



Legislation Review Committee

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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. CRIMES (SERIOUS CRIME PREVENTION ORDERS) BILL 2016; CRIMINAL LEGISLATION AMENDMENT (ORGANISED CRIME AND PUBLIC SAFETY) BILL 2016

Crimes (Serious Crime Prevention Orders) Bill 2016

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

Serious crime prevention orders – Various rights and liberties potentially affected

The Committee acknowledges that serious crime prevention orders are intended to help law enforcement agencies deal with serious crime and improve public safety. There are some safeguards in the Bill, for example, orders must be made by either the District or Supreme Court and legal professional privilege is preserved. Nevertheless, the Bill may impact on various rights and liberties such as freedom of movement, property rights, privacy and the right to work. The Committee refers the Bill to Parliament for further consideration, particularly in relation to the broad definitions of ‘serious crime related activity’ and being ‘involved in serious crime related activity’; the wide-ranging provisions that could be included in such orders; and the potential for orders to be in place for a lengthy period of time.

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

Commencement by proclamation

The Committee prefers legislation to commence on a fixed date or on assent, particularly where the legislation may impact on personal rights and liberties, as is the case with this Bill. However, the Committee notes the Deputy Premier’s comments that there needs to be training and systems and resources need to be updated before the Bill can commence. The Committee makes no further comments.

Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016

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

Public safety orders – Freedom of movement

Public safety orders may impact on a person’s freedom of movement. However, the Committee notes that the purpose of an order is to prevent a serious risk to public safety or security. There are also a number of matters that a senior police officer has to consider before making such an order. An order can usually only be made for several days and, if it is made for a longer period, there is a right to appeal to the Supreme Court. The officer is also prevented from making a public safety order in certain situations, such as in the case of industrial action or non-violent protest. The Committee makes no further comments.

Public safety orders – Search without warrant

The Bill will allow a police officer to enter and search premises and vehicles without a warrant in certain circumstances. However, the Committee notes that this can only occur in limited circumstances in relation to concerns that a person may contravene, or has contravened, a

public safety order. The Committee also notes that these orders generally have short durations of 72 hours or less. The Committee makes no further comments.

Substituted tainted property declaration – Property rights

Requiring property or an interest in property to be forfeited to the State could impact on an offender's property rights and the rights of anyone with an interest in that property. This is particularly the case if the property in question was not used in connection with the relevant offence. However, the Committee notes that property of this kind can only be forfeited in certain circumstances where a person has been convicted of a serious offence and the original property used in the offence is not available for forfeiture. The existing legislation already requires the court to consider potential hardship for the offender or third parties before making an order and gives these individuals appeal rights. The Committee therefore makes no further comments.

Serious crime use property – Property rights

Requiring property or an interest in property to be forfeited to the State could impact on an individual's property rights along with the rights of anyone with an interest in that property. This is particularly the case if the property in question was not used in connection with the serious crime related activity. However, the Committee notes that property of this kind can only be forfeited in certain circumstances where a person has been involved in serious crime related activity and the property used in the activity is not available for forfeiture. The Committee notes that the affected person and third parties with an interest in the property can adduce evidence at the hearing. Half of the proceeds of the forfeiture will also be credited to the Victims Support Fund. The Committee makes no further comments.

Retrospectivity

The amended offence of dealing with property suspected of being proceeds of crime will capture acts or omissions relating to proceeds of crime which arise from serious offence committed before these provisions commence. However, the Committee notes that the existing offence also captures circumstances which occurred before the commencement of that part of the Act. The Committee makes no further comments.

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

Commencement by proclamation

The Committee prefers legislation to commence on a fixed date or on assent, particularly where the legislation may impact on personal rights and liberties, as is the case with this Bill. However, the Committee notes the Deputy Premier's comments that systems and resources need to be updated and relevant individuals need to be trained before the Bill can commence. The Committee makes no further comments.

2. FINES AMENDMENT BILL 2016

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

Oppressive official powers

The Committee notes the considerable reduction in time from 6 months to 21 days as to when civil enforcement measures against a fine defaulter may commence. Such civil enforcement measures include garnishee orders and seizure of property.

The Committee notes that by allowing civil enforcement measures to commence earlier, the collection of unpaid fines may become more efficient. However, the Committee questions the need to reduce the period of time from 6 months to less than one month. The committee refers this issue to Parliament for further consideration.

Privacy

The Committee notes the authorisation granted to credit reporting agencies to release details of any account a fine defaulter has with a deposit-taking institution. The release of such information without the consent of the individual may impact on the individual's right to privacy. The Committee refers this issue to Parliament for further consideration.

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

Commencement by proclamation

The Committee prefers legislation to commence on a fixed date or on assent, particularly where the legislation may impact on personal rights and liberties, as is the case with this Bill. However, the Committee notes the Bill proposes administrative changes to the operation of penalty notices and fine enforcement orders and as such may need flexibility as to its commencement. The Committee makes no further comment.

