



## Legislation Review Committee

### LEGISLATION REVIEW DIGEST

No. 21/56 – 2 August 2016



New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Legislative Assembly.

Legislation Review Committee Legislation Review Digest, Legislation Review Committee, Parliament NSW [Sydney, NSW]: The Committee, 2016, 25p 30 cm

Chair: Mr Michael Johnsen MP

2 August 2016

ISSN 1448-6954

1. Legislation Review Committee – New South Wales

2. Legislation Review Digest No. 21 of 56

I Title.

II Series: New South Wales. Parliament. Legislation Review Committee Digest; No. 21 of 56

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. ADOPTION AMENDMENT (INSTITUTE OF OPEN ADOPTION STUDIES) BILL 2016

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

The Committee acknowledges that allowing a government agency to disclose information to a research organisation about adults and children involved in adoption and out-of-home care could impact on their right to privacy. However, the Committee notes that the Bill contains a number of safeguards to alleviate this risk. The Committee also notes that the NSW Privacy Commissioner supports the Bill and that the research organisation must comply with certain provisions of the NSW privacy legislation. The research will help to facilitate adoption processes to ensure permanency and security for children in out-of-home care. The Committee considers the rights of children to have stable and permanent family arrangements outweigh any privacy risks in this instance. In the Committee's view, the privacy safeguards provided for in the Bill are also appropriate.

### 2. APPROPRIATION BILL 2016; APPROPRIATION (PARLIAMENT) BILL 2016; STATE REVENUE LEGISLATION AMENDMENT (BUDGET MEASURES) BILL 2016

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

### 3. CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) AMENDMENT (PROTECTION FROM SERIOUS OFFENDERS) BILL 2016\*

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

#### *Protection of the family*

The Bill may impact on the right to protection of the family by requiring the State to remove future children from a parent who has committed a serious violent crime against their other child. However, in the Committee's view, the health, welfare and best interests of children must outweigh the protection of the family unit in instances such as those identified in the Bill. In particular, the Committee highlights that the Bill provides scope for the relevant government department to allow children to remain with their parent if it is appropriate in the circumstances. A parent who has a child removed or who is subject to a restraining notice can also apply to the Children's Court for the return of their child and revocation of the restraining notice. The Committee makes no further comments.

### 4. FINES AMENDMENT (ELECTRONIC PENALTY NOTICE) BILL 2016

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

#### *Commencement by proclamation*

The Committee prefers legislation to commence on assent or on a fixed date. However, the Committee notes that the Bill seeks to introduce a new format for the issuing of penalty notices and considers flexibility as to its commencement may be required. The Committee makes no further comment.

5. LOCAL GOVERNMENT AMENDMENT (GOVERNANCE AND PLANNING) BILL 2016

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

*Commencement by proclamation*

The Committee notes the provisions which commence on a day or days to be appointed by proclamation. Commencement by proclamation enables the Executive to commence an Act on day or days of its choosing, or not at all. The Committee notes the Minister's comments in the Second Reading Speech which outline that it is the Government intention to commence the Bill after stakeholder consultation and finalisation of the new model code of conduct. The Committee makes no further comment.

6. LOCAL GOVERNMENT AND ELECTIONS LEGISLATION AMENDMENT (INTEGRITY) BILL 2016

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

Setting limits on the amount a person may donate to a political party, Member or candidate may impact on the implied freedom of political communication in the Commonwealth Constitution by restricting an individual's ability to support their preferred party or candidate. However, on balance, the Committee believes the measures in the Bill are appropriate in the circumstances to ensure the integrity of local government decision-making and to minimise the risk of corruption. The Committee also notes that similar provisions apply to State elections. The Committee makes no further comments.

*Right to take part in public affairs*

The Bill may impact on the right to take part in public affairs by extending the kinds of offences that would disqualify a person from being elected to public office and the disqualification timeframe. The Committee notes that many offences punishable by imprisonment for five years or more have a range of offending behaviour. Some offenders may receive a much more lenient sentence, including a non-custodial sentence. It is not apparent from the Bill that this diversity in circumstances and sentencing is taken into consideration in determining whether or not a particular person should be disqualified from civic office. The Committee notes that once the disqualification timeframe has passed, an affected individual may be eligible to seek election to local government. The Committee also acknowledges that the Bill seeks to restore community confidence in local government. Nevertheless, the Committee refers the proposed amendments to section 275 of the *Local Government Act 1993* to Parliament for consideration about whether including all offences punishable by imprisonment for five years or more as disqualifying offences and extending the disqualification timeframe may unfairly impact on the right to take part in public affairs in some circumstances.

