PARLIAMENT OF NEW SOUTH WALES

Legislation Review Committee

LEGISLATION REVIEW DIGEST

No 1 of 2006

27 February 2006

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 Legislative Assembly. [Sydney, NSW] : The Committee, 2006, 88 p; 30cm

Chair: Mr Allan Shearan MP

27 February 2006

ISSN 1448-6954

1. Legislation Review Committee—New South Wales

2. Legislation Review Digest No. 1 of 2006

I Title.

II Series: New South Wales. Parliament. Legislative Assembly. Legislation Review Committee Digest; No. 1 of 2006

TABLE OF CONTENTS

Membership & Staff iii

Functions of the Legislation Review Committee iv

Guide to the *Legislation Review Digest* v

Summary of Conclusions vii

Part One – Bills 1

SECTION A: Comment on Bills 1

1. Crimes and Courts Legislation Amendment Bill 2005 1
2. Freedom of Information Amendment (Open Government-Disclosure of Contracts) Bill 2005* 2
3. James Hardie Former Subsidiaries (Winding up and Administration) Bill 2005, James Hardie (Civil Liability) Bill 2005, James Hardie (Civil Penalty Compensation Release) Bill 2005 5
4. Law Enforcement Legislation Amendment (Public Safety) Bill 2005 6
5. Police Amendment (Death and Disability) Bill 2005 14
6. Workers Compensation Legislation Amendment (Miscellaneous Provisions) Bill 2005 15

SECTION B: Ministerial Correspondence — Bills Previously Considered 16

7. Companion Animals Amendment Bill 2005 16
8. Confiscation of Proceeds of Crime Amendment Bill 2005 20
9. Consumer Credit (New South Wales) Amendment (Maximum Annual Percentage Rate) Bill 2005 29
10. Crimes Amendment (Road Accidents) Bill 2005 31
11. State Revenue Legislation Amendment Bill 2005 39
12. Vocational Education and Training Bill 2005 42

Part Two – Regulations 46

SECTION A: Regulations about which the Committee is Seeking Further Information 46

SECTION B: Copies of Correspondence on Regulations 47

1. Centennial Park and Moore Park Trust Regulation 2004 48
2. Companion Animals Amendment (Penalty Notices) Regulation 2005 52
3. Hunter Water (General) Regulation 2005 56
4. Protection of the Environment Operations (Waste) Regulation 2005 59
5. Stock Diseases (General) Amendment Regulation 2005 63
6. Workers Compensation Amendment (Advertising) Regulation 2005 65

Appendix 1: Index of Bills Reported on in 2006 73

Appendix 2: Index of Ministerial Correspondence on Bills 74

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2006..... 75

Appendix 4: Index of correspondence on regulations reported on in 2006 76

*** Denotes Private Member's Bill**

MEMBERSHIP & STAFF

Chairman	**Allan Shearan MP, Member for Londonderry**
Vice Chairman	**Virginia Judge MP, Member for Strathfield**
Members	**Shelley Hancock MP, Member for South Coast** **Robyn Parker MLC** **Paul Pearce MP, Member for Coogee** **Penny Sharpe MLC** **Russell Turner MP, Member for Orange** **Peter Wong MLC**
Staff	Russell Keith, Committee Manager Indira Rosenthal, Senior Committee Officer Mel Keenan, Senior Committee Officer Melanie Carmeci, Assistant Committee Officer
Panel of Legal Advisers The Committee retains a panel of legal advisers to provide advice on Bills as required.	Professor Phillip Bates Professor Simon Bronitt Dr Steven Churches Dr Anne Cossins Professor David Farrier Mr John Garnsey QC Associate Professor Luke McNamara Ms Rachel Pepper Mr Rohan Price Ms Diane Skapinker Ms Jennifer Stuckey-Clarke Professor George Williams
Contact Details	Legislation Review Committee Legislative Assembly Parliament House Macquarie Street Sydney NSW 2000
Telephone **Facsimile** **Email** **URL**	02 9230 3418 02 9230 3052 legislation.review@parliament.nsw.gov.au www.parliament.nsw.gov.au/lrc/digests

FUNCTIONS OF THE LEGISLATION REVIEW 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.