3. PUBLIC LOTTERIES AMENDMENT (KENO LICENSING) BILL 2016

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

4. STATE REVENUE LEGISLATION AMENDMENT 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. TECHNICAL AND FURTHER EDUCATION COMMISSION AMENDMENT (TAFE FUNDING GUARANTEE) BILL 2016*

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

PART TWO – REGULATIONS

1. CHILDREN (DETENTION CENTRES) AMENDMENT (USE OF FORCE AND DRUG TESTING) REGULATION 2016; CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT (USE OF FORCE AND DRUG TESTING) REGULATION 2016

Trespasses unduly on personal rights and liberties: s 9(1)(b)(i) of the LRA

Personal physical integrity – issue one

The Committee notes that authorising the use of force to compel a person to undergo medical treatment without their consent trespasses on that person's rights and liberties. The Committee notes, however, that the medical treatment in question is treatment of a life threatening or serious nature which has been authorised by the Chief Executive of Justice Health and Forensic Mental Health. The Committee considers that in some circumstance force may be required to assist in performing such treatment.

The Department has advised that the intention of both the CDC Regulation and CAS Regulation is to provide clarification and guidance on the use of force in correctional and detention

centres, where previously it was not specified or unclear. The Committee makes no further comment.

Personal physical integrity – issue two

Allowing custodial staff to carry out saliva testing of detainees may impact on a detainee’s right to personal physical integrity. The Committee notes that juvenile justice officers are already authorised to test for drugs by using urine samples.

The Department advised that permitting juvenile justice officers to use saliva tests are less confronting for a young person than urine tests. The Committee makes no further comment.

2. HEALTH RECORDS AND INFORMATION PRIVACY AMENDMENT (EXEMPTION) REGULATION 2016

The regulation trespasses unduly on personal rights and liberties: s 9(1)(b)(i) of the LRA

Privacy

Creating an exemption to the existing Health Privacy Principles in NSW, along with enrolling individuals in the opt-out electronic My Health Record system, could interfere with a person’s right to privacy, particularly as health records can contain very sensitive information. However, the Committee notes the intention of the amendment is to improve health outcomes for patients. The Committee also notes that individuals will receive advice on how they can opt-out of the system. The system contains various privacy and security features and the associated Commonwealth legislation contains criminal offences for unauthorised collection, use and disclosure. The Committee therefore makes no further comments.

Part One – Bills

1. Crimes (Serious Crime Prevention Orders) Bill 2016; Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016

Date introduced	22 March 2016
House introduced	Legislative Assembly
Member responsible	The Hon. Troy Grant MP
Portfolio	Justice and Police

PURPOSE AND DESCRIPTION

1. The *Crimes (Serious Crime Prevention Orders) Bill 2016* and the *Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016* are cognate with each other.
2. The object of the *Crimes (Serious Crimes Prevention Orders) Bill 2016* is to enable the Supreme Court and the District Court to make serious crime prevention orders, on the application of the Commissioner of Police, the Director of Public Prosecutions or the New South Wales Crime Commission, so as to prevent, restrict or disrupt involvement by certain persons in serious crime related activities.
3. The objects of the *Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016* are:
 - (a) to amend the *Confiscation of Proceeds of Crime Act 1989* to enable the Supreme Court to make a forfeiture order in respect of the property of a person convicted of a serious criminal offence in substitution for other property that the person used in, or in connection with, the offence that is unavailable for forfeiture, and
 - (b) to amend the *Crimes Act 1900* to recast the offence of dealing with property suspected of being proceeds of crime so as to adopt certain provisions of the corresponding offence in the *Criminal Code* of the Commonwealth, and
 - (c) to amend the *Criminal Assets Recovery Act 1990*:
 - i to enable the Supreme Court to make a forfeiture order in respect of property used in, or in connection with, a serious crime related activity or, if that property is not available for forfeiture, other property of the offender, and
 - ii to clarify the circumstances in which an interest in property ceases to be serious crime derived property or illegally acquired property for the purposes of the Act on its sale or disposition, and

- (d) to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* to enable a senior police officer to make a public safety order to prohibit a person from being present at a public event or at premises or another area if the person's presence poses a serious risk to public safety or security, and
- (e) to make consequential amendments to the *Criminal Procedure Act 1986*.

BACKGROUND

- 4. The Deputy Premier says the Bills introduce tough powers to assist police and law enforcement agencies in dealing with serious and organised crime. One of the key reforms is the introduction of serious crime prevention orders to disrupt criminal activity, which are modelled on similar orders in the United Kingdom.
- 5. Another central reform is the introduction of public safety orders, which will prevent certain individuals from going to places where they are likely to present a serious risk to public safety.
- 6. The Deputy Premier's Second Reading Speech notes that serious and organised crime affects our community, economy and lifestyle. The Australian Crime Commission estimates that serious and organised crime costs Australia more than \$15 billion a year.