7. TECHNICAL AND FURTHER EDUCATION COMMISSION AMENDMENT (FUNDING GUARANTEE FOR TAFE) 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 One – Bills

# 1. Adoption Amendment (Institute of Open Adoption Studies) Bill 2016

Date introduced	22 June 2016
House introduced	Legislative Assembly
Minister responsible	The Hon. Brad Hazzard MP
Portfolio	Family and Community Services and Social Housing

### PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
  - (a) to amend the *Adoption Act 2000* (the Adoption Act) and the *Children and Young Persons (Care and Protection) Act 1998* (the Care and Protection Act) to make provision for the disclosure of information relating to certain persons involved in adoption and out-of-home care to a prescribed research organisation, and
  - (b) to amend the *Adoption Regulation 2015* to prescribe as a research organisation the Institute of Open Adoption Studies, University of Sydney, and
  - (c) to amend the Adoption Act to enable a suitably qualified person employed or nominated by an approved organisation to provide the Children’s Court with a report in relation to the adoption of a child.

### BACKGROUND

2. The Minister’s Second Reading Speech explains that the Government has provided funding to the Institute of Open Adoption Studies to carry out research to improve the evidence base and practice for open adoption. The Institute will be run by the University of Sydney’s Faculty of Education and Social Work, in partnership with Barnados.
3. Prior to establishing the Institute, the Government undertook consultation including with adoption service providers and advocacy groups. The Minister advises that there was broad support for the Institute.
4. The Bill will allow the Institute to obtain qualitative and quantitative data about adoptions and permanent care applications and orders to facilitate its research into open adoption.

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

#### *Privacy*

5. The Bill will authorise the Secretary of the Department of Family and Community Services to enter into arrangements with research organisations so the Secretary can

disclose information about persons involved in adoption or out-of-home-care. Relevant persons will include birth parents, adoptive parents, children, young persons and authorised carers. Information that can be disclosed may include health and personal information about these individuals. The Secretary may also disclose relevant information held by the Children's Guardian, a designated agency or an accredited adoption service provider. The Institute of Open Adoption Studies, University of Sydney, will be prescribed as a research organisation for these purposes (see Schedule 1, clause [4], Schedule 2, clause [1] and Schedule 3 of the Bill).

6. The Bill includes some safeguards to protect the privacy of affected individuals. For example, the Secretary must be satisfied that:
  - reasonable steps are taken to de-identify the information;
  - the research organisation is required to treat the information it receives as confidential; and
  - as far as is reasonably practicable, information will not be published that will allow for the identity of an affected person to be determined (see Schedule 1, clause [4] and Schedule 2, clause [1] of the Bill).
7. As far as is reasonably practicable, the research organisation is to comply with sections 12, 17, 18 and 19 of the *Privacy and Personal Information Protection Act 1998* in its dealings with the information, as if the research organisation were a public sector agency. These provisions provide arrangements for the retention and security of personal information. They also place limits on how personal information may be used and disclosed, including special restrictions on particularly sensitive personal information (e.g. in relation to race, religious beliefs, etc) (see Schedule 1, clause [4] and Schedule 2, clause [1] of the Bill).
8. The research organisation will also be treated as a 'private sector person' for the purposes of the *Health Records and Information Privacy Act 2002*, which means they will be required to comply with the Health Privacy Principles in how they collect, hold or use any health information they receive (see Schedule 1, clause [4] and Schedule 2, clause [1] of the Bill).
9. The NSW Privacy Commissioner has indicated her support for the Bill.

