



New South Wales

Local Government and Elections Legislation Amendment (Integrity) Bill 2016

Explanatory note

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

Overview of Bill

The objects of this Bill are:

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

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

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

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

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

Outline of provisions

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

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

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

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

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

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

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

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

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

Schedule 2 Amendment of Local Government Act 1993 No 30

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

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

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

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

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

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

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



New South Wales

Local Government and Elections Legislation Amendment (Integrity) Bill 2016

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New South Wales

Local Government and Elections Legislation Amendment (Integrity) Bill 2016

No. , 2016

A Bill for

An Act to amend the *Election Funding, Expenditure and Disclosures Act 1981* to impose caps on political donations in connection with local government elections and to amend the *Local Government Act 1993* to make further provision with respect to the disqualification of persons from civic office and the disclosure by councillors of their pecuniary interests.

The Legislature of New South Wales enacts:

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1 Name of Act

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This Act is the *Local Government and Elections Legislation Amendment (Integrity) Act 2016*.

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4

2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Election Funding, Expenditure and Disclosures Act 1981 No 78	1
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[1] Section 4 Definitions		3
	Insert in alphabetical order in section 4 (1):	4
	<i>capped State expenditure period</i> —see section 95H.	5
	<i>local government expenditure period</i> means any of the following periods:	6
	(a) in the case of a general election in any year—the period from and including 1 July in that year to the end of polling day for the election,	7
		8
	(b) in any other case—the period from and including the day on which the date of the election is publicly notified by the person conducting the election to the end of polling day for the election.	9
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[2] Section 4 (1), definition of “third-party campaigner”		12
	Omit the definition. Insert instead:	13
	<i>third-party campaigner</i> means:	14
	(a) for a State election—an entity or other person (not being a registered party, elected member, group or candidate) who incurs electoral communication expenditure for a State election during a capped State expenditure period that exceeds \$2,000 in total, or	15
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	(b) for a local government election—an entity or other person (not being a party, elected member, group or candidate) who incurs electoral communication expenditure for a local government election during a local government expenditure period that exceeds \$2,000 in total.	19
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[3] Section 4A Objects of Act		23
	Insert “or in local government” after “in the government of the State” in section 4A (c).	24
[4] Section 55 Meaning of electoral communication expenditure for a State election		25
	Omit “capped expenditure period for the election within the meaning of section 95H” from section 55 (1).	26
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	Insert instead “capped State expenditure period for the election”.	28
[5] Sections 63 (3), 95F (10) (a) and 95I (1)		29
	Omit “capped expenditure period” wherever occurring.	30
	Insert instead “capped State expenditure period”.	31
[6] Section 83 Application		32
	Omit “other than Divisions 2A and 2B” from section 83 (1) (b).	33
	Insert instead “other than Division 2B”.	34
[7] Section 83, note		35
	Omit the note. Insert instead:	36
	Note. Political donations and electoral expenditure are required to be disclosed in connection with both State and local government elections and members. The cap on political donations applies to both State and local government elections and members, but the cap on electoral communication expenditure and public funding of election campaigns only apply to State elections and members.	37
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[8] Section 84 Definitions—general	1
Omit the definition of <i>capped expenditure period</i> from section 84 (1).	2
[9] Section 85 Meaning of “political donation”	3
Omit the note to section 85 (3A). Insert instead:	4
Note. Any such disposition will be a political donation that is required to be disclosed and subject to the caps on political donations under this Part. Any such donation paid into (or held against the assets of) a federal campaign account is not subject to the cap on donations—see section 95B (2).	5 6 7 8
[10] Section 85 (6)	9
Insert after section 85 (5):	10
(6) For the purposes of this Part, a political donation made to or for the benefit of a party is a political donation for a local government election if the donation is paid into (or held as an asset of) the local government campaign account of the party under section 96.	11 12 13 14
[11] Sections 88 (1A) (a) and 93 (1)	15
Omit “capped expenditure period” wherever occurring.	16
Insert instead “capped State expenditure period or local government expenditure period”.	17
[12] Part 6, Division 2A, heading	18
Omit “for State elections”.	19
[13] Section 95AA Application to State elections only	20
Omit the section.	21
[14] Section 95A Applicable cap on political donations	22
Omit section 95A (1). Insert instead:	23
(1) General cap (except for local government elections)	24
The applicable cap on political donations (except for local government elections) is as follows:	25 26
(a) \$5,000 in the case of any such political donation to or for the benefit of a registered party or of a group,	27 28
(b) \$2,000 in the case of any such political donation to or for the benefit of:	29
(i) a party that is not a registered party, or	30
(ii) an elected member, or	31
(iii) a candidate, or	32
(iv) a third-party campaigner.	33
(1A) General cap (for local government elections)	34
The applicable cap on political donations for local government elections is as follows:	35 36
(a) \$5,000 in the case of any such political donation to or for the benefit of a registered party or of a group,	37 38
(b) \$2,000 in the case of any such political donation to or for the benefit of:	39
(i) a party that is not a registered party, or	40
(ii) an elected member, or	41

