



Legislation Review Committee

LEGISLATION REVIEW DIGEST

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

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Membership

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Guide to the Digest

COMMENT ON BILLS

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

COMMENT ON REGULATIONS

This section contains the Legislation Review Committee's reports on Regulations in accordance with section 9 of the *Legislation Review Act 1987*.

Conclusions

PART ONE – BILLS

1. ANIMAL RESEARCH AMENDMENT (REDUCTION IN DEATHS OF DOGS AND CATS USED FOR RESEARCH) BILL 2018*

The Committee makes no comment on the Bill in respect of the issues set out in section 8A of the *Legislation Review Act 1987*.

2. APPROPRIATION BILL 2018; APPROPRIATION (PARLIAMENT) BILL 2018; NSW GENERATIONS FUNDS BILL 2018; SNOWY HYDRO LEGACY FUND BILL 2018; STATE REVENUE LEGISLATION AMENDMENT BILL 2018

The Committee makes no comment on the Bill in respect of the issues set out in section 8A of the *Legislation Review Act 1987*.

3. CRIMES AMENDMENT (MISCONDUCT IN PUBLIC OFFICE AND OTHER MATTERS) BILL 2018*

The Committee makes no comment in respect of the issues set out in section 8A of the *Legislation Review Act 1987*.

4. PUBLIC FINANCE AND AUDIT AMENDMENT (STATE-FUNDED PRIVATE ENTITIES) BILL 2018*

The Committee makes no comment on the Bill in respect of issues set out in section 8A of the *Legislation Review Act 1987*.

5. RESIDENTIAL TENANCIES AMENDMENT (SOCIAL HOUSING) BILL 2018

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

Risk-based bond scheme - right to housing

The Bill permits the Land and Housing Corporation and the Aboriginal Housing Office to require a social housing tenant to pay a rental bond if they belong to a class of tenant specified in the rental bond guidelines. The Committee recognises that the Government should have the means to take appropriate actions against tenants who do not respect the properties they are tenanted. However, given the Bill applies to tenants in social housing there is a real risk that there will be some people who will be unable to obtain or remain in social housing as they cannot afford to pay a bond.

The Committee also notes that there are aspects of the risk-based scheme that remain unclear. For example, it is unclear how a class of tenant will be determined or how long a person will remain classified in this class of tenants. The Minister outlined that this section will be applied where the tenant has caused significant damage to the property. However, how this is determined is not detailed in the Bill and may lead to an inconsistent application of the scheme.

The Committee notes Article 11(1) of the *International Covenant on Economic, Social and Cultural Rights* which recognises the right of everyone to an adequate standard of living for themselves and their family, which includes adequate food, clothing and housing. Given the above circumstances, the Committee refers to Parliament whether the requirement for some social housing tenants to pay a rental bond unduly trespasses on their right to housing.

Right to housing – registrable persons

The Bill extends the power of the Secretary to approve the termination of a concurrent lease of a registrable person by order of an approved community provider. This may be seen to trespass on the right to housing of a registrable person. The Committee notes that new sections 58B(1A) and (1B) are still subject to subsection 58B(2) which requires the Commissioner of Police to recommend that the presence of the tenant at the public housing places any neighbours in the locality or the tenant at risk of being physically harmed or injured. The principal Act also requires the provision of alternate housing for the registrable person in these circumstances. Given these public safety considerations and the provision of alternate housing, the Committee makes no further comment.

Insufficiently subjects the exercise of legislative power to parliamentary scrutiny: s 8A(1)(b)(v) of the LRA

Matters deferred to rental bond guidelines

The Bill outlines that a tenant may be required to pay a rental bond under section 156D if the tenant belongs to a class of tenant specified in the rental bond guidelines, and the amount of the rental bond is determined in accordance with the rental bond guidelines. The Bill specifies that the guidelines are to be determined by the Minister and made publicly available.

The Committee generally prefers that substantive matters are dealt with in principal legislation. Given that the matters deferred to the rental guidelines includes the definition of 'class of tenant' and the amount of the rental bond, the Committee considers these are matters more appropriately addressed in principal legislation and subject to parliamentary scrutiny. The Committee refers this issue to the attention of Parliament.