ISSUES CONSIDERED BY COMMITTEE

Crimes (Serious Crime Prevention Orders) Bill 2016

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

Serious crime prevention orders – Various rights and liberties potentially affected

- 7. The Bill will permit the Police Commissioner, the DPP or the NSW Crime Commission to apply to the District or Supreme Courts for serious crime prevention orders in relation to certain persons.
- 8. In particular, an order can be made against a person where:
 - (a) they have been convicted of a serious criminal offence, or involved in serious crime related activity; and
 - (b) there are reasonable grounds to believe the making of the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime related activities (see clauses 3 and 5 of the Bill).
- 9. Serious criminal offences include a number of different offences such as in relation to drugs, firearms and certain offences punishable by imprisonment for five years or more involving homicide, theft, violence, fraud, etc.
- 10. Serious crime related activity is anything that is (or was at the time) a serious criminal offence, whether or not the individual has been charged or, if charged, whether or not they have been tried (including if they have been acquitted), or convicted (including if the conviction is quashed or set aside) (see clause 3 of the Bill).
- 11. A person does not necessarily have to have engaged in serious crime related activity themselves to be 'involved in serious crime related activity' for the purposes of the

provision. They can also have engaged in conduct that has facilitated (or is likely to facilitate) another person engaging in this kind of activity (see clause 4 of the Bill).

12. The scope of a serious crime prevention order is broad and the term of an order can be lengthy, up to five years. Orders can also be made with reference to relevant activities and offences before the commencement of the Bill. The Bill does not contain a specific list of the kinds of provisions that can be included in a serious crime prevention order. Rather the Bill says an order can contain 'such prohibitions, restrictions, requirements and other provisions as the court considers appropriate for protecting the public by preventing, restricting or disrupting serious crime related activities' (see clauses 6 and 7 and Schedule 1, Part 2 of the Bill).
13. The Deputy Premier's Second Reading Speech outlines some of the types of restrictions that could be included in a serious crime prevention order:

This could include restrictions in relation to an individual's financial, property, or business dealings or holdings, working arrangements, communication means, premises to which an individual has access, an individual's use of an item or an individual's travel.
14. However, the Bill lists some types of provisions that cannot be included in an order. For example, a person cannot be required to answer questions or provide documents or other information subject to legal professional privilege or disclose protected confidences (see clause 6 of the Bill).
15. Proceedings for a serious crime prevention order are not criminal proceedings and the rules of evidence applicable in civil proceedings, including in relation to the civil burden of proof, will apply (see clause 13 of the Bill).
16. In proceedings for these orders, the court may admit and take into account hearsay evidence, despite any rule to the contrary if the court is satisfied the evidence is from a reliable source, is relevant and of probative value. The person against whom the order is to be made must be served with a copy of the evidence before it is admitted (see clause 5 of the Bill).
17. It will be an offence to contravene a serious crime prevention order. The maximum penalty for an individual will be \$33,000 and/or five years imprisonment (clause 8 of the Bill).
18. There can be consequences for breaching a serious crime prevention order beyond the penalties which the offence attracts. For example, where a partnership, or one or more of the partners are convicted for contravening an order, the Police Commissioner, the DPP or the NSW Crime Commission can apply to the Supreme Court for the dissolution of the partnership. However, before making such an order, the Court must be satisfied of several matters including that there are no further avenues of appeal available to the partnership or partners in respect of their conviction and that it is in the public interest, and just and equitable for the partnership to be dissolved (see clause 10 of the Bill).

The Committee acknowledges that serious crime prevention orders are intended to help law enforcement agencies deal with serious crime and improve public safety. There are some safeguards in the Bill, for example, orders must be made by either the District or Supreme Court and legal

professional privilege is preserved. Nevertheless, the Bill may impact on various rights and liberties such as freedom of movement, property rights, privacy and the right to work. The Committee refers the Bill to Parliament for further consideration, particularly in relation to the broad definitions of ‘serious crime related activity’ and being ‘involved in serious crime related activity’; the wide-ranging provisions that could be included in such orders; and the potential for orders to be in place for a lengthy period of time.

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

Commencement by proclamation

19. The Bill commences on a day or days to be appointed by proclamation (see clause 2 of the Bill).
20. In his Second Reading Speech, the Deputy Premier made the following comments about the commencement of the Bill by proclamation:

Time for implementation of these changes is needed to ensure that all required systems are updated and relevant training and resources are in place for the police, judiciary and legal profession. These reforms are a priority and the Government will ensure they commence as soon as possible.