	(iii) a candidate, or	1
	(iv) a third-party campaigner.	2
	In this subsection, <i>registered party</i> includes a party registered under the <i>Local Government Act 1993</i> .	3 4
	Note. As a result of the adjustments made for inflation under Schedule 1, on the introduction of caps for local government elections the cap of \$5,000 is adjusted to \$5,800 and the cap of \$2,000 is adjusted to \$2,500.	5 6 7
[15]	Section 95A (2), (3) and (5)	8
	Omit “subsection (1)” wherever occurring. Insert instead “subsection (1) or (1A)”.	9
[16]	Section 95A (3A)	10
	Insert after section 95A (3):	11
	(3A) Separate aggregation in relation to local government elections	12
	The provisions of subsections (2) and (3) are to be applied separately to political donations for local government elections and to other political donations.	13 14 15
[17]	Section 95B Prohibition on political donations that exceed applicable cap	16
	Omit “or local government” from section 95B (2) and (3) wherever occurring.	17
[18]	Section 95C Prohibition on donations to more than 3 third-party campaigners	18
	Insert “(whether for a State or local government election)” after “political donations” in section 95C (1).	19 20
[19]	Section 95H Capped State expenditure period	21
	Insert “ <i>State</i> ” before “ <i>expenditure period</i> ”.	22
[20]	Section 96	23
	Omit the section. Insert instead:	24
	96 Requirements for parties	25
	(1) It is unlawful for political donations to a party to be used otherwise than for the objects and activities of the party, including the administration of the party and community activities.	26 27 28
	(2) In particular, it is unlawful for political donations to be used for the personal use of an individual acting in a private capacity.	29 30
	(3) It is unlawful for a party to make payments for electoral expenditure:	31
	(a) for a State election campaign unless the payment is made from the State campaign account of the party kept in accordance with this section, or	32 33
	(b) for a local government election campaign unless the payment is made from the local government campaign account of the party kept in accordance with this section.	34 35 36
	(4) The State campaign account and the local government campaign account of a party are each to be separate accounts with a bank, credit union, building society or other entity prescribed by the regulations.	37 38 39
	(5) The following may be paid into the State campaign account of a party:	40
	(a) political donations made to the party after 1 January 2011 (including the proceeds of the investment or disposal of any political donation of	41 42

property after that date that is held as an asset of the account) other than political donations (or the proceeds of political donations) paid into a local government or federal campaign account,	1
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(b) payments made to the party under Part 5 at any time,	4
(c) money borrowed by the party at any time (other than money borrowed for a local government or federal election),	5
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(d) a bequest to the party,	7
(e) money belonging to the party on 1 January 2011 (including the proceeds of the investment or disposal of any other property belonging to the party on or before that date),	8
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	10
(f) any other money of a kind that is prescribed by the regulations for the purposes of this subsection.	11
	12
(6) However, the following may not be paid into the State campaign account of a party:	13
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(a) a party subscription referred to in section 95D, other than any amount that exceeds the maximum subscription referred to in that section and that constitutes a political donation to the party,	15
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(b) any amount of a political donation to the party that exceeds the applicable cap on political donations to the party under section 95A (1),	18
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(c) any money paid to the party under Part 6A,	20
(d) any other money of a kind that is prescribed by the regulations for the purposes of this subsection.	21
	22
(7) The following may be paid into the local government campaign account of a party:	23
	24
(a) political donations made to the party after 1 July 2016 that do not exceed the applicable cap on political donations to the party for a local government election (including the proceeds of the investment or disposal of any political donation of property after that date for a local government election that is held as an asset of the account),	25
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(b) money borrowed by the party at any time for a local government election,	30
	31
(c) any other money of a kind that is prescribed by the regulations for the purposes of this subsection.	32
	33
(8) However, the following may not be paid into the local government campaign account of a party:	34
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(a) a party subscription referred to in section 95D,	36
(b) any other money of a kind that is prescribed by the regulations for the purposes of this subsection.	37
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(9) This section does not prevent payments being made out of the State campaign account, or the local government campaign account, of a party that are in addition to the payments for electoral expenditure referred to in subsection (3).	39
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[21] Section 96AA Requirements for third-party campaigners	42
Omit “electoral communication expenditure incurred during a capped expenditure period” from section 96AA (1).	43
	44
Insert instead “electoral communication expenditure incurred for a State election during a capped State expenditure period”.	45
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[22]	Section 96AA (1) (a)	1
	Insert “in the State Register of Third-party Campaigners” after “under this Act”.	2
[23]	Section 96AA (1A)	3
	Insert after section 96AA (1):	4
	(1A) It is unlawful for a third-party campaigner to make payments for electoral communication expenditure incurred for a local government election during a local government expenditure period, or to accept political donations for the purposes of incurring that expenditure, unless:	5
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	(a) the third-party campaigner is registered under this Act in the Local Government Register of Third-party Campaigners, and	9
		10
	(b) the third-party campaigner has an official agent, and	11
	(c) the payments are made by, and the donations are made to, that agent.	12
	Note. Section 38C prevents registration of third-party campaigners in the period of 7 days before any local government general election.	13
		14
[24]	Schedule 2 Savings, transitional and other provisions	15
	Insert at the end of the Schedule, with appropriate Part and clause numbering:	16
	Part Provisions consequent on enactment of Local Government and Elections Legislation Amendment (Integrity) Act 2016	17
		18
		19
	Amendments do not apply to local government by-elections before next general election	20
		21
	The amendments made to this Act by the <i>Local Government and Elections Legislation Amendment (Integrity) Act 2016</i> do not apply in relation to a local government by-election for a council that occurs before the next general election for the council after the commencement of that Act.	22
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	Indexation of political donation caps for local government elections in line with indexation for State elections	26
		27
	Schedule 1 applies to an adjustable amount inserted into section 95A by the <i>Local Government and Elections Legislation Amendment (Integrity) Act 2016</i> as if that amount had been inserted in that section on the enactment of that section.	28
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Schedule 2 Amendment of Local Government Act 1993 No 30

