



Legislation Review Committee

LEGISLATION REVIEW DIGEST

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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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Membership

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Guide to the Digest

COMMENT ON BILLS

This section contains the Legislation Review Committee's reports on Bills introduced into Parliament on which the Committee has commented against one or more of the five criteria for scrutiny set out in s 8A(1)(b) of the *Legislation Review Act 1987*.

COMMENT ON REGULATIONS

The Committee considers all regulations made and normally raises any concerns with the Minister in writing. When it has received the Minister's reply, or if no reply is received after 3 months, the Committee publishes this correspondence in the Digest. The Committee may also inquire further into a regulation. If it continues to have significant concerns regarding a regulation following its consideration, it may include a report in the Digest drawing the regulation to the Parliament's "special attention". The criteria for the Committee's consideration of regulations are set out in s 9 of the *Legislation Review Act 1987*.

Regulations for the special attention of Parliament

When required, this section contains any reports on regulations subject to disallowance to which the Committee wishes to draw the special attention of Parliament.

Conclusions

PART ONE - BILLS

1. ASSISTED REPRODUCTIVE TECHNOLOGY AMENDMENT BILL 2016

Trespasses on personal rights and liberties: s 8A(1)(b)(i) of the LRA

Privacy

Disclosing identifying information about an individual conceived using assisted reproductive technology without their consent could interfere with their privacy. Advice from the Department on this issue indicated that the power would rarely be used and only in the most extreme circumstances such as if a sibling was seriously ill and wanted to meet their donor conceived sibling. The Department further added that the Regulations will set out a number of considerations such as a requirement to try to obtain consent before any disclosure, a requirement to consider the views of the parties and a requirement to consider any relevant report of a psychologist or psychiatrist as to whether contact would be in the interests of the parties. Given the above considerations the Committee makes no further comment.

2. DRUG MISUSE AND TRAFFICKING AMENDMENT (DRUG EXHIBITS) BILL 2016

Trespasses on personal rights and liberties: s 8A(1)(b)(i) of the LRA

Destruction of evidence before trial and without court order

The Bill proposes that certain prohibited substances and plants, which are evidence in drug-related proceedings, may now be destroyed on the order of a police officer rather than the court. This may occur before proceedings relating to an offence have been finally determined. However, the Committee notes the safeguards in the Bill and that the Bill is intended to ensure police officers are not unduly exposed to dangerous substances. The Committee also notes that the changes should allow courts to focus on more significant issues. The Committee therefore makes no further comments.

Evidentiary presumptions

For the purposes of criminal proceedings, the Bill creates a presumption that a drug seized by police is the same drug analysed by forensic services. However, the Committee notes that the accused can rebut this presumption. These provisions are also intended to make drug trials more efficient for the accused, the prosecution and the court by removing the need for the court to call witnesses to prove continuity of the evidence. For these reasons, the Committee makes no further comments.

Inappropriately delegates legislative powers: s 8A(1)(b)(iv) of the LRA

Commencement by proclamation

The Committee generally prefers legislation to commence on a fixed date or on assent, rather than by proclamation. However, the Committee notes that the Bill proposes changes to the storage and management of prohibited substances. As such, the Committee acknowledges that it may be appropriate to have some flexibility in the

commencement date to allow for associated procedures and systems to be put in place. As such, the Committee makes no further comments.

3. ELECTRICITY SUPPLY AMENDMENT (ADVANCED METERS) BILL 2016

Inappropriately delegates legislative powers: s 8A(1)(b)(iv) of the LRA

Commencement by proclamation

The Committee generally prefers legislation to commence on a fixed date or on assent, rather than by proclamation. However, the Bill makes changes to the administrative and regulatory arrangements associated with electricity meters. The Committee therefore acknowledges that some flexibility may be desirable with respect to the commencement of the Act. The Committee makes no further comments.

4. FAIR TRADING AMENDMENT (FUEL PRICE TRANSPARENCY) BILL 2016

The Committee makes no comment on the Bill in respect of issues set out in s8A of the Legislation Review Act 1987.