PART TWO – REGULATIONS

1. LOCAL GOVERNMENT (GENERAL) AMENDMENT (REGIONAL JOINT ORGANISATIONS) REGULATION 2018

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

Access to government information

The Regulation modifies the application of certain provisions in the *Local Government Act 1993*. For example, joint organisations will not be required to give public notice of their first meeting. The draft code of meeting practice will also not need to be publicly exhibited.

The Committee notes that this may restrict access to government information. Given that joint organisations are different to councils, modifying the application of provisions which usually apply to councils may be warranted in some circumstances. However, the Committee notes that there appears to be no publically available information regarding the rationale for these particular modifications and as such draws this matter to the attention of Parliament.

Part One – Bills

1. Animal Research Amendment (Reduction in Deaths of Dogs and Cats used for Research)Bill 2018*

Date introduced	21 June 2018
House introduced	Legislative Council
Member responsible	The Hon. Mark Pearson MLC
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Animal Research Act 1985* to require a person, as a condition of the person's accreditation as a research establishment or the person's animal research authority, to take all reasonable steps to home a dog or cat that is no longer required by the person for animal research purposes unless a vet has determined that the dog or cat is not suitable to be homed. Such reasonable steps include:
 - a) socialising or training the dog or cat to ensure that the dog or cat is suitable for homing, or
 - b) causing the dog or cat to be given to a person or animal homing organisation, or
 - c) any other action taken in accordance with the Code of Practice under that Act.
2. The Bill provides that a dog or cat is taken to be no longer required by a person for animal research purposes if the dog or cat has been kept by the person for more than 6 months.
3. Failure to comply with the proposed requirement is grounds for a complaint under Part 4 of the *Animal Research Act 1985* and may result in the cancellation or suspension of the person's accreditation or authority.

BACKGROUND

4. In his second reading speech, the Hon. Mark Pearson MLC noted that the Bill amends the *Animal Research Act 1985* to require research establishments to assist in the homing of cats and dogs after they are no longer required for animal research purposes. The Bill requires authorised persons to take all reasonable steps to home a cat or dog. These steps include but are not limited to:
 - socialising or training the dog or cat to ensure that they are suitable for homing;
 - causing the dog or cat to be bought, adopted or given to a person or animal homing organisation; and

- notifying the Animal Research Review Panel that the dog or cat is available to be given to an animal homing organisation for adoption.

ISSUES CONSIDERED BY COMMITTEE

The Committee makes no comment on the Bill in respect of the issues set out in section 8A of the *Legislation Review Act 1987*.

2. Appropriation Bill 2018; Appropriation (Parliament) Bill 2018; NSW Generations Funds Bill 2018; Snowy Hydro Legacy Fund Bill 2018; State Revenue Legislation Amendment Bill 2018

Date introduced	19 June 2018
House introduced	Legislative Assembly
Minister responsible	The Hon Dominic Perrottet MP
Portfolio	Treasury

PURPOSE AND DESCRIPTION

Appropriation Bill 2018

1. The object of this Bill is to appropriate from the Consolidated Fund various sums of money required during the 2018–19 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, including 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. The Bill for the 2018–19 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.
4. The Bill for the 2018–19 financial year contains provision for transfer payments from the Commonwealth to non-Government schools and local government.
5. The Bill provides for appropriation for the whole of the 2018–19 financial year.

Appropriation (Parliament) Bill 2018

6. The object of this Bill is to appropriate from the Consolidated Fund the sum of \$162,132,000 required during the 2018–19 financial year for the services of the Legislature, including recurrent services, capital works and services and debt repayment.

NSW Generations Funds Bill 2018

7. The object of this Bill is to provide for the establishment of the NSW Generations (Debt Retirement) Fund and the NSW Generations (Community Services and Facilities) Fund for the purposes of providing funding for State debt retirement and certain community purposes.

Snowy Hydro Legacy Fund Bill 2018

8. The object of this Bill is to provide for the use of the value of the proceeds of the sale of Snowy Hydro Limited to fund infrastructure projects that primarily benefit regional New South Wales.