The Committee prefers legislation to commence on a fixed date or on assent, particularly where the legislation may impact on personal rights and liberties, as is the case with this Bill. However, the Committee notes the Deputy Premier’s comments that there needs to be training and systems and resources need to be updated before the Bill can commence. The Committee makes no further comments.

Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016

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

Public safety orders – Freedom of movement

21. The Bill amends the *Law Enforcement (Powers and Responsibilities) Act 2002* to empower a senior police officer (an Inspector or higher ranked officer) to make a public safety order if they are satisfied of the following:
 - (a) the presence of a person at a particular public event, or other area, poses a serious risk to public safety or security, and
 - (b) the order is reasonably necessary in the circumstances (proposed sections 87P and 87R of the *Law Enforcement (Powers and Responsibilities) Act 2002* in Schedule 5, clause [1] of the Bill).
22. Under the order, the person will be prohibited from attending the public event, or entering, or being present at, the specified premises or other area during the period specified in the order (proposed section 87Q of the *Law Enforcement (Powers and Responsibilities) Act 2002* in Schedule 5, clause [1] of the Bill).

23. The senior police officer must take a number of matters into account when determining whether the order is reasonably necessary. Some examples include the following:
- (a) whether the person has previously behaved in a way that posed a serious risk to public safety or security or has a history of engaging in serious crime related activity;
 - (b) whether the person would be prevented from being present at certain places such as work, an educational institution, a place where health or welfare services are provided, or a place of worship; and
 - (c) other measures reasonably available to mitigate the risk.
24. A 'serious risk to public safety or security' includes death, serious physical harm to a person or serious damage to property.
25. A senior police officer is not permitted to make a public safety order that would prohibit someone from entering their residence or attending a place where industrial action, non-violent advocacy, protest or dissent is the primary purpose for the individual attending that place (proposed section 87R of the *Law Enforcement (Powers and Responsibilities) Act 2002* in Schedule 5, clause [1] of the Bill).
26. An order can generally only be in force for 72 hours in total, although there is some scope to make long duration public safety orders. In such cases, affected persons can appeal to the Supreme Court against the decision to make the order (proposed sections 87S and 87W of the *Law Enforcement (Powers and Responsibilities) Act 2002* in Schedule 5, clause [1] of the Bill).

Public safety orders may impact on a person's freedom of movement. However, the Committee notes that the purpose of an order is to prevent a serious risk to public safety or security. There are also a number of matters that a senior police officer has to consider before making such an order. An order can usually only be made for several days and, if it is made for a longer period, there is a right to appeal to the Supreme Court. The officer is also prevented from making a public safety order in certain situations, such as in the case of industrial action or non-violent protest. The Committee makes no further comments.

Public safety orders – Search without warrant

27. In relation to public safety orders, the Bill will allow police officers to enter and search premises without a warrant in certain circumstances. In particular, the police officer must suspect on reasonable grounds that a person subject to a public safety order is within the premises or area specified in the order.
28. A police officer will also be empowered to stop and search a vehicle without a warrant in some circumstances. However, the police officer must suspect on reasonable grounds that:
- (a) a person in the vehicle is subject to a public safety order, and
 - (b) the vehicle is approaching, is in, or has recently left an event or other area referred to in the order.

29. In addition, a police officer can detain a vehicle for as long as is reasonably necessary to conduct a search (proposed section 87ZB of the *Law Enforcement (Powers and Responsibilities) Act 2002* in Schedule 5, clause [1] of the Bill).

The Bill will allow a police officer to enter and search premises and vehicles without a warrant in certain circumstances. However, the Committee notes that this can only occur in limited circumstances in relation to concerns that a person may contravene, or has contravened, a public safety order. The Committee also notes that these orders generally have short durations of 72 hours or less. The Committee makes no further comments.

Substituted tainted property declaration – Property rights

30. The Bill will amend the *Confiscation of Proceeds of Crime Act 1989* to allow the DPP or Police Integrity Commissioner to apply to the court for a substituted tainted property declaration against an individual.
31. The effect of the declaration is that property, or an interest in property, of a person convicted of a serious offence is available for forfeiture to the State instead of tainted property used in connection with that offence.
32. The court is required to make a substituted tainted property declaration against a person if it is satisfied of the following:
- (a) the person has been convicted of a serious offence, and
 - (b) property became tainted because it was used in connection with the offence, and
 - (c) the particular tainted property is not available for forfeiture because:
 - i the person does not own, and does not have control of, the property, or
 - ii the property has been sold, otherwise disposed of or cannot be found for any other reason.
33. The property to be substituted must not have a greater value than the original tainted property and, if practicable, must be the same kind or property.
34. The property specified in the declaration as being available for forfeiture will be treated as the tainted property for the purposes of the Act in relation to the relevant offence (proposed section 33 of the *Confiscation of Proceeds of Crime Act 1989* in Schedule 1, clause [5] of the Bill).
35. Under existing provisions, the court must consider certain matters when making a forfeiture order including any hardship reasonably likely to arise for the person convicted of the serious offence or any other person (see section 18 of the *Confiscation of Proceeds of Crime Act 1989*). Third parties with an interest in the property that may be forfeited have a right to apply to the court for relief under existing provisions (see for example section 20 of the *Confiscation of Proceeds of Crime Act 1989*).
36. There are also existing appeal rights for the individual convicted of the serious offence and any other person with an interest in the property to be forfeited (see section 92 of the *Confiscation of Proceeds of Crime Act 1989*).