(3) 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.

GUIDE TO THE *LEGISLATION REVIEW DIGEST*

Part One – Bills

Section A: Comment on Bills

This section contains the Legislation Review Committee's reports on Bills introduced into Parliament. Following a brief description of the Bill, the Committee considers each Bill against the five criteria for scrutiny set out in s 8A(1)(b) of the *Legislation Review Act 1987* (see page iv).

Section B: Ministerial correspondence – Bills previously considered

This section contains the Committee's reports on correspondence it has received relating to Bills and copies of that correspondence. The Committee may write to the Minister responsible for a Bill, or a Private Member of Parliament in relation to his or her Bill, to seek advice on any matter concerning that Bill that relates to the Committee's scrutiny criteria.

Part Two – 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 is set out in s 9 of the *Legislation Review Act 1987* (see page iv).

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.

Regulations about which the Committee is seeking further information

This table lists the Regulations about which the Committee is seeking further information from the Minister responsible for the instrument, when that request was made and when any reply was received.

Copies of Correspondence on Regulations

This part of the *Digest* contains copies of the correspondence between the Committee and Ministers on Regulations about which the Committee sought information. The Committee's letter to the Minister is published together with the Minister's reply.

Appendix 1: Index of Bills Reported on in 2005

This table lists the Bills reported on in the calendar year and the *Digests* in which any reports in relation to the Bill appear.

Appendix 2: Index of Ministerial Correspondence on Bills for 2005

This table lists the recipient and date on which the Committee sent correspondence to a Minister or Private Member of Parliament in relation to Bills reported on in the calendar year. The table also lists the date a reply was received and the *Digests* in which reports on the Bill and correspondence appear.

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2005

This table specifies the action the Committee has taken with respect to Bills that received comment in 2005 against the five scrutiny criteria. When considering a Bill, the Committee may refer an issue that relates to its scrutiny criteria to Parliament, it may write to the Minister or Member of Parliament responsible for the Bill, or note an issue. Bills that did not raise any issues against the scrutiny criteria are not listed in this table.

Appendix 4: Index of correspondence on Regulations reported on in 2005

This table lists the recipient and date on which the Committee sent correspondence to a Minister in relation to Regulations reported on in the calendar year. The table also lists the date a reply was received and the *Digests* in which reports on the Regulation and correspondence appear.

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Crimes and Courts Legislation Amendment Bill 2005

2. The Committee has not identified any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

2. Freedom of Information Amendment (Open Government-Disclosure of Contracts) Bill 2005*

7. The Committee has not identified any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

3. James Hardie Former Subsidiaries (Winding up and Administration) Bill 2005, James Hardie (Civil Llability) Bill 2005, James Hardie (Civil Penalty Compensation Release) Bill 2005

1. As the Bills were enacted before the Committee had opportunity to report on them and were for the purpose of facilitating an agreement between the persons, or people representing the interest of the persons affected, the Committee has not analysed these Bills.

4. Law Enforcement Legislation Amendment (Public Safety) Bill 2005

Right to silence: s 87L

35. The Committee notes that the right to silence when questioned is an important rule of law principle and a fundamental human right.

36. However, the Committee notes that this right may appropriately be modified or abrogated when in the public interest.

37. Having regard to the aims of the Bill, and the precedents with respect to vehicles, the Committee does not consider s 87L unduly trespasses on a person's fundamental right to silence.

Right to peaceful assembly: s 87D

44. The Committee notes that the special powers under the Bill and the manner in which they may be exercised have the potential to significantly trespass on the personal right of peaceful assembly.

45. The Committee considers that such special powers must have sufficient checks to ensure that they are only exercised when required to ensure public safety.

46. The Committee notes that the authorisation of special powers can be given by the Commissioner of Police or by a Deputy or Assistant Commissioner of Police where the relevant officer has reasonable grounds for believing that there is a large-scale public disorder occurring or a threat of such a disorder occurring in the near future, and is satisfied that the exercise of those powers is reasonably necessary to prevent or control the public disorder.

