

**2025**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**EXPLANATORY STATEMENT AND HUMAN RIGHTS COMPATABILITY STATEMENT  
GOVERNMENT AGENCIES (CAMPAIGN ADVERTISING) AMENDMENT BILL 2025**

This explanatory statement relates to the *Government Agencies (Campaign Advertising) Amendment Bill 2025* (the Bill). It has been prepared in order to assist the reader of the Amendments and to help inform debate on the bill. It does not form a part of the bill and has not been endorsed by the Assembly.

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## OVERVIEW OF THE BILL

This bill modernises and enhances the *Government Agencies (Campaign Advertising) Act 2009*.

This Act has the near-unique reputation of being legislation introduced and passed by the Opposition with Crossbench support, despite being opposed in-principle by the government of the day<sup>1</sup>. Guidelines were created by the Government in 2010 as required under the Act, and the scheme has operated substantively unamended since that point in time.

This bill seeks to apply amendments to the existing scheme which account for identified shortcomings, so as to ensure it can better operate as intended into the future. This is achieved in the following ways:

1. Clarification is made to what constitutes a *party political purpose*. In recognition of the significance of name-recognition and identity-recognition to electoral politics, the concept is extended to include the identification of politicians (Members of the Legislative Assembly, candidates and prospective candidates) and party branding, both by name and by depiction.
2. Clarification is made for advertising about proposed government programs, so that such advertising must be predicated on consultation activities occurring.
3. Additional restrictions are added for federal election periods, such that approval for a government advertising campaign will be required from all party leaders during that federal election period.

Each category of amendments is intended to improve confidence in the public service's impartiality from electoral politics, consistent with its values. It is expected that the amendments will require revised guidelines to be issued via disallowable instrument concurrent with the implementation of the amendments at a time to be fixed by the Minister within six months of the bill's passage.

## HUMAN RIGHTS COMPATABILITY

This bill is not a significant bill. Significant bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

However, it is worth acknowledging that the underlying scheme for the review of Government Advertising campaigns was first implemented in 2009. The original bill, presented as a private members' bill in 2008, was not accompanied by a human rights compatibility statement.<sup>2</sup> The committee performing the role of legislative scrutiny of the day made no comments on the bill.<sup>3</sup> The bill was subjected to substantial amendments following a committee inquiry and it appears those amendments were not subjected to legislative scrutiny. The disallowable instrument containing the guidelines received no comment from the committee performing the role of legislative scrutiny<sup>4</sup>, has not been revised since its introduction in 2010 and therefore has not been subject to any additional scrutiny in the intervening years. Since then, the ACT's Human Rights framework has significantly matured, so fresh analysis could be considered useful and welcome. This explanatory statement therefore examines the existing scheme alongside the proposed amendments in the bill.

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<sup>1</sup> Assembly Hansard, Seventh Assembly, Week 05 – Wednesday 1 April 2009, pages [1636-1649](#)

<sup>2</sup> *Government Agencies (Campaign Advertising) Bill 2008*

<sup>3</sup> *Seventh Assembly, Scrutiny Report No 2 – 2 February 2009*

<sup>4</sup> *Seventh Assembly, Scrutiny Report No 25 – 9 August 2010*

## **Rights Engaged**

The Bill and the Act engages the following rights under the *Human Rights Act 2004*:

- Taking part in public life (section 17) (promoted and limited)

### **The nature of the rights affected (s28(2)(a))**

The right to take part in public life necessitates open lines of communication between people and their elected representatives. In this context, it is close to synonymous with the Australian Constitution's implied freedom of political communication. As with other matters which burden the implied freedom, limiting this right in one way can serve to promote it in another, and the opposite is also true. Good legislation balances these aspects so that the promotions exceed the limitations to the overall benefit of our democracy.

The framework under consideration limits the ability of elected members of the ACT who are in Executive Government to distribute communications to residents of the ACT, including its electors, using the resources of the Government. This is a feature of the existing law. The bill clarifies it in certain regards rather than substantively altering it.

### **The importance of the purpose of the limitation (s28(2)(b)); How the rights are promoted**

The resources of the Government are substantial and are at the disposal of an incumbent executive. A corrupt executive, as can be observed in the histories of a number of foreign countries, might choose to deploy these resources against their political opponents. This is contrary to the expectations of Australians, who demand fair and democratic electoral contests when choosing their elected representatives.

Placing limitations on how the resources of government can be used to communicate with electors, if applied well, has the effect of levelling the playing field. A party in government becomes compelled to rely upon the communication resources they can accumulate and propagate without the benefits of incumbency. A governing party therefore cannot use its incumbency to dominate platforms of news and media to the structural disadvantage or exclusion of other participants.

This improves the electoral experience for people overall, through significantly enhanced confidence that elections are conducted in a manner that guarantees the free expression of the will of the voters. Voters can also have enhanced confidence of the apolitical nature of the public service which carries out any government advertising which occurs.

### **The nature and extent of the limitation (s28(2)(c))**

Governments are, in effect, barred from using government resources for advertising with electoral benefits, also described as *party political* purposes. The core limitations are articulated in section 17(3) of the Act. Without repeating the full text of the Act here, the conditions taken together still allow the government to run advertising campaigns but require that they be conducted in a non-partisan way for the purpose of communicating factual information that the people of the ACT have a genuine need to receive.

An assurance framework is applied through the appointment of a campaign advertising reviewer. Their appointment must be approved by a two-thirds majority of the Assembly, which provides for enhanced confidence in the appointee's suitability to conduct non-partisan reviews and provide periodic reports.

