



Australian Capital Territory

Government Agencies (Campaign Advertising) Act 2009

A2009-55

Contents

	Page
Part 1	Preliminary
1	Name of Act 2
2	Commencement 2
3	Dictionary 2
4	Notes 2
5	Object of Act 2
Part 2	Important concepts
6	General principles 3
7	What is a <i>government agency</i> ? 3
8	Who is a <i>responsible person</i> ? 4
9	What is a <i>government campaign</i> ? 4
10	What are <i>campaign costs</i> ? 5
11	What is <i>party political</i> ? 6

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	Page
Part 3	Campaign advertising reviewer
12	Appointment of reviewer 7
13	Reviewer's functions 8
Part 4	Requirements for government campaigns
14	Reviewer to review certain government campaigns 9
15	Government campaigns must comply with Act 10
16	Statement of total campaign costs 10
17	Minister must make guidelines 10
18	Government campaigns before election restricted 14
Part 5	Reporting
19	Reviewer to prepare report 15
20	Reviewer to give report to Legislative Assembly 16
21	Reporting sensitive information 17
22	Reports to be given to Speaker 18
Part 6	Miscellaneous
23	Exemptions 19
24	Regulation-making power 19
Dictionary	20



Australian Capital Territory

Government Agencies (Campaign Advertising) Act 2009

A2009-55

An Act about campaign advertising by government agencies

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Government Agencies (Campaign Advertising) Act 2009*.

2 Commencement

This Act commences on 1 July 2010.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*general election*—see the *Electoral Act 1992*, dictionary.' means that the term 'general election' is defined in that dictionary and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Object of Act

The object of this Act is to prevent the use of public funds for advertising or other communications for party political purposes.

Part 2 Important concepts

6 **General principles**

The following general principles apply to the use of public funds for government campaigns:

- (a) members of the public have the right to access comprehensive information about government policies, programs and services which affect their entitlements, rights and obligations;
- (b) governments may use public funds for information programs and education campaigns to explain government policies, programs or services and to tell members of the public about their entitlements, rights and obligations;
- (c) information programs and education campaigns must not be conducted for party political purposes.

7 **What is a *government agency*?**

In this Act:

government agency means:

- (a) an administrative unit; or
- (b) a territory instrumentality; or
- (c) a statutory office-holder and the staff assisting the statutory office-holder; or
- (d) a territory-owned corporation.

8 Who is a *responsible person*?

In this Act:

responsible person, for a government agency, means—

- (a) for an administrative unit—the responsible Minister; and
- (b) for a territory instrumentality—the chief executive officer; and
- (c) for a statutory office-holder and the staff assisting the statutory office-holder—the statutory office-holder; and
- (d) for a territory-owned corporation—the chief executive of the corporation.

9 What is a *government campaign*?

In this Act:

government campaign—

- (a) means the dissemination by a government agency of information to members of the public about a government program, policy or matter which affects their entitlements, rights or obligations; and
- (b) includes an information program or education campaign to explain the program, policy or matter; but
- (c) does not include any of the following:
 - (i) dissemination of information about public health or safety programs, including road safety programs;
 - (ii) advertisements for stated jobs;
 - (iii) tender advertising;
 - (iv) other routine advertising campaigns carried out by an agency in relation to its operational activities.

Examples—par (c) (i)

- 1 road safety programs about the dangers of drink driving, speeding or not wearing seatbelts
- 2 public health programs about the dangers of smoking or obesity
- 3 public health programs about losing weight and getting fit

Examples—par (c) (iv)

- 1 notices about traffic or transport
- 2 notice of garbage collection times
- 3 tourism campaigns

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

10 What are *campaign costs*?

In this Act:

campaign costs—

- (a) means the cost of the development, production and conduct of government campaigns; and
- (b) includes the costs relating to using the media.