47. The Committee refers to Parliament the question as to whether the terms of the Bill unduly trespass upon the right to peaceful assembly.

Privacy: s 87J and s 87K

52. The Committee notes that simply being present in an authorised area is sufficient to subject a person and/or that person's vehicle to being stopped and searched by any police officer.

53. The Committee notes that the exercise of the powers under s 87J and s 87K is a significant trespass on the personal right to privacy.

54. The Committee refers to Parliament whether the absence of any reasonable suspicion requirement in s 87J and s 87K constitutes an undue trespass on a person's right to privacy.

5. Police Amendment (Death and Disability) Bill 2005

2. The Committee has not identified any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

6. Workers Compensation Legislation Amendment (Miscellaneous Provisions) Bill 2005

2. The Committee has not identified any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

SECTION B: Ministerial Correspondence — Bills Previously Considered

7. Companion Animals Amendment Bill 2005

7. The Committee thanks the Minister for his reply.

8. Confiscation of Proceeds of Crime Amendment Bill 2005

17. The Committee thanks the Attorney General for his reply.

9. Consumer Credit (New South Wales) Amendment (Maximum Annual Percentage Rate) Bill 2005

8.	The Committee thanks the Minister for her letter and addressing its concerns about retrospectivity.

10. Crimes Amendment (Road Accidents) Bill 2005

20.	The Committee thanks the Attorney General for his reply.

11. State Revenue Legislation Amendment Bill 2005

4.	The Committee thanks the Minister for his reply.

12. Vocational Education and Training Bill 2005

4.	The Committee thanks the Minister for her reply.

Part One – Bills

SECTION A: COMMENT ON BILLS

1. CRIMES AND COURTS LEGISLATION AMENDMENT BILL 2005

Date Introduced:	29 November 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Bob Debus MP
Portfolio:	Attorney General

The Bill passed all stages in the Legislative Assembly on 29 November 2005 and in the Legislative Council on 30 November 2005. On 1 December 2005 it received the Royal Assent.

Purpose and description

1. The Bill makes miscellaneous amendments relating to bail, courts and law enforcement.

Issues Considered by the Committee

2. The Committee has not identified any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

The Committee makes no further comment on this Bill.

2. FREEDOM OF INFORMATION AMENDMENT (OPEN GOVERNMENT-DISCLOSURE OF CONTRACTS) BILL 2005*

Date Introduced: 1 December 2005
House Introduced: Legislative Assembly
Member Responsible: Ms Clover Moore MP*

Purpose and Description

1. This Bill amends the *Freedom of Information Act 1989* (the Act) so as to require details of major contracts entered into between the Government and the private sector to be published, excluding provisions that are commercial-in-confidence or that would be exempt from public access under that Act.

Background

2. The second reading speech stated:

> In New South Wales, we already have voluntary guidelines for public agencies to disclose the terms of major contracts with the private sector, issued by the Premier's Department.[1] This bill takes the important step of legislating to make those guidelines mandatory and to give them the force of law. I note that the Auditor-General's report to Parliament recommends that to occur.[2] Locating the new legislative provisions within the Freedom of Information Act is consistent with the underlying philosophy that the public has a right to access information. It is also consistent with the approach taken in other jurisdictions. Members of the public have a right to request specific documents on demand, and the Government is obligated to comply unless it can be clearly demonstrated that it is against the public interest to release the information.
>
> This bill further promotes the objectives of the Freedom of Information Act by putting additional obligations on Government agencies to publish summaries of major contracts with the private sector—making them more accessible to the public, and facilitating individual requests for specific documents. The bill includes new "commercial-in-confidence" definitions, to limit the scope for exemptions and clarify the obligations of government agencies.[3]

[1] Premier's Memorandum No. 2000-11, *Disclosure of Information on Government Contracts with the Private Sector,* 27 April 2000, www.premiers.nsw.gov.au/pubx_dload_part4/prem_circs_memos/prem_memos/2000/m2000-11.htm.