**The Committee acknowledges that allowing a government agency to disclose information to a research organisation about adults and children involved in adoption and out-of-home care could impact on their right to privacy. However, the Committee notes that the Bill contains a number of safeguards to alleviate this risk. The Committee also notes that the NSW Privacy Commissioner supports the Bill and that the research organisation must comply with certain provisions of the NSW privacy legislation. The research will help to facilitate adoption processes to ensure permanency and security for children in out-of-home care. The Committee considers the rights of children to have stable and permanent family arrangements outweigh any privacy risks in this instance. In the Committee's view, the privacy safeguards provided for in the Bill are also appropriate.**

## 2. Appropriation Bill 2016; Appropriation (Parliament) Bill 2016; State Revenue Legislation Amendment (Budget Measures) Bill 2016

Date introduced	21 June 2016
House introduced	Legislative Assembly
Minister responsible	The Hon. Gladys Berejiklian MP
Portfolio	Treasury

### PURPOSE AND DESCRIPTION

#### *Appropriation Bill 2016*

1. The object of this Bill is to appropriate from the Consolidated Fund various sums of money required during the 2016–17 financial year for the services of the Government, including:
  - (a) Departments of the Public Service, and
  - (b) various special offices.
2. The Bill appropriates a single sum for the services of each agency comprising recurrent services, capital works and services and debt repayment.
3. The Consolidated Fund largely comprises receipts from, and payments out of, taxes, fines, some regulatory fees, Commonwealth grants and income from Crown assets.
4. The Bill for the 2016–17 financial year contains an additional appropriation which allocates revenue raised in connection with gaming machine taxes to the Minister for Health for spending on health related services.
5. The Bill for the 2016–17 financial year contains provision for transfer payments from the Commonwealth to non-Government schools and local government.
6. The Bill provides for appropriation for the whole of the 2016–17 financial year.
7. The Bill also sets out the recurrent services for which the “Advance to the Treasurer” appropriation was expended in the 2014–15 financial year, appropriates \$77,709,000 from the Consolidated Fund for those services and makes the necessary adjustment to the “Advance to the Treasurer” appropriation for that year.

#### *Appropriation (Parliament) Bill 2016*

8. The object of this Bill is to appropriate from the Consolidated Fund the sum of \$146,816,000 required during the 2016–17 financial year for the services of the

## LEGISLATION REVIEW COMMITTEE

### APPROPRIATION BILL 2016; APPROPRIATION (PARLIAMENT) BILL 2016; STATE REVENUE LEGISLATION AMENDMENT (BUDGET MEASURES) BILL 2016

Legislature comprising recurrent services, capital works and services and debt repayment.

#### *State Revenue Legislation Amendment (Budget Measures) Bill 2016*

9. The object of this Bill is to implement certain revenue-related measures in the 2016–17 State budget. The Bill:
  - (a) amends the *Duties Act 1997* to impose a surcharge duty of 4% in relation to the acquisition of interests in residential land by foreign persons and to remove the off the plan duty concession in the case of foreign persons, and
  - (b) amends the *Land Tax Act 1956* to impose surcharge land tax of 0.75% on residential land owned by foreign persons, and
  - (c) amends the *Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011* to increase the payroll tax rebate for new jobs from \$3,000 to \$4,000 for the second year of employment and to restrict the rebate applying to those new jobs to employers who have 50 or fewer full time equivalent employees.
10. The Bill defines a foreign person to have the same meaning as in the *Foreign Acquisitions and Takeovers Act 1975* of the Commonwealth (which generally includes an individual not ordinarily resident in Australia, a corporation in which such an individual has a substantial interest, a trustee of a trust in which such an individual holds a substantial interest or a foreign government). The definition is modified to ensure that Australian citizens are not foreign persons (wherever they reside) and that New Zealand citizens holding special category visas are not foreign persons if they have been in Australia for at least 200 days in the previous 12 months.

## BACKGROUND

11. These Bills give legislative effect to the 2016 – 2017 Budget.
12. Although they are separate Acts when operative, the *Appropriation Bill 2016*, the *Appropriation (Parliament) Bill 2016* and the *State Revenue Legislation Amendment (Budget Measures) Bill 2016* are cognate Bills. Therefore, all three Bills have been considered in one report.

