



New South Wales

Local Government and Elections Legislation Amendment (Integrity) Bill 2016

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Election Funding, Expenditure and Disclosures Act 1981* to impose caps on political donations in respect of local government elections, and
- (b) to amend the *Local Government Act 1993* to disqualify a person from holding civic office if the person has been convicted of an offence against the *Election Funding, Expenditure and Disclosures Act 1981* relating to unlawful political donations or the failure to disclose donations or electoral expenditure, or has been convicted of an offence of any kind that is punishable by imprisonment for 5 years or more, and
- (c) to repeal section 448 (g) of the *Local Government Act 1993*, which exempts councillors and senior officers from the requirement to disclose pecuniary interests in relation to certain planning matters, and
- (d) to enable the Chief Executive of the Office of Local Government to apply to the Supreme Court for an order to recover, from a councillor who has been found to have contravened the disclosure obligations of the *Local Government Act 1993*, the amount of any monetary benefit obtained by the councillor as a result of the decision to which the contravention relates.

The proposed amendments are part of a package of reforms to promote the integrity of local government decision-making. In addition to the reforms proposed by this Bill, other proposed reforms in connection with planning matters include:

- (a) changes to development application forms under the *Environmental Planning and Assessment Act 1979* so that an applicant is required to disclose whether the applicant, or

any other person having a financial interest in the application, is a councillor or council general manager, or a spouse or relative of a councillor or general manager (a failure to disclose would constitute an offence under section 148B of that Act), and

- (b) changes to delegations and gateway determination procedures under that Act that authorise local councils to make local environmental plans concerning permissible development so that a councillor or council general manager who has a financial interest in the plan does not take part in the making of the plan, and
- (c) changes to the model code of conduct for councillors under the *Local Government Act 1993* to ensure that councillors do not participate in council decisions relating to the determination of development applications made by them or by the council general manager or in which they have a financial interest.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Election Funding, Expenditure and Disclosures Act 1981 No 78

Schedule 1 [6] and [13] apply Division 2A (Caps on political donations for State elections) of Part 6 of the Act to local government elections and elected members of councils. Division 2B (Caps on electoral communication expenditure) of Part 6 will continue to apply only to State elections.

Schedule 1 [14] applies the general cap on political donations for State elections to local government elections. That cap will apply to any political donation to or for the benefit of a party, group, elected member, candidate or third-party campaigner in relation to a local government election. **Schedule 1 [16]** provides that the caps on donations for State and local government elections apply separately, with the result that the aggregation provisions for multiple small donations apply separately and that separate donations for State and local government elections (up to the respective caps) can be made to parties and third-party campaigners. The amendments refer to the capped amounts when the relevant provisions were enacted in 2011 because the stated amounts are indexed for inflation under Schedule 1 to the Act.

Schedule 1 [20] requires a party to establish a local government campaign account that is separate from its State campaign account for the purpose of accounting for donations and expenditure for local government elections. **Schedule 1 [10]** provides that a donation to a party is for a local government election if it is paid into its local government campaign account.

Schedule 1 [1], [2] and [23] deal with third-party campaigners in connection with local government elections. A person becomes a third-party campaigner (who is required to be registered and to whom the cap on political donations applies) if the person incurs electoral communication expenditure for local government elections exceeding \$2,000 during the local government expenditure period (which for local government general elections held in September in any year is the period from 1 July to the date of the election). Currently, third-party campaigners in State elections are subject to the Act if they incur electoral communication expenditure exceeding \$2,000 during the 6-month period before a State general election.

Schedule 1 [3]–[5], [7]–[9], [11], [12], [15], [17]–[19], [21] and [22] make consequential amendments.

Schedule 1 [24] inserts transitional provisions, including to provide that the amendments do not apply to local government by-elections before the next local government general election.

Schedule 2 Amendment of Local Government Act 1993 No 30

Schedule 2 [1] extends the existing grounds for disqualification from holding the office of councillor or mayor of a council or the office of chairperson or member of a county council. A person who is disqualified from holding civic office may not be elected or appointed to such an office and may not continue to hold, or act in, any office currently held.

A person will be disqualified from holding civic office if the person has been convicted of an offence punishable by imprisonment for 5 years or more (whether in New South Wales or elsewhere in Australia) in the last 7 years. (An existing disqualification arising from being convicted of offences under the *Crimes Act 1900* relating to property is omitted, since those offences carry penalties of imprisonment for more than 5 years and will be covered by the new disqualification.)

A person will also be disqualified if the person has been convicted in the last 2 years of an offence under any of the following provisions of the *Election Funding, Expenditure and Disclosures Act 1981*:

- (a) section 75, 96GE (7), 96H (2) or (3), 97M or 110A (7) (offences relating to making false statements, providing false documents or information or withholding information),
- (b) section 96HA (offences involving breaches of caps on donations and expenditure),
- (c) section 96HB (1) (offences relating to establishing schemes to circumvent the donation or expenditure prohibitions or restrictions),
- (d) section 96I (1) (offences relating to the prohibition on donations from property developers, tobacco, liquor or gambling industries).

Schedule 2 [2] omits an exemption from the obligation of councillors, general managers, senior council staff, advisers and certain others to disclose pecuniary interests. As a result of the amendment, such persons will be required to disclose a pecuniary interest in a proposal considered by a council that relates to the making, amending, altering or repeal of a local environmental plan or other environmental planning instrument even if it does not change the permissible uses of land in which a councillor or related person has a proprietary interest or land adjoining, adjacent to or in proximity to the land.

Schedule 2 [3] enables the Chief Executive of the Office of Local Government to apply to the Supreme Court for an order to recover from a councillor who has been found to have contravened the disclosure obligations of the Act the amount of any monetary benefit obtained by the councillor as a result of the decision to which the contravention relates. The Supreme Court may also order the councillor to provide security to the council over property held by the councillor, to secure the recovery of the amount ordered to be paid.

Schedule 2 [4] inserts savings provisions, including to provide that the amendment creating new grounds for disqualification from civic office does not apply to disqualify a person currently holding any civic office but applies so that an offence committed before the commencement of the proposed Act can be taken into account in the future.