[1] Section 275 Who is disqualified from holding civic office?

Omit section 275 (1) (e). Insert instead:

- (e) if he or she is while holding that office, or has been within 7 years before nomination for election, election or appointment to the office, convicted in New South Wales of an offence that is punishable by imprisonment for 5 years or more, or convicted in another State or Territory, or under a law of the Commonwealth, of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (e1) if he or she is while holding that office, or has been within 2 years before nomination for election, election or appointment to the office, convicted of an offence under the *Election Funding, Expenditure and Disclosures Act 1981* that is punishable by imprisonment for 2 years or more, or

[2] Section 448 What interests do not have to be disclosed?

Omit section 448 (g).

[3] Section 490C

Insert after section 490B:

490C Supreme Court order for recovery of monetary benefits as a result of non-disclosure by councillors

- (1) The Departmental Chief Executive may apply to the Supreme Court for an order under this section against a councillor who has been found by the Civil and Administrative Tribunal under this Chapter to have contravened Part 2 (Duties of disclosure).
- (2) The Supreme Court may, if satisfied on the balance of probabilities that the councillor obtained a monetary benefit as a result of a decision made by the council relating to a matter in which the councillor had a pecuniary interest and in respect of which the councillor contravened Part 2:
 - (a) order the councillor to pay the council an amount that the Court is satisfied represents the amount of the monetary benefit acquired by the councillor, or accrued to the councillor, as a result of the decision, or
 - (b) order the councillor to grant the council security over any property of the councillor to secure the payment required by an order under paragraph (a).
- (3) If proceedings are pending in the Civil and Administrative Tribunal that may give rise to a finding in respect of which the Departmental Chief Executive may make application to the Supreme Court for an order under this section, the Supreme Court may, on application by the Departmental Chief Executive, restrain the councillor the subject of the proceedings from disposing or dealing with property of the councillor pending the making and determination of an application for an order under this section.
- (4) In this section:
 - monetary benefit** means any monetary, financial or economic benefit (including an extension of the permitted use of land or the removal of prohibitions or restrictions on the development of land).

[4] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts	1
	2
Insert at the end of the Schedule, with appropriate Part and clause numbering:	3
Part Provisions consequent on enactment of Local Government and Elections Legislation Amendment (Integrity) Act 2016	4
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	6
Definition	7
In this Part:	8
<i>amending Act</i> means the <i>Local Government and Elections Legislation Amendment (Integrity) Act 2016</i> .	9
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Disqualifications from holding civic office	11
The amendment made to section 275 of this Act by the amending Act:	12
(a) does not apply to disqualify a person holding any civic office the person held immediately before the commencement of the amending Act, and	13
	14
(b) subject to paragraph (a), extends to offences committed before the commencement of the amending Act.	15
	16
Supreme Court orders regarding monetary benefits from non-disclosure	17
Section 490C, as inserted by the amending Act, does not apply in relation to a contravention of Part 2 of Chapter 14 that occurred before the commencement of the amending Act.	18
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