[2] Auditor-General's Report to Parliament 2005, *Compliance Review of Agency Disclosure of Information on Government Contracts with the Private Sector*, Volume 5, www.audit.nsw.gov.au/publications/reports/financial/2005/vol5/006_ComplianceReviewOfGovernmentContractswithPrivateSector.pdf

[3] Ms Clover Moore MP, Member for Bligh, Legislative Assembly *Hansard*, 1 December 2005.

The Bill

3. The Bill's key requirement is that, within 90 days of a government contract having been entered into by or on behalf of an ***agency***[4], a summary of the main details of that contract must be published on the agency's internet website and in any other manner approved by the responsible Minister [proposed s 15A(1)].

4. The Bill's definition of a ***government contract*** excludes its application to contracts with a price less than $150,000.[5]

5. The Bill does not limit the details to be published. The minimum details that must be published vary, depending on whether the contract concerned is for less than $5 million or for more than $5 million [proposed s 15A(2)]. In relation to:

   - all contracts to which the Bill applies (ie, contracts with a price exceeding $150,000), particulars to be published include the goods or services to be provided, the amount payable to the contractor, any provisions permitting the variation of that amount and the criteria against which the various tenders were assessed in the case of a contract arising from a tendering process; and
   - contracts with a price exceeding $5 million, *additional* particulars must be published, including details about any future transfers of assets between the parties, any guarantees or undertakings between the parties, and the results of any cost-benefit analysis conducted in connection with the contract.

6. The Bill exempts from publication two types of contractual provisions. First, it exempts the ***commercial-in-confidence provisions*** of a government contract, making such provisions specifically exempt from the public disclosure provisions of Part 3 of the Act [Schedule 1[1], proposed s 15A(3) and [2]-[4]].[6] Secondly, the Bill exempts any other information of a nature that its inclusion in a document would cause the document to be exempt under the Act [proposed s 15A(3)]. Under the Act, for example, Cabinet and Executive Council documents are exempt, as are documents affecting the business affairs of a third party.[7]

---

[4] An ***agency*** is defined in the Bill to include a statutory State owned corporation and its subsidiaries: proposed s 15A(5).

[5] A ***government contract*** is defined in the Bill to exclude "a contract under which the total amount to be paid for the project, or for the goods or services, is less than $150,000": proposed s 15A(5). This definition is also limited to contracts "to undertake a specific project (such as a construction, infrastructure or property development project) or to provide specific goods or services (such as information technology services)".

[6] In relation to a government contract, the Bill defines ***commercial-in-confidence provisions*** as "provisions of the contract that disclosure:
   (a) the contractor's financing arrangements,
   (b) the contractor's cost structure or profit margins, or
   (c) any intellectual property in which the contractor has an interest, or
   (d) any matter whose disclosure would place the contractor at a substantial commercial disadvantage in relation to other contractors or potential contractors, whether at present or in the future".

[7] *Freedom of Information Act 1989*, s 6(1) and Schedule 1.

Issues Considered by the Committee

7. The Committee has not identified any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

The Committee makes no further comment on this Bill.

3. JAMES HARDIE FORMER SUBSIDIARIES (WINDING UP AND ADMINISTRATION) BILL 2005, JAMES HARDIE (CIVIL LIABILITY) BILL 2005, JAMES HARDIE (CIVIL PENALTY COMPENSATION RELEASE) BILL 2005

Date Introduced:	1 December 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Bob Debus MP
Portfolio:	Attorney General

These Bills were introduced into, and passed, both Houses on 1 December 2005.

1. As the Bills were enacted before the Committee had opportunity to report on them and were for the purpose of facilitating an agreement between the persons, or people representing the interest of the persons affected, the Committee has not analysed these Bills.

The Committee makes no further comment on this Bill.

4. LAW ENFORCEMENT LEGISLATION AMENDMENT (PUBLIC SAFETY) BILL 2005

Date Introduced:	15 December 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Bob Debus MP
Portfolio:	Attorney General

1. The Bill passed all stages in both the Legislative Assembly and in the Legislative Council on 15 December 2005. On that same day it received the Royal Assent.