5. INCLOSED LANDS, CRIMES AND LAW ENFORCEMENT LEGISLATION AMENDMENT (INTERFERENCE) BILL 2016

Trespasses unduly on personal rights and liberties: s 8A(1)(b)(i) of the LRA

Search and seizure without a warrant

The Committee notes that the power to search people and seize property without a warrant trespasses on a person's right to privacy and property. However, the committee notes the objectives of the Bill which include ensuring police have adequate powers to prevent certain protestor behaviour which may place the safety of other people at risk. Having regard to these objectives, the Committee considers the powers appropriate and makes no further comment.

Right to peaceful assembly

The Committee notes that the powers granted to police under this Bill and the exercise of these powers may trespass upon the personal right of peaceful assembly. Such powers should only be used where there are sufficient checks available to ensure they are only exercised when required to ensure public safety.

The Committee refers to the safeguards relating to the exercise of police powers in the *Law Enforcement (Powers and Responsibilities) Act 2002* which require police officers to provide information and warnings before making a direction. Given these safeguards and the objectives of the Bill which include addressing behaviour which may pose a risk to the safety of others, the committee makes no further comment.

Inappropriately delegates legislative powers: s 8A(1)(b)(iv) of the LRA

Commencement by proclamation

6. MINING AND PETROLEUM INDUSTRY POLITICAL DONATIONS LEGISLATION AMENDMENT (CORRUPTION RISK REDUCTION) BILL 2016*

Trespasses on personal rights and liberties: s 8A(1)(b)(i) of the LRA

Implied freedom of political communication

Prohibiting individuals from making political donations may impermissibly burden the implied freedom of political communication in the Commonwealth Constitution. The Committee notes that the amendments are designed to secure the integrity of the Parliament and other government institutions and reduce corruption risks, among other things. However, the Committee refers these provisions to Parliament for further consideration, to assess whether there is sufficient evidence that the provisions are unlikely to impermissibly burden the implied freedom of political communication in the Commonwealth Constitution.

Part One - Bills

1. Assisted Reproductive Technology Amendment Bill 2016

Date introduced	9 March 2016
House introduced	Legislative Assembly
Member responsible	The Hon. Jillian Skinner MP
Portfolio	Health

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:

- (a) to establish a scheme where persons who were born as a result of ART treatment provided before 1 January 2010 using a donated gamete are able to obtain certain non-identifying information about the donor of the gamete and to require ART providers to retain records for this purpose for up to 75 years,
- (b) to make it an offence to knowingly falsify or destroy records required to be kept or retained under the *Assisted Reproductive Technology Act 2007* (the principal Act),
- (c) to extend to 15 years the maximum period for which donated gametes and embryos created using donated gametes may be stored and used,
- (d) to provide an exception to the 5 woman limit (which prevents ART treatment using a donated gamete being provided to a woman if there are already 5 other women who have given birth to offspring of the donor) if the woman or spouse of the woman is the parent of a child born as a result of ART treatment using a gamete from the same donor,
- (e) to permit information about a person born as a result of ART treatment using a donated gamete to be disclosed to the person's siblings and to the donor of the gamete if the Secretary of the Ministry of Health considers the information should be disclosed,
- (f) to permit donors of gametes and offspring of donors and parties to private ART arrangements to voluntarily provide information for inclusion in the central register,
- (g) to provide for the voluntary inclusion of information about donor conception in a birth registration statement and for the recording of that information in the Births, Deaths and Marriages Register and for the person to whom the statement relates to be notified about the information if the person is older than 18 years of age and applies for a birth certificate,
- (h) to move a number of key provisions of the *Assisted Reproductive Technology Regulation 2014* into the principal Act.

BACKGROUND

2. The amendments proposed by the Bill have been informed by a statutory review of the *Assisted Reproductive Technology Act 2007* and reports from two parliamentary inquiries into donor conception by the Legislative Assembly Law and Safety Committee in 2012 and 2013.
3. The Government did not support all of the Committee's recommendations. However, in developing the Bill, the Government consulted further with relevant stakeholders about contentious issues such as the central collection of pre-2010 records relating to donor-conceived individuals.

