

Legislative Council—No 59

As introduced and read a first time, 18 February 2009

South Australia

Regulating Government Publicity Bill 2009

A BILL FOR

An Act to regulate government publicity; and for other purposes.

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Schedule 1—Guidelines for government publicity

The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Regulating Government Publicity Act 2009*.

2—Commencement

5 This Act will come into operation 2 months after the day on which it is assented to by the Governor.

3—Interpretation

In this Act—

candidate for election means a person nominated as a candidate at an election in accordance with Part 8 Division 1 of the *Electoral Act 1985*;

10 *Committee* means the Government Publicity Committee established under section 4;

election means election of a member or members of the House of Assembly or Legislative Council;

Guidelines means the Guidelines for government publicity as set out in Schedule 1;

15 *government publicity* means an advertisement, advertising campaign or announcement, funded by public funds, relating to the government or any government activities, programs or initiatives;

political party has the same meaning as in the *Electoral Act 1985*;

public authority means—

- 20 (a) an administrative unit of the Public Service;
- (b) a Minister;
- (c) an agency or instrumentality of the Crown;
- (d) any other authority declared by regulation to be a public authority for the purposes of this definition.

4—Establishment of Government Publicity Committee

- (1) The Government Publicity Committee (the *Committee*) is established.
- (2) The Committee consists of—
 - (a) the Auditor-General; and
 - (b) the Ombudsman; and
 - (c) a person with knowledge and experience in advertising appointed by the Auditor-General.
- (3) A member appointed under subsection (2)(c)—
 - (a) is to be appointed on such terms and conditions specified in the instrument of appointment; and
 - (b) is entitled to fees, allowances and expenses prescribed by the regulations.
- (4) The provisions of Part 2 Division 4 of the *Public Sector Management Act 1995* apply in relation to each member of the Committee as if the member were a member of an advisory body.
- (5) The Auditor-General and the Ombudsman may be represented on the Committee by a delegate.

5—Government publicity must comply with Guidelines

- (1) A public authority that uses public funds for government publicity must comply with the Guidelines in relation to that publicity.
- (2) Subject to subsection (3), the Committee may, on complaint by any person, determine whether or not, in the opinion of the Committee, a public authority has complied with subsection (1).
- (3) The Committee must not entertain a complaint about government publicity in respect of which an authorisation under section 7 is in force.
- (4) The Committee may require the public authority to furnish specified information in order to determine a complaint under this section.
- (5) If the Committee determines that a public authority has failed to comply with subsection (1), the Committee may issue any 1 or more of the following directions:
 - (a) a direction requiring the content or style of the publicity or the method of its dissemination to be modified in a specified manner;
 - (b) any other direction the Committee considers necessary or desirable to ensure compliance with the Guidelines;
 - (c) a direction requiring the public authority to immediately stop any further such publicity;
 - (d) a direction requiring the public authority to stop using public funds for the publicity;
 - (e) if the Committee is satisfied that a particular political party is responsible for the publicity—a direction requiring the political party to pay, on behalf of the public authority, into such fund or account as may be specified by the Auditor-General—

- (i) the amount of any public money used by the public authority for the publicity; or
- (ii) any amounts owing to any person or body in respect of the publicity.

(6) A public authority must comply with a direction under this section.

6—Offence to use more than \$50 000 of public funds for government publicity without authorisation

A person must not authorise the use of more than \$50 000 of public funds for any particular government advertising campaign without an authorisation in relation to the campaign under section 7.

7—Authorisations

(1) A public authority may apply to the Committee for an authorisation in relation to any government publicity for which public funds are proposed to be used.

(2) An application under subsection (1) must be made in such manner and form as is determined by the Committee.

(3) The Committee may require the public authority to furnish further specified information in order to determine the application.

(4) The Committee must not grant an authorisation if it considers that the government publicity does not comply with the Guidelines.

(5) The Committee may, in granting an authorisation under this section, impose any 1 or more of the following conditions:

(a) a condition that the content or style of the publicity or the method of its dissemination be modified in a specified manner;

(b) a condition that the Guidelines are to be complied with for the duration of the publicity;

(c) any other conditions that the Committee considers necessary or desirable to ensure compliance with the Guidelines.

(6) An authorisation must be notified, together with any conditions, in the Gazette.

(7) The Committee may, on its own initiative or on application, by notice in the Gazette, vary an authorisation under this section or vary or revoke a condition of such an authorisation or impose a condition or further condition.

(8) A public authority must comply with a condition of an authorisation imposed under this section.

8—Approval of appropriation

(1) An Act of the Parliament purporting to appropriate revenue or other public money for the purpose of government publicity is invalid and of no effect unless the appropriation has been first approved by the Committee.

(2) A certificate apparently signed by the Auditor-General on behalf of the Committee and certifying that the Committee has approved an appropriation specified in the certificate is, in the absence of proof to the contrary, proof of the matter so certified.

9—Enforcement

- (1) The Committee may institute proceedings in the Supreme Court against a public authority alleging a contravention of section 5(6), section 5 or section 7(8).
- (2) If, in proceedings under this section, the Supreme Court is satisfied that a contravention has occurred, the Court may—
- (a) grant an injunction against the public authority in relation to the conduct that constitutes, or is alleged to constitute, the contravention; and
 - (b) make any other orders that the Court thinks fit.

10—Regulations

The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.

Schedule 1—Guidelines for government publicity

The following guidelines apply to government publicity:

- (a) government publicity should include a statement of the publicity's objective;
- (b) government publicity should provide objective, factual and explanatory information;
- (c) government publicity should present information in an unbiased and equitable manner;
- (d) information presented in government publicity should be based on accurate, verifiable facts and be expressed in conformity with those facts;
- (e) government publicity should not contain clauses or statements that cannot be substantiated;
- (f) government publicity should present information in a way that makes facts clearly and easily distinguishable from comment, opinion and analysis;
- (g) if government publicity contains information of a comparative nature, the information must state the basis of the comparison and must not be misleading;
- (h) government publicity should not have the capacity to influence public support for a political party or for candidates for election to, or members of, Parliament;
- (i) government publicity should not intentionally promote party political interests or give rise to a reasonable perception that it is promoting party political interests;
- (j) government publicity should present information in objective and unbiased language and be free from partisan promotion of government policies or political arguments;
- (k) government publicity should not contain any material which directly attacks or seems to scorn the views, policies or actions of others, including the policies and opinions of other political parties;
- (l) government publicity should not contain party political slogans or images.