Examples—campaign costs

- 1 cost of using market research agencies, public relations consultants or advertising agencies to develop information
- 2 production costs of press, radio, on-line or other electronic media, cinema or television advertisements
- 3 production costs of audio-visual material
- 4 production costs of pamphlets and explanatory booklets

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

11 What is *party political*?

In this Act:

party political—something is *party political* if it is designed to promote the policies, past performance, achievements or intentions of a program or the government with a view to advancing or enhancing a political party’s reputation rather than informing the public.

Part 3 Campaign advertising reviewer

12 Appointment of reviewer

- (1) The Minister must appoint a person to be the campaign advertising reviewer (the *reviewer*).

Note For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

- (2) The Minister must not appoint a person as reviewer unless satisfied that the person has experience or expertise in 1 or more of the following areas:

- (a) media and advertising;
- (b) legal;
- (c) government administration.

- (3) The reviewer must not be a public servant.
- (4) The Minister must not appoint a person as reviewer unless the Legislative Assembly has approved the appointment, by resolution passed by a majority of at least $\frac{2}{3}$ of the members.
- (5) The reviewer must be appointed for not longer than 3 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

- (6) The conditions of appointment of the reviewer are the conditions agreed between the Minister and the reviewer, subject to any determination under the *Remuneration Tribunal Act 1995*.
- (7) The Legislation Act, division 19.3.3 (Appointments—Assembly consultation) does not apply to the appointment of a reviewer.

13 Reviewer's functions

- (1) The reviewer has the following functions:
 - (a) to review proposed government campaigns to ensure campaigns comply with this Act;
 - (b) to report to the responsible person and the Legislative Assembly the result of each review mentioned in paragraph (a).
- (2) The reviewer has any other function given to the reviewer by this Act.

Note 1 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

Note 2 A provision of a law that gives an entity a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

Part 4 Requirements for government campaigns

14 Reviewer to review certain government campaigns

- (1) If the campaign costs of a government campaign proposed by a government agency are likely to exceed \$40 000, the responsible person for the agency must ask the reviewer to review the proposed campaign and report to the responsible person about whether it complies with this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including guidelines (see Legislation Act, s 104).

- (2) The responsible person for a government agency may ask the reviewer to review, and report to the responsible person about, a government campaign proposed by the agency even if the campaign costs are not expected to exceed \$40 000 if the responsible person considers that the subject matter of the campaign is sensitive or otherwise considers that a review is appropriate.
- (3) If the reviewer is asked to review a proposed government campaign, the reviewer must—
 - (a) review the campaign; and
 - (b) report to the responsible person on whether the campaign complies with this Act.

15 Government campaigns must comply with Act

The responsible person for a government agency may conduct a government campaign only if—

- (a) the responsible person certifies that the campaign complies with this Act; and
- (b) if the campaign costs for the campaign are likely to exceed \$40 000—the reviewer has reported to the responsible person in relation to the compliance of the campaign with this Act.

16 Statement of total campaign costs

- (1) The responsible person for a government agency that has undertaken a government campaign must prepare a statement of the total campaign costs for the campaign.
- (2) The statement must set out any development and production costs of the government campaign that can be separately identified.

17 Minister must make guidelines

- (1) The Minister must make guidelines for this Act consistent with its object and the general principles.
- (2) Guidelines are a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (3) Without limiting subsection (1), the guidelines must include provisions to the following effect:
 - (a) information in a government campaign must be relevant to current government responsibilities;

Example—information relevant to current government

- 1 information about existing or new government policies or policy changes for which there is legislative authority, an appropriation or a current government decision to implement

- 2 information about government programs or services or changes to programs or services for which there is legislative authority, an appropriation or a current government decision to implement
- 3 scientific, medical or health and safety information
- 4 information about government performance to facilitate accountability to the public

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (b) information in a government campaign must be presented in an objective and fair way and not include—
- (i) comment or opinion, unless the comment or opinion is clearly identified as comment or opinion and is clearly distinguishable from statements of fact; or
 - (ii) statements promoting the government's performance;