ISSUES CONSIDERED BY COMMITTEE

Trespasses on personal rights and liberties: s 8A(1)(b)(i) of the LRA

Privacy

4. The Bill proposes to allow the Secretary to disclose certain identifying information about an individual conceived using assisted reproductive technology without that person's consent. In particular, if the Secretary receives an application from the individual's siblings or the donor, the Secretary can disclose identifying information about the individual if the Secretary believes contact is justified to protect the welfare and best interests of both persons.
5. In making a decision, the Secretary will be required to take into account any matters prescribed by the Regulations (see Schedule 1 of the Bill, proposed section 40A of the *Assisted Reproductive Technology Act 2007*).

Disclosing identifying information about an individual conceived using assisted reproductive technology without their consent could interfere with their privacy. Advice from the Department on this issue indicated that the power would rarely be used and only in the most extreme circumstances such as if a sibling was seriously ill and wanted to meet their donor conceived sibling. The Department further added that the Regulations will set out a number of considerations such as a requirement to try to obtain consent before any disclosure, a requirement to consider the views of the parties and a requirement to consider any relevant report of a psychologist or psychiatrist as to whether contact would be in the interests of the parties. Given the above considerations the Committee makes no further comment.

2. Drug Misuse and Trafficking Amendment (Drug Exhibits) Bill 2016

Date introduced	9 March 2016
House introduced	Legislative Assembly
Member responsible	The Hon. Gabrielle Upton MP
Portfolio	Attorney General

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
 - (a) to amend the *Drug Misuse and Trafficking Act 1985* (the Principal Act) and the *Drug Misuse and Trafficking Regulation 2011* to update and streamline the system for the retention, analysis and destruction of prohibited plants, prohibited drugs, Schedule 9 substances (that is, substances set out in Schedule 9 of the Poisons List under the *Poisons and Therapeutic Goods Act 1966*) and psychoactive substances (relevant substances), and suspected relevant substances, that are seized or otherwise come into the possession of the NSW Police Force,
 - (b) to make other consequential amendments and to enact provisions of a savings and transitional nature consequential on the enactment of the proposed Act.

BACKGROUND

2. The Bill responds to concerns raised by the NSW Auditor-General in a report to Parliament in February 2013, *Managing drug exhibits and other high profile goods: NSW Police Force*. The Auditor-General reviewed the NSW Police Force's management, storage and disposal of drug exhibits. While the Auditor-General found that the Police generally deal with drug exhibits well, he also highlighted scope for improvement to increase safety and efficiency and decrease costs. The Legislative Assembly Public Accounts Committee also supported all of the Auditor-General's recommendations.
3. The reforms proposed by the Bill were developed by a working group comprising the NSW Police Force, the Department of Justice, the Office of the Director of Public Prosecutions and the NSW Forensic and Analytical Science Service. Other key stakeholders were also consulted on these reforms.

ISSUES CONSIDERED BY COMMITTEE

Trespasses on personal rights and liberties: s 8A(1)(b)(i) of the LRA

Destruction of evidence before trial and without court order

4. Under existing provisions in Part 3A of the *Drug Misuse and Trafficking Act 1985*, the NSW Police Force must apply to the Court with respect to the destruction of a prohibited plant or drug. The Bill proposes to replace Part 3A so that qualified police officers can make orders for the destruction of those substances.