State Revenue Legislation Amendment Bill 2018

9. The objects of this Bill are as follows:
 - a) to amend the *Emergency Services Levy Act 2017* to make it clear that a requirement that an insurer indicate in an insurance invoice how much of the premium payable is attributable to an emergency services insurance contribution does not apply if no part of the premium payable is attributable to that contribution,
 - b) to amend the *Payroll Tax Act 2007* to raise the tax-free threshold for payroll tax progressively, over the next 4 financial years, to \$1,000,000.

BACKGROUND

10. These Bills give effect to the 2018-19 Budget.
11. Although they are separate Acts when operative, the *Appropriation Bill 2018*, the *Appropriation (Parliament) Bill 2018*, the *NSW Generations Funds Bill 2018*, the *Snowy Hydro Legacy Fund Bill 2018*, and the *State Revenue Legislation Amendment Bill 2018* are cognate Bills. Therefore, all five bills have been considered in one report.

ISSUES CONSIDERED BY THE COMMITTEE

The Committee makes no comment on the Bill in respect of the issues set out in section 8A of the *Legislation Review Act 1987*.

3. Crimes Amendment (Misconduct in Public Office and Other Matters) Bill 2018*

Date introduced	21 June 2018
House introduced	Legislative Assembly
Member	Mr Jamie Parker MP
Portfolio	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to prohibit the following misconduct in or in relation to public office:
 - a) Current and former public officials misusing information obtained in an official capacity
 - b) Public officials engaging in official conduct, or exercising influence, for dishonest purposes
 - c) Public officials acting in matters in which they have a pecuniary interest
 - d) The bribing of public officials
 - e) Public officials accepting bribes
 - f) Conspiring to dishonestly influence a public official
 - g) Conspiring to dishonestly obtain a benefit from a public authority
 - h) Conspiring to dishonestly cause a loss or risk of loss to a public authority

BACKGROUND

2. The Bill amends the *Crimes Act 1900* by inserting a new Part 4AF: Offences relating to misconduct in public office.
3. In his second reading speech, Mr Parker indicated that the Bill seeks to create statutory offences for matters relating to misconduct in public office, bribery and conspiring to dishonestly influence an official or obtain a benefit, among other offences. According to Mr Parker, prosecution of these and similar offences currently relies on the common law.
4. In 2014, the Independent Commission Against Corruption (ICAC) made a submission to an inquiry of the Committee on the Independent Commission Against Corruption suggesting that certain common law offences relating to corrupt conduct be codified.¹ That

¹ See Independent Commission Against Corruption, [Submission no 8](#), 1 August 2014.

Committee summarised this and other evidence relating to the codification of such common law offences in its discussion paper.²

ISSUES CONSIDERED BY COMMITTEE

The Committee makes no comment in respect of the issues set out in section 8A of the *Legislation Review Act 1987*.

² Committee on the Independent Commission Against Corruption, [Prosecutions arising from Independent Commission Against Corruption investigations: Discussion Paper](#), pp13-17.

4. Public Finance and Audit Amendment (State-funded Private Entities) Bill 2018*

Date introduced	21 June 2018
House introduced	Legislative Assembly
Member	Mr Ryan Park MP
Portfolio	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Public Finance and Audit Act 1983* to authorise the Auditor-General to audit private entities that receive money from the State for a public purpose.

BACKGROUND

2. According to the second reading speech, the Bill introduces 'follow the money' powers for the Auditor-General. This would enable the Auditor-General to audit private and non-government bodies that receive money for a public purpose, for example through government contractors.
3. In 2013, the Legislative Assembly Public Accounts Committee recommended that the Auditor-General's powers be expanded to enable it to 'follow the dollar'.³

ISSUES CONSIDERED BY COMMITTEE

The Committee makes no comment on the Bill in respect of issues set out in section 8A of the *Legislation Review Act 1987*.

³ Legislative Assembly Public Accounts Committee, [Efficiency and effectiveness of the Audit Office of NSW](#), Report 11/55, September 2013, recommendation 5.