Requiring property or an interest in property to be forfeited to the State could impact on an offender's property rights and the rights of anyone with an interest in that property. This is particularly the case if the property in question was not used in connection with the relevant offence. However, the Committee notes that property of this kind can only be forfeited in certain circumstances where a person has been convicted of a serious offence and the original property used in the offence is not available for forfeiture. The existing legislation already requires the court to consider potential hardship for the offender or third parties before making an order and gives these individuals appeal rights. The Committee therefore makes no further comments.

Serious crime use property – Property rights

37. The Bill amends the *Criminal Assets Recovery Act 1990* to allow the NSW Crime Commission to apply to the Supreme Court for a substituted serious crime use property declaration against a person who has engaged in serious crime related activity (proposed section 22AA of the *Criminal Assets Recovery Act 1990* in Schedule 3, clause [8] of the Bill).
38. The effect of such a declaration is that an interest in property owned by a person who has engaged in serious crime related activity is available for forfeiture to the State in lieu of property that was actually used in connection with that activity.
39. These declarations are intended for circumstances where the individual does not own or have control over the actual property used in the activity or the property has been sold, otherwise disposed of or cannot be found (proposed section 9B of the *Criminal Assets Recovery Act 1990* in Schedule 3, clause [3] of the Bill).
40. The Court must make such a declaration if it is more probable than not that the individual has engaged in serious crime related activity, particular property was used in connection with that activity, but that property is not available for forfeiture to the State (proposed section 22AA of the *Criminal Assets Recovery Act 1990* in Schedule 3, clause [8] of the Bill).
41. The definition of 'serious crime related activity' refers to anything done by a person that was at the time a serious criminal offence, whether or not the person has been charged with the offence. The definition also captures scenarios where a person has been charged with an offence and has been tried (including tried and acquitted), or convicted (even if the conviction is quashed or set aside). Serious criminal offences include a number of different offences in relation to drugs, firearms, and certain offences punishable by imprisonment for five years or more involving homicide, theft, violence, fraud, etc (see section 6 of the *Criminal Assets Recovery Act 1990*).
42. Half of the proceeds of forfeiture orders made in relation to serious crime use property or substituted property will be credited to the Victims Support Fund (amendment to section 32 of the *Criminal Assets Recovery Act 1990* in Schedule 3, clause [11] of the Bill).
43. The affected individual and anyone with an interest in the property has a right to appear before the Supreme Court and adduce evidence at the hearing of the application (proposed section 22AA of the *Criminal Assets Recovery Act 1990* in Schedule 3, clause [8] of the Bill).

44. The existing legislation already contains provisions dealing with situations where hardship may be caused to spouses and dependents as a result of an assets forfeiture order (see for example section 24 of the *Criminal Assets Recovery Act 1990*).

Requiring property or an interest in property to be forfeited to the State could impact on an individual's property rights along with the rights of anyone with an interest in that property. This is particularly the case if the property in question was not used in connection with the serious crime related activity. However, the Committee notes that property of this kind can only be forfeited in certain circumstances where a person has been involved in serious crime related activity and the property used in the activity is not available for forfeiture. The Committee notes that the affected person and third parties with an interest in the property can adduce evidence at the hearing. Half of the proceeds of the forfeiture will also be credited to the Victims Support Fund. The Committee makes no further comments.

Retrospectivity

45. The Bill recasts the provision in the *Crimes Act 1900* relating to dealing with property suspected of being proceeds of crime. The wording of the offence is changed. In addition, the maximum penalty is increased from \$5,500 and/or imprisonment for two years to imprisonment for five years if the property is valued at \$100,000 or more or imprisonment for three years if the property is less than \$100,000 (amended section 193C of the *Crimes Act 1900* in Schedule 2, clause [1] of the Bill).
46. This amended provision will apply to acts or omissions in relation to proceeds of crime arising from serious offences committed before the commencement of these amended provisions. However, at present, the existing section 193G already captures circumstances of this nature that occurred before the commencement of that part of the Act (amended section 193G of the *Crimes Act 1900* in Schedule 2, clause [4] of the Bill; see also the existing provision).

The amended offence of dealing with property suspected of being proceeds of crime will capture acts or omissions relating to proceeds of crime which arise from serious offence committed before these provisions commence. However, the Committee notes that the existing offence also captures circumstances which occurred before the commencement of that part of the Act. The Committee makes no further comments.