5. For example, a qualified police officer may order that a prohibited plant be destroyed if a certificate of identification has been issued, the plant has been photographed and the height and number of plants have been recorded (see Schedule 1 of the Bill, proposed section 39H of the *Drug Misuse and Trafficking Act 1985*; see also Schedule 2 of the Bill, proposed clause 16E of the *Drug Misuse and Trafficking Regulation 2011*).
6. Likewise, a qualified police officer may order that a prohibited substance be destroyed if a sample of the substance has been retained and a certificate of analysis of the sample has been given to the defendant or accused. The defendant or accused must be given written notice of the proposed destruction and at least 28 days need to pass before the substance can be destroyed. Prior to destruction, the substance must be photographed and its mass recorded (see Schedule 1 of the Bill, proposed section 39I of the *Drug Misuse and Trafficking Act 1985*; see also Schedule 2 of the Bill, proposed clause 16E of the *Drug Misuse and Trafficking Regulation 2011*).
7. The Bill contains similar provisions relating to the destruction of drugs where the volume is less than traffickable quantity, the substances are dangerous or there are other security issues (see for example Schedule 1 of the Bill, proposed sections 39J, 39K and 39L of the *Drug Misuse and Trafficking Act 1985*).

The Bill proposes that certain prohibited substances and plants, which are evidence in drug-related proceedings, may now be destroyed on the order of a police officer rather than the court. This may occur before proceedings relating to an offence have been finally determined. However, the Committee notes the safeguards in the Bill and that the Bill is intended to ensure police officers are not unduly exposed to dangerous substances. The Committee also notes that the changes should allow courts to focus on more significant issues. The Committee therefore makes no further comments.

Evidentiary presumptions

8. The Bill creates a rebuttable presumption that a drug which has been analysed is the same drug seized by the police. However, the drug must have been sealed in accordance with the legislation and entered on the NSW Police Force's exhibits management system (see Schedule 2 of the Bill, which inserts a new Part 3, Division 5 into the *Drug Misuse and Trafficking Regulation 2011*).

For the purposes of criminal proceedings, the Bill creates a presumption that a drug seized by police is the same drug analysed by forensic services. However, the Committee notes that the accused can rebut this presumption. These provisions are also intended to make drug trials more efficient for the accused, the prosecution and the court by removing the need for the court to call witnesses to prove continuity of the evidence. For these reasons, the Committee makes no further comments.

Inappropriately delegates legislative powers: s 8A(1)(b)(iv) of the LRA

Commencement by proclamation

9. Clause 2 of the Bill provides that the Act commences on a day or days to be appointed by proclamation.

The Committee generally prefers legislation to commence on a fixed date or on assent, rather than by proclamation. However, the Committee notes that the Bill proposes changes to the storage and management of prohibited substances. As such, the Committee acknowledges that it may be appropriate to have some flexibility in the commencement date to allow for associated procedures and systems to be put in place. As such, the Committee makes no further comments.

3. Electricity Supply Amendment (Advanced Meters) Bill 2016

Date introduced	9 March 2016
House introduced	Legislative Council
Member responsible	The Hon. John Ajaka MLC
Portfolio	Ageing, Disability Services and Multiculturalism

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to provide that retailers and metering providers, rather than distributors, are responsible for the installation, maintenance and replacement of electricity meters, and
 - (b) to provide for the regulation of electricity meters as electrical installations under the *Electricity (Consumer Safety) Act 2004*, and
 - (c) to make further provision with respect to the accreditation of persons who are permitted to carry out certain network services.

BACKGROUND

2. The Minister's Second Reading Speech says the Bill seeks to remove responsibility for electricity meters from distribution businesses and establish a metering safety and compliance framework under NSW Fair Trading. The Bill is intended to support a voluntary, market-led roll out of smart meters in NSW by allowing retailers and businesses to install them.

ISSUES CONSIDERED BY COMMITTEE

Inappropriately delegates legislative powers: s 8A(1)(b)(iv) of the LRA

Commencement by proclamation

3. Clause 2 of the Bill provides that the Act will commence on a day or days to be appointed by proclamation.

The Committee generally prefers legislation to commence on a fixed date or on assent, rather than by proclamation. However, the Bill makes changes to the administrative and regulatory arrangements associated with electricity meters. The Committee therefore acknowledges that some flexibility may be desirable with respect to the commencement of the Act. The Committee makes no further comments.

4. Fair Trading Amendment (Fuel Price Transparency) Bill 2016

Date introduced	8 March 2016
House introduced	Legislative Assembly
Member responsible	The Hon. Victor Dominello MP
Portfolio	Innovation and Better Regulation

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to amend the *Fair Trading Act 1987* (the principal Act) to provide for the establishment of a scheme for the publication of service station fuel prices on an ongoing and up-to-date basis, and
 - (b) to make a consequential amendment to the *Fair Trading Regulation 2012*.