5. Residential Tenancies Amendment (Social Housing) Bill 2018

Date introduced	21 June 2018
House introduced	Legislative Assembly
Minister responsible	The Hon. Pru Goward MP
Portfolio	Social Housing

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Residential Tenancies Act 2010* and the *Housing Act 2001* as follows:
 - a) to enable the New South Wales Land and Housing Corporation (the Corporation) and the Aboriginal Housing Office (the AHO) to require a tenant to pay a rental bond at any time after a residential tenancy agreement has commenced (if a bond was not paid at the beginning of the agreement),
 - b) to provide for guidelines approved by the Minister for Social Housing to specify the classes of tenants in Corporation and AHO residential tenancy agreements who may be required to pay a rental bond during an agreement and to provide for the amount of rental bond payable,
 - c) to provide that the Corporation and the AHO may give a tenant a termination notice, and the New South Wales Civil and Administrative Tribunal (NCAT) may order the termination of a Corporation or AHO residential tenancy agreement, if the tenant fails to pay all or part of a rental bond, whether the bond was required to be paid at the beginning or during the agreement,
 - d) to provide that a tenant in a Corporation or AHO residential tenancy agreement who pays the outstanding rental bond or enters into a repayment plan, after being given a termination notice or order, will not be required to vacate the premises and the residential tenancy agreement will not be terminated,
 - e) to require NCAT to terminate a Corporation residential tenancy agreement if the tenant has been found guilty of a fraud offence under section 69 or 69A of the *Housing Act 2001* unless there are exceptional circumstances,
 - f) to enable certain community housing providers to terminate a residential tenancy agreement of a tenant who is a registrable person (within the meaning of the *Child Protection (Offenders Registration) Act 2000*) in the same way as the Secretary of the Department of Family and Community Services (the FACS Secretary) is able to terminate a residential tenancy agreement of a public housing tenant who is a registrable person,

- g) to provide that the residential tenancy agreement of a registrable person may only be terminated by a community housing provider on the recommendation of the Commissioner of Police and with the approval of the FACS Secretary,
 - h) to require alternative housing to be made available to the registrable person,
 - i) to update offences relating to public housing tenant fraud and to extend the offences so that they apply to fraud arising in relation to rental subsidies or other benefits paid by the FACS Secretary to tenants who are not in public housing,
 - j) to give the FACS Secretary access to information and investigative powers for the purposes of preventing and investigating fraud against the FACS Secretary, similar to the Corporation's existing powers,
 - k) to enable the FACS Secretary to recover any rental subsidy or other benefit paid to a person if the person was not entitled to the rental subsidy or other benefit because it was obtained by fraud,
 - l) to make other minor and consequential amendments.
2. The Bill also makes a consequential amendment to the *Residential Tenancies Regulation 2010* to enable the Corporation and AHO to collect rental bonds from tenants without having to use the online rental bond service established by the Commissioner for Fair Trading.

BACKGROUND

- 3. In her second reading speech, the Minister stated that the Bill represents the next stage in implementing key aspects of the Future Directions for Social Housing in NSW strategy.
- 4. The Minister noted that the Bill will enable the NSW Land and Housing Corporation and the Aboriginal Housing Office the power to take action against tenants that cause serious damage to property or fraudulently seek Government benefits, such as rental rebate fraud.

ISSUES CONSIDERED BY THE COMMITTEE

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

Risk-based bond scheme - right to housing

- 5. The Bill introduces a risk-based bond scheme. Under proposed section 156D, a tenant may be required to pay a rental bond if the tenant:
 - did not pay a rental bond at the time they entered into the social housing tenancy agreement (s156D(3)(a)); and
 - belongs to a class of tenant specified in the rental bond guidelines (s 156D(3)(b)); and
 - is given at least 14 days written notice specifying the amount of the rental bond payable (ss 156D(3)(c)-(d)); and

- the rental bond is determined in accordance with the rental bond guidelines, which will be made publicly available (ss 156D(3)(e), 156D(5)).

