 consultants should be followed.