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

Commencement by proclamation

47. The Bill will commence on a day or days to be appointed by proclamation (see clause 2 of the Bill).

The Committee prefers legislation to commence on a fixed date or on assent, particularly where the legislation may impact on personal rights and liberties, as is the case with this Bill. However, the Committee notes the Deputy Premier's comments that systems and resources need to be updated and relevant individuals need to be trained before the Bill can commence. The Committee makes no further comments.

2. Fines Amendment Bill 2016

Date introduced	22 March 2016
House introduced	Legislative Council
Minister responsible	The Hon. Dominic Perrottet MP
Portfolio	Finance, Services and Property

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Fines Act 1996* and provisions of other Acts and a regulation relating to liability for parking and other vehicle offences as follows:
 - (a) to recognise that owners of vehicles or vessels who have been issued a penalty notice for an offence committed by another person who was in charge of the vehicle or vessel may nominate that person as the person actually in charge of the vehicle or vessel even though the relevant fine has been paid, and to provide for the consequences of that nomination in particular circumstances,
 - (b) to extend the time within which such a nomination may be made to 90 days in a case where the fine is paid,
 - (c) to enable civil debt recovery measures to be taken against a fine defaulter before all available action has been taken under driver licence or vehicle registration measures,
 - (d) to enable additional fines to be added to existing time to pay arrangements for fine defaulters, subject to a right to request that the extension be discontinued,
 - (e) to permit penalty reminder notices and notices of fine enforcement orders to be served at any address that a fine defaulter has provided for other applications related to fine enforcement,
 - (f) to make it clear that the Commissioner of Fines Administration may withdraw a penalty notice enforcement order if the penalty notice for the fine is withdrawn under an arrangement with an agency that issues penalty notices,
 - (g) to authorise credit reporting bodies to disclose identification and account details about a fine defaulter and to update related terminology in line with Commonwealth legislation,
 - (h) to make other minor and consequential amendments, including savings and transitional provisions consequent on the proposed amendments.

BACKGROUND

2. The *Fines Amendment Bill 2015* introduces reforms to the administration of State fines by the Office of State Revenue. The reforms follow on from amendments to the *Fines Act 1996* made by the *State Revenue Legislation Amendment Act 2015* and other measures aimed at improving the fines enforcement process.

ISSUES CONSIDERED BY COMMITTEE

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

Oppressive official powers

3. Clause 10 of the Bill amends the *Fines Act 1996* to permit civil enforcement measures to commence if a fine remains unpaid 21 days after enforcement action is directed to be taken against the driver licence or vehicle registration of the fine defaulter. Currently, civil enforcement measures cannot commence until all available enforcement action has been taken under the driver licence and vehicle registration measures. Such measures are exhausted after six months.
4. Civil enforcement measures include a property seizure order, a garnishee order, a charge on land, or a combination of the aforementioned.

The Committee notes the considerable reduction in time from 6 months to 21 days as to when civil enforcement measures against a fine defaulter may commence. Such civil enforcement measures include garnishee orders and seizure of property.

The Committee notes that by allowing civil enforcement measures to commence earlier, the collection of unpaid fines may become more efficient. However, the Committee questions the need to reduce the period of time from 6 months to less than one month. The committee refers this issue to Parliament for further consideration.

Privacy

5. Clause 12 of the Bill authorises a credit reporting body to disclose identifying information to the Commissioner of Fines Administration for the purposes of enforcing payment of a fine. Such information includes the details of any account the fine defaulter has with a deposit-taking institution.

The Committee notes the authorisation granted to credit reporting agencies to release details of any account a fine defaulter has with a deposit-taking institution. The release of such information without the consent of the individual may impact on the individual's right to privacy. The Committee refers this issue to Parliament for further consideration.

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

Commencement by proclamation

6. The Bill will commence on a day or days to be appointed by proclamation.

The Committee prefers legislation to commence on a fixed date or on assent, particularly where the legislation may impact on personal rights and liberties, as is the case with this Bill. However, the Committee notes the Bill proposes administrative changes to the operation of penalty notices and fine enforcement orders and as such may need flexibility as to its commencement. The Committee makes no further comment.

3. Public Lotteries Amendment (Keno Licensing) Bill 2016

Date introduced	22 March 2016
House introduced	Legislative Assembly
Minister responsible	The Hon. Troy Grant MP
Portfolio	Racing

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Public Lotteries Act 1996 (the Act)*:
 - (a) to establish new arrangements for the licensing of keno under which the existing exclusive keno licence will be cancelled and new exclusive keno licences with a term expiring in 2050 will be granted to the existing licensees, and
 - (b) to provide transitional arrangements to facilitate the transfer of keno operations from the existing keno licence to the new licences, and
 - (c) to insert a definition of *keno*.