## ISSUES CONSIDERED BY COMMITTEE

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

### 3. Children and Young Persons (Care and Protection) Amendment (Protection from Serious Offenders) Bill 2016\*

Date introduced	23 June 2016
House introduced	Legislative Assembly
Member responsible	Ms Tania Mihailuk MP
	*Private Member's Bill

#### PURPOSE AND DESCRIPTION

1. The objects of this Bill are to:
  - (a) ensure that, subject to some exceptions, any person found guilty of the murder or manslaughter of a child or young person, or of certain other serious offences in relation to a child or young person, where the offender was the parent or guardian of the victim, will automatically have his or her future children removed from his or her care at birth or will be prevented from residing with, approaching or contacting them, and
  - (b) provide for the issue of restraining notices so that any person found guilty of such an offence may be prevented from residing with, approaching or having any contact with a child or young person.

#### BACKGROUND

2. Ms Mihailuk explains that the Bill will ensure vulnerable children and young people are kept safe from their parents or guardians who have previously committed violent offences against children:

This Bill prioritises the safety of the most vulnerable children, while also containing a number of safeguards to ensure that parents who may be capable of adequately caring for their children are not punished twice for a previous serious crime.

3. Ms Mihailuk highlights that South Australia has passed legislation of a similar nature.

#### ISSUES CONSIDERED BY COMMITTEE

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

##### *Protection of the family*

4. The Bill proposes that where an individual is found guilty of a disqualifying offence and gives birth to a child after the commencement of the Bill, the Secretary of the Department of Family and Community Services will be required to issue an instrument of guardianship and may issue a restraining notice in relation to that child (see proposed sections 38K and 38Q of the *Children and Young Persons (Care and Protection) Act 1998*).

5. The kinds of offences specified in the Bill are serious and violent offences where the parent or guardian has committed the offence against their own child. Examples include murder, manslaughter, infanticide, assault causing death, wounding or grievous bodily harm with intent and reckless grievous bodily harm. The Bill also captures offences committed before the commencement of the provisions (see proposed section 38H of the *Children and Young Persons (Care and Protection) Act 1998*).
6. The Bill adopts an extended meaning for the term, 'found guilty'. It includes a reference to situations where an individual has been charged with a disqualifying offence but there has been a special verdict or acquittal on mental health grounds. For example, the definition would capture a special verdict that the accused was not guilty by reason of mental illness under section 38 of the *Mental Health (Forensic Provisions) Act 1990* (see proposed section 38I of the *Children and Young Persons (Care and Protection) Act 1998*).
7. The effect of the instrument of guardianship is that the Minister will become responsible for the care of the child. A restraining notice may prohibit an offender from living at the same property as the child, coming within a specified distance of them, or having contact with them. Alternatively, it may only allow for contact in the presence of a specified person (see proposed sections 38L and 38R of the *Children and Young Persons (Care and Protection) Act 1998*).
8. The Bill contains some safeguards in relation to offenders who no longer present a risk to their children. For example, the Secretary can decline to issue a guardianship instrument or a restraining notice if he or she is of the opinion that the relevant offence:
  - occurred where there were significant mitigating circumstances, or
  - arose as a result of an illness or condition from which the offender no longer suffers or circumstances that no longer exist (see proposed sections 38K and 38Q of the *Children and Young Persons (Care and Protection) Act 1998*).
9. A parent of a child the subject of a guardianship instrument or restraining notice may also make an application to the Children's Court to have the instrument revoked. Likewise, a woman who is pregnant may apply to the court to prevent the issue of a guardianship instrument (see proposed sections 38O, 38P and 38T of the *Children and Young Persons (Care and Protection) Act 1998*).
10. There are a number of factors that the court may consider in determining an application from a parent. Examples include the seriousness of the offence, the penalty imposed and whether or not there were significant mitigating circumstances or aggravating factors (see proposed section 38U of the *Children and Young Persons (Care and Protection) Act 1998*).

**The Bill may impact on the right to protection of the family by requiring the State to remove future children from a parent who has committed a serious violent crime against their other child. However, in the Committee's view, the health, welfare and best interests of children must outweigh the protection of the family unit in instances such as those identified in the Bill. In particular, the Committee highlights that the Bill provides scope for the relevant government department to allow children to remain with their parent if it is appropriate in the circumstances. A parent who has a child removed or who is subject to a**

**restraining notice can also apply to the Children’s Court for the return of their child and revocation of the restraining notice. The Committee makes no further comments.**

## 4. Fines Amendment (Electronic Penalty Notice) Bill 2016

Date introduced	23 June 2016
House introduced	Legislative Assembly
Minister responsible	The Hon. Troy Grant MP
Portfolio	Justice and Police

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Fines Act 1996 to allow penalty notices to be issued electronically. The Bill also includes other amendments to the Fines Act 1996 to consolidate and standardise provisions relating to penalty notices.