6. In her second reading speech, the Minister outlined that section 156D:

...enables the Land and Housing Corporation and the Aboriginal Housing Office to require a tenant to pay a bond at any time during the term of their tenancy agreement, whether that agreement is a fixed-term tenancy or a continuing tenancy, if they were not required to pay a rental bond at the commencement of their tenancy and if they belong to a class of tenant specified in guidelines approved by the Minister for Social Housing. A rental bond will only be required if a tenant has caused significant damage to his or her property in accordance with these Ministerial guidelines.

The Bill permits the Land and Housing Corporation and the Aboriginal Housing Office to require a social housing tenant to pay a rental bond if they belong to a class of tenant specified in the rental bond guidelines. The Committee recognises that the Government should have the means to take appropriate actions against tenants who do not respect the properties they are tenancing. However, given the Bill applies to tenants in social housing there is a real risk that there will be some people who will be unable to obtain or remain in social housing as they cannot afford to pay a bond.

The Committee also notes that there are aspects of the risk-based scheme that remain unclear. For example, it is unclear how a class of tenant will be determined or how long a person will remain classified in this class of tenants. The Minister outlined that this section will be applied where the tenant has caused significant damage to the property. However, how this is to be determined is not detailed in the Bill and may lead to an inconsistent application of the scheme.

The Committee notes Article 11(1) of the *International Covenant on Economic, Social and Cultural Rights* which recognises the right of everyone to an adequate standard of living for themselves and their family, which includes adequate food, clothing and housing. Given the above circumstances, the Committee refers to Parliament whether the requirement for some social housing tenants to pay a rental bond unduly trespasses on their right to housing.

Right to housing – registrable persons

7. Section 58B (1A) and (1B) amend the *Housing Act 2001* and outline provisions for the termination of a concurrent lease of registrable persons in certain circumstances. A concurrent lease of a registrable person may be terminated under this provision by the making of an order with the approval of the Secretary.
8. In her second reading speech, the Minister stated that 'Where the power is used, a registrable person will not be rendered homeless, and it is the requirement of the legislation that other suitable accommodation must be found for the person.' This is outlined in the principal Act under section 58C.

The Bill extends the power of the Secretary to approve the termination of a concurrent lease of a registrable person by order of an approved community provider. This may be seen to trespass on the right to housing of a registrable person. The Committee notes that new sections 58B(1A) and (1B) are still subject

to subsection 58B(2) which requires the Commissioner of Police to recommend that the presence of the tenant at the public housing places any neighbours in the locality or the tenant at risk of being physically harmed or injured. The principal Act also requires the provision of alternate housing for the registrable person in these circumstances. Given these public safety considerations and the provision of alternate housing, the Committee makes no further comment.

Insufficiently subjects the exercise of legislative power to parliamentary scrutiny: s 8A(1)(b)(v) of the LRA

Matters deferred to rental bond guidelines

9. Section 156D outlines that a tenant may be required to pay a rental bond if the tenant belongs to a class of tenant specified in the rental bond guidelines (s 156D(3)(b)) and if the amount of the rental bond is determined in accordance with the rental bond guidelines (s 156D(3)(e)).
10. Section 156D defines the rental bond guidelines as any guidelines approved by the Minister for the purpose of this section. The section also requires the guidelines to be made publicly available.
11. Failure to pay all or part of a rental bond is grounds for terminating a social housing tenancy agreement (s 156C).

The Bill outlines that a tenant may be required to pay a rental bond under section 156D if the tenant belongs to a class of tenant specified in the rental bond guidelines, and the amount of the rental bond is determined in accordance with the rental bond guidelines. The Bill specifies that the guidelines are to be determined by the Minister and made publicly available.

The Committee generally prefers that substantive matters are dealt with in principal legislation. Given that the matters deferred to the rental guidelines includes the definition of 'class of tenant' and the amount of the rental bond, the Committee considers these are matters more appropriately addressed in principal legislation and subject to parliamentary scrutiny. The Committee refers this issue to the attention of Parliament.