BACKGROUND

2. This Bill follows a review of keno licensing arrangements. As stated in the Second Reading Speech, the review found that:

...there was significant scope to modernise the keno regulatory regime by bringing the licences into the modern regulatory regime as it applies to NSW Lotteries.
3. Under the new regime the incumbent licensees were granted new keno licences until 1 April 2050.

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*.

4. State Revenue Legislation Amendment Bill 2016

Date introduced	22 March 2016
House introduced	Legislative Assembly
Minister responsible	The Hon. Dominic Perrottet MP
Portfolio	Finance, Services and Property

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:

(a) to amend the *Duties Act 1997*:

- i to make further provision relating to exemptions from duty for corporate reconstruction transactions, and
- ii to provide for a reduction in duty on agreements for the sale or transfer of securities where a transfer to which the agreement applies is a corporate consolidation transaction, and
- iii to make other amendments in the nature of statute law revision,

(b) to amend the *First Home Owner Grant (New Homes) Act 2000* to extend the availability of the first home owner grant in cases where the new home being purchased or built is a substantially renovated home or a home built to replace demolished premises,

(c) to amend the *Land Tax Management Act 1956* to make further provision in relation to the application of the principal place of residence exemption to unoccupied land intended to be the owner's principal place of residence,

(d) to amend the *Payroll Tax Act 2007*:

- i to extend an exemption from payroll tax applying to wages paid by a wholly-owned subsidiary of a local council to wages paid by a body corporate wholly owned by 2 or more local councils, and
- ii to make other amendments in the nature of statute law revision,

(e) to amend the *Taxation Administration Act 1996* to extend a requirement for the Chief Commissioner of State Revenue (the Chief Commissioner) to pay interest on a refund made to a taxpayer (following a successful objection or review) to members of a group to which the taxpayer belongs under the *Land Tax Management Act 1956* or the *Payroll Tax Act 2007*,

(f) to amend the *Unclaimed Money Act 1995*:

- i to enable the Chief Commissioner to accept payment of amounts that are not unclaimed money for the purposes of that Act (because they are \$100 or less) and to enable owners to recover those amounts, and
- ii to enable the owner of unclaimed money that has been paid to the Chief Commissioner to apply for that money to be repaid even though the right to the money has been extinguished, and
- iii to make other amendments in the nature of statute law revision.

BACKGROUND

2. The Minister's Second Reading Speech notes the main purpose of the Bill is to ensure tax legislation is effective and up to date. The Minister says the reforms will:
 - (a) promote fairness, by ensuring individuals in similar circumstances have similar outcomes;
 - (b) fight actual and potential tax avoidance practices; and
 - (c) reduce red tape by removing uncertainty, increasing harmonisation with other jurisdictions where possible and improving administrative simplicity.

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. Technical and Further Education Commission Amendment (TAFE Funding Guarantee) Bill 2016*

Date introduced	23 March 2016
House introduced	Legislative Assembly
Member responsible	Mr Luke Foley MP
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Technical and Further Education Commission Act 1990* to ensure that not less than 70% of funding for vocational education and training is allocated to the TAFE Commission.

BACKGROUND

2. This Bill seeks to introduce a TAFE funding guarantee where a minimum 70 per cent of funding for vocational education and training be allocated to the TAFE Commission. In the Second Reading Speech, Mr Luke Foley MP, asserted that there are, '80,000 fewer students enrolled in TAFE today than there were in 2012' and '11,500 fewer students with a disability enrolled in TAFE than in 2012.'

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.

Part Two – Regulations

1. Children (Detention Centres) Amendment (Use of Force and Drug Testing) Regulation 2016; Crimes (Administration of Sentences) Amendment (Use of Force and Drug Testing) Regulation 2016

PURPOSE AND DESCRIPTION

Children (Detention Centres) Amendment (Use of Force and Drug Testing) Regulation 2016

1. The objects of this Regulation are:
 - (a) to authorise a juvenile justice officer to use force to allow a medical practitioner to carry out necessary medical treatment on a detainee, and
 - (b) to provide that a use of force report is not required when force is only threatened, when a detainee is restrained in order to be moved from one location to another or when a riot shield is used for personal protection, and
 - (c) to enable a juvenile justice officer to obtain a saliva sample (in addition to a urine sample) for drug testing purposes.

Crimes (Administration of Sentences) Amendment (Use of Force and Drug Testing) Regulation 2016

2. The objects of this Regulation are:
 - (a) to authorise a correctional officer to use force to allow a medical practitioner to carry out necessary medical treatment on an inmate, and
 - (b) to provide that a use of force report is not required when force is only threatened or when an inmate is restrained in order to be moved from one location to another.