Examples

- 1 objective facts and explanatory information are included
 - 2 material presented as fact is based on and conforms with accurate, verifiable facts
 - 3 factual comparisons are presented in a way that is not misleading and state the basis for comparison
 - 4 existing policies, services or activities are not represented as new
- (c) information in a government campaign must not include slogans or other advertising techniques designed to have, or likely to have, the effect of promoting a political party or position instead of communicating a factual message;

Example—advertising techniques

jingles

- (d) information in a government campaign must be presented in a way that is accessible and takes into account any special communication needs of particular people or groups;

Examples—groups that may have special communication needs

- 1 young people
- 2 Aboriginal and Torres Strait Islanders
- 3 people whose first language is not English

- (e) information in a government campaign must not be directed at promoting the government or party political interests in any way, including by way of—

- (i) content; or
- (ii) source; or
- (iii) reason; or
- (iv) purpose; or
- (v) choice of media; or
- (vi) timing, geographic or demographic targeting; or
- (vii) designed effect;

Examples—promoting government or party political interests

- 1 mentioning the party in government or the party leader by name
- 2 deriding the views, policies or actions of others, including policies and opinions of opposition parties or groups
- 3 including party-political slogans or images
- 4 designing to influence public support for a political party, a candidate for election, a Minister or a member of the Assembly
- 5 mentioning or linking to a website of a politician or a political party

- (f) information in a government campaign must be produced and distributed in an efficient, effective and relevant way, with regard to accountability;

Examples

- 1 justifiable by cost-benefit analysis in terms of community needs, efficiency and effectiveness
 - 2 clear audit trail regarding decision-making
 - 3 current procurement policies and procedures for tendering, obtaining services and employing consultants followed
- (g) the presentation and delivery of information in a government campaign must be clearly identified as part of a government campaign;

Example

a statement at the end of a television or radio announcement

- (h) a government campaign must be presented and delivered in a way that recognises the diversity of the ACT community and the full participation of women, and ethnic and Aboriginal and Torres Strait Islander communities, by realistically representing their interests, lifestyles and contributions to Australian society;
- (i) the presentation and delivery of information in a government campaign must comply with any relevant laws in force in the ACT.

Example

privacy laws

18 Government campaigns before election restricted

- (1) A government agency must not conduct a government campaign in the pre-election period.
- (2) This section does not apply to the electoral commissioner.

Note 1 A government campaign does not include advertisements for stated jobs, tender advertising or other routine advertising carried out by an agency in relation to its operational activities (see s 9, def **government campaign**).

Note 2 Also, the Minister may exempt a campaign from this Act in an emergency, urgent circumstances or other extraordinary circumstances (see s 23).

Part 5 Reporting

19 Reviewer to prepare report

- (1) The reviewer must prepare a report for the Legislative Assembly about government campaigns for the following periods (the *report periods*):
 - (a) for a year in which a general election is held—
 - (i) the 6-month period ending on 30 June in the year; and
 - (ii) the period beginning on 1 July in the year and ending at the start of the pre-election period; and
 - (b) for any other year—the 6-month periods ending on 30 June and 31 December in the year.
- (2) The reviewer must report on the following:
 - (a) each proposed government campaign (a *proposed campaign*) referred to the reviewer in the report period;
 - (b) for each proposed campaign—
 - (i) the campaign costs itemised by the kind of costs incurred and the ways used to disseminate information for the campaign; and
 - (ii) the result of the reviewer's review and the reasons for the reviewer's decision.
- (3) The reviewer must give the report to the Legislative Assembly not later than—
 - (a) for a report mentioned in subsection (1) (a) (ii)—2 weeks before the election; and
 - (b) for any other report—3 months after the end of the report period.