BACKGROUND

2. The Bill facilitates the introduction of an online system that will require service station operators to report their current fuel prices, and update them, in real-time. The system will be free for operators to upload their prices and for consumers to search this information, in line with the Government's open data principles. The Minister for Innovation and Better Regulation says the proposed system is the first of its kind in Australia and possibly the world.

ISSUES CONSIDERED BY COMMITTEE

The Committee makes no comment on the Bill in respect of issues set out in s8A of the Legislation Review Act 1987.

5. Inclosed Lands, Crimes and Law Enforcement Legislation Amendment (Interference) Bill 2016

Date introduced	9 March 2016
House introduced	Legislative Assembly
Minister responsible	The Hon Anthony Roberts MP
Portfolio	Industry, Resources and Energy

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:

- (a) to amend the *Inclosed Lands Protection Act 1901* to create an aggravated form of the offence of unlawful entry on inclosed lands to increase, from \$550 to \$5,500, the maximum penalty that is applicable in relation to land on which a business or undertaking is being conducted and where the offender, while on the lands:
 - i interferes with, or attempts or intends to interfere with, the conduct of the business or undertaking, or
 - ii does anything that gives rise to a serious risk to the safety of the offender or any other person on those lands,
- (b) to amend the *Crimes Act 1900* to extend the meaning of “mine” in connection with the existing indictable offence (that carries a maximum penalty of imprisonment for 7 years) of intentionally or recklessly interfering with a mine (including hindering the working of equipment belonging to a mine) so that it extends to equipment and other things associated with a mine and to:
 - i a gas or other petroleum extraction site, and
 - ii a mineral, or gas or other petroleum, exploration site, and
 - iii a work construction site for proposed minerals, or gas or other petroleum, extraction, and
 - iv a former mine at which works are being carried out to decommission the mine or make it safe,
- (c) to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* to confer additional search and seizure powers (without warrant) where a police officer suspects on reasonable grounds that a person has (or a vehicle, vessel or aircraft contains) anything that is intended to be used to lock-on or secure a person to any plant, equipment or structure for the purpose of interfering with the conduct of a

business or undertaking and that is likely to be used in a manner that will give rise to a serious risk to the safety of any person,

- (d) to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* to remove limitations on the exercise of police powers to give directions in public places to prevent obstructions of persons or traffic (or harassment or intimidation of or fear to other persons) in the case of demonstrations, protests, processions or organised assemblies, so that directions may be given:
 - i if the police officer believes on reasonable grounds that the direction is necessary to deal with a serious risk to the safety of the person to whom the direction is given or to any other person, or
 - ii if the demonstration, protest, procession or assembly is obstructing traffic and is not an authorised public assembly under the *Summary Offences Act 1988* in which persons are participating substantially in accordance with the authorisation, and the police officer in charge at the scene has authorised the giving of directions.

BACKGROUND

- 2. This Bill amends the *Inclosed Lands Protection Act 1901*, the *Crimes Act 1901* and the *Law Enforcement (Powers and Responsibilities) Act 2002* in order to address risks to businesses and individuals from unsafe protest activities. The Bill responds to concerns raised by business, protestors and members of the public.
- 3. In the Second Reading Speech, the Hon Anthony Roberts MP provided a number of examples of unsafe protest activities. Minister Roberts stated:

Examples of activities that threaten public and worker safety include a current prosecution that protestors entered a workplace and tampered with equipment being set for an explosives blast operation, putting themselves and workers at risk.

ISSUES CONSIDERED BY COMMITTEE

Trespasses unduly on personal rights and liberties: s 8A(1)(b)(i) of the LRA
Search and seizure without a warrant

- 4. Schedule 3 of the Bill amends the *Law Enforcement (Powers and Responsibilities) Act 2002* to provide police officers with the power to search for and seize things without a warrant. Such things include anything which is intended to be used to lock-on or secure a person to any plant, equipment or structure for the purpose of interfering with the conduct of a business and which is likely to give rise to a serious risk of injury to any person.