ISSUES CONSIDERED BY COMMITTEE

Trespasses unduly on personal rights and liberties: s 9(1)(b)(i) of the LRA

Personal physical integrity – issue one

3. Under the *Crimes (Administration of Sentence) Act 1999* and the *Children (Detention Centres) Act 1987*, the Chief Executive of Justice Health and Forensic Mental Health Network can authorise a medical practitioner to carry out medical treatment without an inmate or detainee's consent if the treatment is necessary to save the person's life or prevent serious damage to the person's health.

4. Both the *Children (Detention Centres) Amendment (Use of Force and Drug Testing) Regulation 2016* (CDC Regulation) and the *Crimes (Administration of Sentences) Amendment (Use of Force) Regulation 2016* (CAS Regulation) authorise the use of force to allow a medical practitioner to carry out such medical treatment on a detainee or inmate.

The Committee notes that authorising the use of force to compel a person to undergo medical treatment without their consent trespasses on that person's rights and liberties. The Committee notes, however, that the medical treatment in question is treatment of a life threatening or serious nature which has been authorised by the Chief Executive of Justice Health and Forensic Mental Health. The Committee considers that in some circumstance force may be required to assist in performing such treatment.

The Department has advised that the intention of both the CDC Regulation and CAS Regulation is to provide clarification and guidance on the use of force in correctional and detention centres, where previously it was not specified or unclear. The Committee makes no further comment.

Personal physical integrity – issue two

5. The *Children (Detention Centres) Amendment (Use of Force and Drug Testing) Regulation 2016* authorises juvenile justice officers to use saliva tests to test for drugs. Previously, juvenile justice officers were only authorised to use urine samples.

Allowing custodial staff to carry out saliva testing of detainees may impact on a detainee's right to personal physical integrity. The Committee notes that juvenile justice officers are already authorised to test for drugs by using urine samples.

The Department advised that permitting juvenile justice officers to use saliva tests are less confronting for a young person than urine tests. The Committee makes no further comment.

2. Health Records and Information Privacy Amendment (Exemption) Regulation 2016

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to exempt persons (such as general practitioners) and organisations (such as public sector agencies) from the application of clause 15 (Linkage of health records) of Schedule 1 to the *Health Records and Information Privacy Act 2002*.
2. The exemption applies only to the extent that the persons or organisations include information about an individual registered for the My Health Record system trial established under Commonwealth legislation in the My Health Record system.

ISSUES CONSIDERED BY COMMITTEE

The regulation trespasses unduly on personal rights and liberties: s 9(1)(b)(i) of the LRA

Privacy

3. On 4 March 2016, The Hon. Sussan Ley MP, Commonwealth Minister for Health, Aged Care and Sport, announced that 360,000 residents in the Nepean Region of Western Sydney would have electronic health records automatically created for them as part of the Commonwealth My Health Record system trial. The record will be an online summary of an individual's health information such as medicines the person is taking and treatments they have received. Under the trial, patients will be able to share this information online at any time with authorised health care providers such as doctors, pharmacist and hospitals.
4. The amendment in the Regulation proposes an exemption to Health Privacy Principle 15 in the NSW *Health Records and Information Privacy Act 2002* to facilitate the Commonwealth trial.
5. Health Privacy Principle 15 prevents NSW public sector agencies and private health service providers from including an individual's health information in a health records linkage system without the person's express consent, except in limited circumstances.
6. The Minister said the previous My Health Record System, which was an opt-in model, led to less than one in ten Australians signing up. The trial will be an opt-out model, which means persons will be enrolled in the trial even though they have not given their express consent to be part of it. The Minister noted that affected residents would receive a letter informing them of the trial and advising them how they could opt-out of it.
7. The My Health Record system has various security and privacy features such as password protection along with the ability to restrict access to certain GPs and hospitals, view other people who have opened your records and delete unwanted files.

8. The *My Health Records Act 2012* (Cth) contains some criminal offence provisions relating to unauthorised activities concerning health records. For example, it is an offence to collect, use or disclose health information from the My Health Record system if that action is unauthorised. The maximum penalty includes imprisonment for up to two years (see for example section 59 of the *My Health Records Act 2012* (Cth)).
9. The Minister said if all Australians used the My Health Record system, it is estimated it could save 5,000 lives per year and could help prevent 2 million primary care and outpatient visits, 500,000 emergency department visits and 310,000 hospital admissions.

Creating an exemption to the existing Health Privacy Principles in NSW, along with enrolling individuals in the opt-out electronic My Health Record system, could interfere with a person's right to privacy, particularly as health records can contain very sensitive information. However, the Committee notes the intention of the amendment is to improve health outcomes for patients. The Committee also notes that individuals will receive advice on how they can opt-out of the system. The system contains various privacy and security features and the associated Commonwealth legislation contains criminal offences for unauthorised collection, use and disclosure. The Committee therefore makes no further comments.

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,

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- 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.