Campaign advertising is further restricted during the pre-election period of the Territory – a time where significant volumes of partisan advertising material is in circulation – for the clear avoidance of doubt. The Electoral Commissioner is exempted from these requirements due to the essential role they have in advertising the procedural aspects of an election.

The Bill will add additional restrictions covering Federal election periods, such that government advertising campaigns require the approval of all party leaders in the Assembly. This is to improve the confidence that the ACT Government is not conducting advertising which could be seen as interfering in a Federal election, for example by advertising a program of cooperation between the Territory and Commonwealth Governments to the improper advantage of the federal incumbents.

The bill will limit advertising on proposed government programs to those involving community consultation, so that a government cannot advertise something that has not been agreed to by the Assembly or where it is predicated on re-election.

The bill will further clarify that something has a *party political* purpose where it depicts or names a member of the Legislative Assembly, a candidate or prospective candidate for election, or utilises something resembling a party's name or political branding. This recognises the fact that name-recognition and identity-recognition are increasingly significant aspects of the Territory's electoral politics, so the identification and presentation of politicians and brands is inherently party-political.

#### **The relationship between the limitation and its purpose (s28(2)(d))**

The limitations in the Act directly target those activities in government campaign advertising which are likely to produce an electoral advantage – either due to subject matter or due to the time or manner of advertising. This works to minimise if not prevent the misuse of public funds for partisan purposes in a clear and direct way.

The amendments in the Bill ensure that advertising during federal election periods are also considered in the guidelines. Requiring approval from all party leaders directly infers confidence that the proposed advertising campaign is non-partisan.

The amendments in the Bill also add additional clarity on how the naming and depiction of politicians are relevant to apparent partisanship. Additionally, limiting advertising on proposed programs to community consultation prevents public funds from being used to 'pitch' a program in a partisan way.

#### **Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve (s28(2)(e))**

The limitations are focussed specifically on those activities which are liable to produce an apparent politicisation of the public service. All other forms of government campaign advertising are able to be approved. Accordingly, any less-restrictive approach would likely fail to target the intended purpose.

The amendments serve to tighten existing laws to handle identified shortcomings in the current scheme, adding clarity on where advertising should be limited and by corollary how it can be permitted. While proposed programs cannot be partisanly advertised, community consultation on prospective programs can still occur.

Restrictions to advertising during federal election campaigns are confined to the clearest span of time which is assuredly highly sensitive to political advertising and perceptions of possible

partisanship in any government advertising campaigns. This is between the issue of the writs and the day of the federal election.

## **CLIMATE IMPACT**

This bill has no direct or indirect implications for climate change.

## **CLAUSE NOTES**

### **Clause 1 – Name of the Act**

This identifies the bill, once it is prospectively passed, as being the *Government Agencies (Campaign Advertising) Amendment Act 2025*.

### **Clause 2 – Commencement**

The commencement date will be on a day fixed by the Minister by written notice. This allows the Minister to prepare any necessary amendments to guidelines and processes which are necessary ahead of formal commencement, noting that commencement must still occur within six months of the bill's notification.

### **Clause 3 – Legislation Amended**

The bill will amend only the *Government Agencies (Campaign Advertising) Act 2009*.

### **Clause 4 – Definition of a party political purpose**

This reforms the definition of 'party political', which was a matter of contention during passage of the original Act<sup>5</sup>, and is extended to align with contemporary practices. In addition to the existing criteria, this will now expressly include the depiction, naming or identification of a member of the Legislative Assembly, a candidate or prospective candidate for an election, and any naming or branding resembling that of a political party. Exceptions are made for the content of a report for the legislative Assembly, or a person doing something required under law.

Definitions of *candidate*, *election* and *prospective candidate* are tied to those used under the *Electoral Act 1992*. It therefore means these definitions only apply with respect to Territory elections.

### **Clause 5 – Additional clarity on campaign advertising for proposed government programs**

This adds a new section 17(3)(aa), which requires any government advertising campaign concerning a proposed government program, policy or matter to be predicated on conducting public consultation about that program, policy or matter.

### **Clauses 6, 7 & 8 – Prohibition on promoting the government or partisan interests**

This clarifies section 17(3)(e) by incorporating the language of 'party political purpose', as amended in clause 4, to ensure that the prohibition properly extends to promoting individual members of the Legislative Assembly and election candidates. The heading for the examples is

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<sup>5</sup> Assembly Hansard, Seventh Assembly, Week 15 – Wednesday 9 December 2009, pages [5572](#)-5574

amended accordingly, and example 1 is clarified with additional reference to including an image of the government party leader.

### **Clauses 9, 10 & 11 – Approvals required during a Federal Election Campaign**

The heading of section 18 is clarified to observe that restrictions are applied to both Territory and Federal elections.

A new section 18(1A) is inserted which introduces approval requirements during a Commonwealth pre-election period. This is defined in a new 18(3) as the period between the issuing of writs and the polling day for a federal election. During this period, any ACT government advertising campaign will require the consensus approval of all party leaders in the ACT Legislative Assembly.

### **Clause 12 – Schedule for reviewer’s reports**

This amends section 19(1)(a)(ii) to close a technical gap in the reviewer’s reporting requirements. Under the existing law, the reviewer is not required to report for the period between a Territory election and the 31<sup>st</sup> of December in the same year. The reviewer will now be required to prepare an additional report covering any activity in that period.

### **Clauses 13 & 14 – Dictionary**

The dictionary entry for *party political* is amended to *party political purpose*, consistent with amendments at Clause 4, and references the revised Section 11.

A definition for *registered party* is added to support amendments in clauses 4 and 10, which points to the *Electoral Act 1992*.