The Committee notes that the power to search people and seize property without a warrant trespasses on a person's right to privacy and property. However, the committee notes the objectives of the Bill which include ensuring police have adequate powers to prevent certain protestor behaviour which may place the safety of other people at risk. Having regard to these objectives, the Committee considers the powers appropriate and makes no further comment.

Right to peaceful assembly

5. Under the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPR Act) police officers have the power to direct a person to move on from a public place provided that person is behaving in a number of specified ways. For example, whether their behaviour is obstructing another person or obstructing traffic or whether their behaviour constitutes harassment or intimidation of another person. Section 200 of the LEPR Act limits the exercise of these powers by not authorising police officers to use such powers in relation to:
- an industrial dispute;
 - an apparently genuine demonstration or protest;
 - a procession;
 - or an organised assembly.
6. This Bill seeks to amend the LEPR Act to extend the powers available to police officers to give move on directions in relation to a demonstration, protest, procession or assembly. Under the Bill police officers are not precluded from giving a move on direction in relation to any demonstration, protest, procession or assembly where they consider, on reasonable grounds, that a direction is necessary to deal with a serious risk to the safety of the person or others.

The Committee notes that the powers granted to police under this Bill and the exercise of these powers may trespass upon the personal right of peaceful assembly. Such powers should only be used where there are sufficient checks available to ensure they are only exercised when required to ensure public safety.

The Committee refers to the safeguards relating to the exercise of police powers in the *Law Enforcement (Powers and Responsibilities) Act 2002* which require police officers to provide information and warnings before making a direction. Given these safeguards and the objectives of the Bill which include addressing behaviour which may pose a risk to the safety of others, the committee makes no further comment.

Inappropriately delegates legislative powers: s 8A(1)(b)(iv) of the LRA

Commencement by proclamation

7. The Bill provides for the Act to commence on a day or days to be appointed by proclamation.

The Committee prefers legislation of this kind, which affects rights and liberties, to commence on assent or a specified day.

6. Mining and Petroleum Industry Political Donations Legislation Amendment (Corruption Risk Reduction) Bill 2016*

Date introduced	10 March 2016
House introduced	Legislative Assembly
Member responsible	Mr Jamie Parker MP
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to reduce corruption risk, and ensure appropriate decision-making, by removing the ability of those who would benefit from decisions of public authorities or public office-holders to make political donations that could exert influence on, or otherwise affect, the making of those decisions. This is achieved by:
 - (a) prohibiting political donations from the mining and petroleum industry, and
 - (b) prohibiting the making of environmental planning instruments relating to extractive industries at the request of persons who have made political donations or having regard to submissions made by such persons, and
 - (c) prohibiting the granting of certain planning approvals relating to extractive industries to persons who have made political donations or having regard to submissions made by such persons, and
 - (d) prohibiting the issue of mining authorisations or petroleum titles to persons who have made political donations.

BACKGROUND

2. The Bill seeks to reduce corruption risks and ensure appropriate decision-making by public authorities and public officials by prohibiting political donations by those in the mining industry who may benefit from decisions of these offices or individuals and making associated amendments.
3. In support of the Bill, Mr Jamie Parker MP's Second Reading Speech refers to the recent High Court decision in *McCloy v New South Wales* [2015] HC 34, where the High Court upheld the validity of existing provisions in the *Election Funding, Expenditure and Disclosures Act 1981* which prohibit property developers from making political donations, among other things.
4. Mr Parker also referred to a report by the Independent Commission Against Corruption in October 2013, "Reducing the opportunities and incentives for corruption in the State's management of coal resources", which identified corruption risks associated with the mining and extractive industries.