Part Two – Regulations

1. Local Government (General) Amendment (Regional Joint Organisations) Regulation 2018

Date published	11 May 2018
Date tabled	15 May 2018
Disallowance date – Legislative Assembly	14 August 2018
Disallowance date – Legislative Council	18 September 2018
Minister responsible	The Hon Gabrielle Upton MP
Portfolio	Local Government

PURPOSE AND DESCRIPTION

1. The object of the Regulation is to amend the *Local Government (General) Regulation 2005* (the LG Regulation) as follows:
 - a) To apply certain provisions of the Regulation to joint organisations and to modify the application of other provisions of the Regulation to joint organisations,
 - b) To require a joint organisation to include certain matters in its charter and to make the charter publicly available within 30 days of adoption of the charter,
 - c) To provide for matters relating to the meetings of joint organisations,
 - d) To provide for the election of chairpersons to joint organisations,
 - e) To provide for the appointment of alternates for voting representatives on the boards of joint organisations and for the conduct of meetings other than in person,
 - f) To require a joint organisation to prepare a statement of strategic regional priorities, an annual revenue statement, an annual statement reporting on the implementation of its strategies and plans for delivery of those priorities and a policy concerning the payment of expenses,
 - g) To specify functions that may not be delegated by a joint organisation,
 - h) To provide for annual financial contributions and other contributions by member councils to joint organisations,
 - i) To provide for matters relating to the staff of joint organisations, including the appointment of first executive officers and staff entitlements on transfers between joint organisations or councils and joint organisations,

- j) To exclude provisions conferring land acquisition powers and provisions relating to the determination of certain charges from applying to joint organisations,
 - k) To provide for other transitional and consequential matters.
2. This Regulation is made under the *Local Government Act 1993* (the LG Act), including sections 400U(5), 400W, 400ZE(1), 400ZF and 400ZH and clause 17B of Schedule 6.

BACKGROUND

3. In November 2017, the NSW Parliament passed the *Local Government Amendment (Regional Joint Organisations) Act 2017*, which provided for the establishment of 'regional joint organisations'. Under the LG Act, such organisations are a partnership of councils that can establish strategic regional priorities, provide regional leadership, and identify and implement opportunities for inter-governmental co-operation on certain matters.
4. In February 2018, the Government then published a draft regulation and regulation consultation guide, and sought feedback from stakeholders.⁴ An implementation guide, which provides further detail on the effect of the regulatory reforms, was then published in May 2018.⁵

ISSUES CONSIDERED BY THE COMMITTEE

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

Access to government information

5. The Regulation modifies the application of certain public notice provisions in the LG Act.
6. Proposed clause 397C(1) provides that section 9 of the LG Act and clause 232 of the LG Regulation do not apply in respect of the first meeting of a joint organisation. Both of these provisions impose public notice requirements in relation to the time and place of meetings and the business to be transacted at such meetings.
7. At the first meeting, the joint organisation may, for example:
- elect the chairperson
 - adopt the draft joint organisation charter for consultation with member councils
 - appoint an interim executive officer and delegate to that officer
 - adopt a code of conduct and administrative procedures
 - adopt a code of meeting practice.⁶

⁴ NSW Office of Local Government, [Supporting joint organisation success: Regulation Consultation Guide](#), February 2018.

⁵ NSW Government, [Joint Organisation Implementation Guidance: Working together for regional communities](#), May 2018.

⁶ *Ibid*, p12.

8. Although there is no requirement to provide notice of the meeting, the implementation guide confirms that the joint organisation 'may' choose to provide such notice and publish the business papers.
9. Clause 397C(3) also provides that subsections 361(2)-(5) of the LG Act do not apply to joint organisations. This means that the joint organisation is not required to publicly exhibit and receive submissions on the draft code of meeting practice.

The Regulation modifies the application of certain provisions in the *Local Government Act 1993*. For example, joint organisations will not be required to give public notice of their first meeting. The draft code of meeting practice will also not need to be publicly exhibited.

The Committee notes that this may restrict access to government information. Given that joint organisations are different to councils, modifying the application of provisions which usually apply to councils may be warranted in some circumstances. However, the Committee notes that there appears to be no publically available information regarding the rationale for these particular modifications and as such draws this matter to the attention of Parliament.

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.