### BACKGROUND

2. This Bill seeks to amend the Fines Act 1996 to allow penalty notices to be issued electronically. In 2013, five NSW Police Force local area commands trialed a system of issuing traffic infringement notices electronically. The Office of State Revenue has estimated that \$1.2 million could be saved by issuing penalty notices electronically.
3. Penalty notices will only be issued electronically when the recipient consents to receive it electronically. Where the recipient refuses or fails to understand, the notice will be sent by post in line with current practice. Penalty notices will not be able to be issued electronically to children under 16 years of age.

### ISSUES CONSIDERED BY COMMITTEE

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

##### *Commencement by proclamation*

4. The Bill provides that the Act will commence on a day or days to be appointed by proclamation. This provides the Executive with the power to commence the Act on a day or days of its choosing, or not all.

**The Committee prefers legislation to commence on assent or on a fixed date. However, the Committee notes that the Bill seeks to introduce a new format for the issuing of penalty notices and considers flexibility as to its commencement may be required. The Committee makes no further comment.**



## 5. Local Government Amendment (Governance and Planning) Bill 2016

Date introduced	22 June 2016
House introduced	Legislative Assembly
Minister responsible	The Hon. Paul Toole MP
Portfolio	Local Government

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Local Government Act 1993 (the Principal Act) as follows:
  - (a) to extend the purposes of that Act and to set out principles for councils,
  - (b) to include expanded descriptions of the roles of councils, mayors and councillors and the functions of general managers,
  - (c) to enable councils to apply to reduce councillor numbers or mandated meetings or change wards, before the next council elections after the proposed Act commences,
  - (d) to increase the term of office for mayors elected by councillors from 1 year to 2 years,
  - (e) to require councillors to take an oath or make an affirmation of office,
  - (f) to enable postal voting to be used for elections by all councils and to postpone the use of countbacks instead of by-elections until after a day to be specified by regulations,
  - (g) to limit the role of councils in determining the staff organisation of a council to senior positions,
  - (h) to enable councils to delegate the function of accepting tenders (other than for services currently provided by council staff members) and granting financial assistance,
  - (i) to provide for a model code of conduct for meetings,
  - (j) to streamline provisions in the Principal Act relating to the integrated planning and reporting framework and enable regulations to be made about consultation and other procedural matters,
  - (k) to provide for the council auditor functions to be exercised by the Auditor-General (or a person appointed by the Auditor-General) and to confer other auditing functions relating to local government on the Auditor-General,
  - (l) to require councils to establish Audit, Risk and Improvement Committees,

- (m) to enable the appointment of a financial controller for a council if an improvement order is issued for the council,
- (n) to make it clear that an administrator appointed to a council has the functions of a mayor,
- (o) to provide for misconduct by councillors relating to disclosures of pecuniary interests to be dealt with in the same way as other misconduct, by including disclosure requirements in mandatory code of conduct provisions and applying the same disciplinary provisions that apply to breaches of the code,
- (p) to apply the model code provisions relating to disclosure of pecuniary interests to members of council committees and other advisers,
- (q) to make it clear that wage rise restrictions do not apply to a case where a council is recategorised for the purpose of determining the category of allowances payable to councillors and mayors,
- (r) to extend regulation-making powers for various matters,
- (s) to make other consequential amendments and to enact savings and transitional provisions.

## BACKGROUND

2. This Bill implements the initial phase of the Government's reform of the *Local Government Act 1993*. The reforms follow from recommendations of the Independent Local Government Review Panel and the Local Government Act Taskforce.
3. Reforms within the Bill include, but are not limited to:
  - new principles for local government;
  - the establishment of distinct roles for mayors, general managers and councillors;
  - increasing the term of office for mayors from one to two years;
  - drafting of a new meeting code and code of conduct; and
  - oversight of Councils by the Auditor-General.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Commencement by proclamation*

4. A number of provisions within this Bill commence on a day or days to be appointed by proclamation. The Committee prefers legislation to commence on assent or on a fixed date.