20 Reviewer to give report to Legislative Assembly

- (1) If the Legislative Assembly is sitting when the reviewer has finished the report—
 - (a) the reviewer must give the report to the Speaker; and
 - (b) the Speaker must present the report to the Legislative Assembly on the next sitting day.
- (2) If the Legislative Assembly is not sitting when the reviewer has finished the report—
 - (a) the reviewer must give the report, and a copy for each member of the Legislative Assembly, to the Speaker; and
 - (b) the report is taken for all purposes to have been presented to the Legislative Assembly on the day the reviewer gives it to the Speaker (the *report day*); and
 - (c) publication of the report is taken to have been ordered by the Legislative Assembly on the report day; and
 - (d) the Speaker must arrange for a copy of the report to be given to each member of the Legislative Assembly on the report day; and
 - (e) the Speaker may give directions for the printing and circulation, and in relation to the publication, of the report; and
 - (f) despite paragraph (b), the Speaker must present the report to the Legislative Assembly on the next sitting day.
- (3) The reviewer may give a copy of the report to a Minister who, in the reviewer's opinion, has a special interest in the report.
- (4) In this section:

Speaker, for a report given to the Deputy Speaker or clerk under section 22 (Reports to be given to Speaker), means the Deputy Speaker or clerk.

21 Reporting sensitive information

- (1) A report under this part must not include information for the Legislative Assembly if the reviewer considers that disclosing the information would be contrary to the public interest because it could—
 - (a) be an unreasonable disclosure of personal information about a person; or
 - (b) disclose a trade secret; or
 - (c) disclose information (other than a trade secret) having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or
 - (d) be an unreasonable disclosure of information about the business, commercial or financial interests or affairs of an entity; or

Note **Entity** includes a person (see Legislation Act, dict, pt 1).

 - (e) prejudice the investigation of a contravention of a law; or
 - (f) prejudice the fair trial of a person; or
 - (g) prejudice relations between the ACT government and another government.
- (2) However, the report may include information mentioned in subsection (1) if the reviewer is satisfied that the substance of the information is public knowledge.
- (3) If, under subsection (1), the reviewer omits information from a report for the Legislative Assembly, the reviewer may prepare a special report for the public accounts committee that includes the information.
- (4) The reviewer must give the special report to the presiding member of the public accounts committee.

- (5) The presiding member must present the special report to the public accounts committee.
- (6) A special report presented to the public accounts committee is taken for all purposes to have been referred to the committee by the Legislative Assembly for inquiry and any report that the committee considers appropriate.
- (7) In this section:

public accounts committee means the committee of the Legislative Assembly whose functions include the examination of financial statements for the Territory, a department or a territory authority.

22 Reports to be given to Speaker

- (1) A report required by this part to be given to the Speaker must—
 - (a) if the Speaker is unavailable—be given to the Deputy Speaker; or
 - (b) if both the Speaker and Deputy Speaker are unavailable—be given to the clerk of the Legislative Assembly.
- (2) For subsection (1), the Speaker or Deputy Speaker is unavailable if—
 - (a) he or she is absent from duty; or
 - (b) there is a vacancy in the office.

Part 6 Miscellaneous

23 Exemptions

- (1) The Minister may exempt a campaign from this Act.
- (2) However, the Minister may exempt a campaign only if satisfied it is appropriate because of—
 - (a) an emergency; or
 - (b) extreme urgency; or
 - (c) other extraordinary circumstances.
- (3) The Minister must tell the Legislative Assembly, in writing, about an exemption and the reasons for the exemption as soon as practicable after the exemption is given.
- (4) An exemption is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

24 Regulation-making power

The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- disallowable instrument (see s 9)
- electoral commissioner
- Executive
- Minister (see s 162)
- notifiable instrument (see s 10)
- public servant
- statutory office holder
- territory instrumentality.

campaign costs—see section 10.

general election—see the *Electoral Act 1992*, dictionary.

government agency—see section 7.

government campaign—see section 9.

party political—see section 11.

pre-election period—see the *Electoral Act 1992*, dictionary.

responsible person—see section 8.

reviewer—see section 12.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 10 December 2008.

2 Notification

Notified under the Legislation Act on 21 December 2009.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Government Agencies (Campaign Advertising) Bill 2009, which originated in the Legislative Assembly as the Government Agencies (Campaign Advertising) Bill 2008 and was passed by the Assembly on 9 December 2009.

Clerk of the Legislative Assembly

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