ISSUES CONSIDERED BY COMMITTEE

Trespasses on personal rights and liberties: s 8A(1)(b)(i) of the LRA

Implied freedom of political communication

5. The Bill proposes to amend Part 6, Division 4A of the *Election Funding, Expenditure and Disclosures Act 1981* to prohibit mining or petroleum industry business entities from making political donations in NSW. Under the existing legislation, property developers and tobacco, liquor and gambling industry business entities are already prohibited from making political donations (see generally Schedule 1 of the Bill).
6. The prohibition will extend to ‘close associates’ of corporations in the mining or petroleum industry. The definition of a ‘close associate’ in section 96GB of the *Election Funding, Expenditure and Disclosures Act 1981* includes some individuals, such as a director or officer of the relevant corporation or their spouse and a person with voting power in the corporation of greater than 20% or their spouse (Schedule 1, clause [4] of the Bill).
7. Section 96GD of the existing Act exempts annual or other membership subscriptions paid to a political party by an individual from the definition of a political donation unless it is a reportable political donation (i.e. a donation of \$1,000 or more). Section 96GE also allows a person to apply to the NSW Electoral Commission for a determination that they are not a prohibited donor.
8. The Bill includes an objects provision to explain the rationale for banning certain donors from making political donations. The objects include securing and promoting the integrity of the Parliament and other government institutions and reducing corruption risks and undue influence in the government, among other things (Schedule 1, clause [3] of the Bill).

Prohibiting individuals from making political donations may impermissibly burden the implied freedom of political communication in the Commonwealth Constitution. The Committee notes that the amendments are designed to secure the integrity of the Parliament and other government institutions and reduce corruption risks, among other things. However, the Committee refers these provisions to Parliament for further consideration, to assess whether there is sufficient evidence that the provisions are unlikely to impermissibly burden the implied freedom of political communication in the Commonwealth Constitution.

Appendix One – Functions of the Committee

The functions of the Legislation Review Committee are set out in the *Legislation Review Act 1987*:

8A Functions with respect to Bills

- 1 The functions of the Committee with respect to Bills are:
 - (a) to consider any Bill introduced into Parliament, and
 - (b) to report to both Houses of Parliament as to whether any such Bill, by express words or otherwise:
 - i trespasses unduly on personal rights and liberties, or
 - ii makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, or
 - iii makes rights, liberties or obligations unduly dependent upon non-reviewable decisions, or
 - iv inappropriately delegates legislative powers, or
 - v insufficiently subjects the exercise of legislative power to parliamentary scrutiny
- 2 A House of Parliament may pass a Bill whether or not the Committee has reported on the Bill, but the Committee is not precluded from making such a report because the Bill has been so passed or has become an Act.

9 Functions with respect to Regulations

- 1 The functions of the Committee with respect to regulations are:
 - (a) to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament,
 - (b) to consider whether the special attention of Parliament should be drawn to any such regulation on any ground, including any of the following:
 - i that the regulation trespasses unduly on personal rights and liberties,
 - ii that the regulation may have an adverse impact on the business community,
 - iii that the regulation may not have been within the general objects of the legislation under which it was made,
 - iv that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made,

- v that the objective of the regulation could have been achieved by alternative and more effective means,
 - vi that the regulation duplicates, overlaps or conflicts with any other regulation or Act,
 - vii that the form or intention of the regulation calls for elucidation, or
 - viii that any of the requirements of sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation, and
- (c) to make such reports and recommendations to each House of Parliament as it thinks desirable as a result of its consideration of any such regulations, including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.
- 2 Further functions of the Committee are:
- (a) to initiate a systematic review of regulations (whether or not still subject to disallowance by either or both Houses of Parliament), based on the staged repeal of regulations and to report to both Houses of Parliament in relation to the review from time to time, and
 - (b) to inquire into, and report to both Houses of Parliament on, any question in connection with regulations (whether or not still subject to disallowance by either or both Houses of Parliament) that is referred to it by a Minister of the Crown.

The functions of the Committee do not include an examination of, inquiry into or report on a matter of Government policy, except in so far as such an examination may be necessary to ascertain whether any regulations implement Government policy or the matter has been specifically referred to the Committee under subsection (2) (b) by a Minister of the Crown.