**The Committee notes the provisions which commence on a day or days to be appointed by proclamation. Commencement by proclamation enables the**

**Executive to commence an Act on day or days of its choosing, or not at all. The Committee notes the Minister's comments in the Second Reading Speech which outline that it is the Government intention to commence the Bill after stakeholder consultation and finalisation of the new model code of conduct. The Committee makes no further comment.**

## 6. Local Government and Elections Legislation Amendment (Integrity) Bill 2016

Date introduced	21 June 2016
House introduced	Legislative Assembly
Minister responsible	The Hon. Paul Toole MP
Portfolio	Local Government

### PURPOSE AND DESCRIPTION

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

### BACKGROUND

3. The Minister's Second Reading Speech highlights that the reforms in the Bill are in response to community concern about the actions of a very small minority of elected officials who have allegedly misused their civic office to advance their business interests.
4. These reforms are part of a broader package to restore community confidence in local councils and ensure the integrity of their decision-making.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Freedom of political communication*

5. The Bill will impose caps on political donations in respect of local government elections and will mirror the existing caps on donations that apply at the State level. The caps will be set at \$5,000 for donations to a registered party or group and \$2,000 for donations to an unregistered party; an elected Member; a candidate; or a third-party campaigner (see in particular Schedule 1, clause [14] of the Bill).

**Setting limits on the amount a person may donate to a political party, Member or candidate may impact on the implied freedom of political communication in the Commonwealth Constitution by restricting an individual's ability to support their preferred party or candidate. However, on balance, the Committee believes the measures in the Bill are appropriate in the circumstances to ensure the integrity of local government decision-making and to minimise the risk of corruption. The Committee also notes that similar provisions apply to State elections. The Committee makes no further comments.**

#### *Right to take part in public affairs*

6. The Bill will extend the existing restrictions that apply to those who have committed criminal offences and who hold or seek to hold office in local government.
7. At present, an individual cannot hold civic office if they have been convicted of a property-related offence under Part 4 of the *Crimes Act 1900* within five years before nomination for election, election or appointment to office. The Bill will extend this timeframe to seven years and will expand the relevant offences to include all offences punishable by imprisonment for five years or more. This will include offences in other States and Territories or under laws of the Commonwealth, if they are also offences in New South Wales (see existing section 275 of the *Local Government Act 1993* and Schedule 2, clause [1] of the Bill).
8. The Bill will also prevent individuals from holding civic office if they are convicted of an offence punishable by imprisonment for two years or more under the *Election Funding, Expenditure and Disclosures Act 1981*. This restriction will extend to two years before nomination for election, election or appointment to the office (see Schedule 2, clause [1] of the Bill).
9. The above amendments will apply to offences before the commencement of the Bill but will not disqualify a person holding office immediately before the Bill commences (see Schedule 2, clause [4] of the Bill).

**The Bill may impact on the right to take part in public affairs by extending the kinds of offences that would disqualify a person from being elected to public office and the disqualification timeframe. The Committee notes that many offences punishable by imprisonment for five years or more have a range of offending behaviour. Some offenders may receive a much more lenient sentence, including a non-custodial sentence. It is not apparent from the Bill that this diversity in circumstances and sentencing is taken into consideration in determining whether or not a particular person should be disqualified from**

civic office. The Committee notes that once the disqualification timeframe has passed, an affected individual may be eligible to seek election to local government. The Committee also acknowledges that the Bill seeks to restore community confidence in local government. Nevertheless, the Committee refers the proposed amendments to section 275 of the *Local Government Act 1993* to Parliament for consideration about whether including all offences punishable by imprisonment for five years or more as disqualifying offences and extending the disqualification timeframe may unfairly impact on the right to take part in public affairs in some circumstances.

## 7. Technical and Further Education Commission Amendment (Funding Guarantee for TAFE) Bill 2016\*

Date introduced	23 June 2016
House introduced	Legislative Assembly
Member responsible	Ms Prue Carr 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, Ms Prue Carr MP, referred to figures indicating that for 2016-17 there will be 126,000 fewer students enrolled in TAFE than there were 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*.**

# 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.