Purpose and Description

2. The Bill's object is to provide for a range of law enforcement and other criminal justice measures to deal with large-scale public disorder in any area for the purposes of securing public safety. For the purposes of the Bill, a public disorder is:

> a riot or other civil disturbance that gives rise to a serious risk to public safety, whether at a single location or resulting from a series of incidents in the same or different locations [s 87A(1)].

3. The Bill's provisions will generally sunset after 2 years [s 87P].

Background

4. On Sunday 11 December 2005, a crowd estimated to be of about 5000 gathered at Cronulla beach after elements in the local community had called for a public showing in response to the previous weekend's reported assault by several individuals of "Lebanese ancestry" on two or three Cronulla beach surf lifesavers.

5. The crowd intially assembled without incident, but alcohol-fuelled violence broke out after a large segment of the mostly white crowd chased a man of middle eastern appearance into a hotel. The ensuing mêlée soon became widespread; in the course of it a number of police, ambulance officers and individual members of the public perceived to be Lebanese were assaulted.[8]

6. The following nights saw incidents of retaliatory violence and vandalism in Cronulla and other suburbs throughout the southern Sydney Metropolitan Area, and an unprecedented police lock-down of the beaches in Sydney and surrounding areas, from Wollongong to Newcastle.[9]

[8] It is noteworthy that Recommendation 8.18 of the 2003 NSW Summit on Alcohol Abuse proposed a trial in Cronulla, evaluated by the Bureau of Crime Statistics and Research, of an increase in the penalty notice from $22 to $220 for drinking illegally in an Alcohol Free Zone.

[9] The riots and subsequent violence received media coverage throughout the world. See, eg, "On the beach: Why the recent riots in Australia should surprise no one", *Boston Globe*, 25 December 2005.

7. On 15 December 2005 Parliament was recalled solely to pass the Bill, and the expanded police powers were first exercised on the night of 17-18 December 2005.[10]

8. The Bill requires the NSW Ombudsman to scrutinise the new powers conferred on police under Part 6A of the Act and provide a detailed report to the Attorney General and Minister for Police in late 2007 [s 87O].

The Bill

Emergency powers - liquor restrictions

9. The Bill amends the *Law Enforcement (Powers and Responsibilities) Act 2002* [LEPaR Act] so that a police officer of or above the rank of Superintendent may:

- authorise police officers to impose an emergency closure of licensed premises (or a prohibition on the sale or supply of liquor from any such premises) in an area, if it will reasonably assist in preventing or controlling a large-scale public disorder. Such a closure or prohibition is limited to a maximum total period of 48 hours [s 87B]; and/or
- establish an emergency alcohol-free zone (in which drinking or the immediate possession of liquor is prohibited) to assist in preventing or controlling a large-scale public disorder [s 87C].

10. Such actions are limited to a maximum total period of 48 hours [s 87B(2) & s 87C(2)].

11. Failing to comply with a direction to close licensed premises or to cease selling or supplying liquor on those premises, under s 87B(3) is an offence attracting a maximum penalty of 50 penalty units (currently $5,500) or imprisonment for 12 months, or both.

12. A person who has received a warning under s 87C(3) in relation to an emergency alcohol-free zone, but who:

- commences to drink liquor in the zone;
- fails to stop drinking liquor in the zone; or
- resumes drinking liquor in the zone,

is guilty of an offence. The maximum penalty is 20 penalty units (currently $2,200).[11]

[10] In the debate on the Bill in the Legislative Assembly, the Minister for Police noted that he had asked the Commissioner of Police to "operate on the assumption that Parliament will pass these laws and to start preparing operating protocols governing their use by the police", and that he had indicated that "the police should be ready this evening to confiscate cars, seize communications devices and, if necessary, set up roadblocks": Hon P C Scully MP, Minister for Police, Legislative Assembly *Hansard*, 15 December 2005.

[11] Section 87C also provides for the seizure within the emergency alcohol-free zone of liquor or any container of such liquor: s 87C(6) & 87C(7).

Emergency powers - lockdown areas and roadblocks

13. The Bill also amends the LEPaR Act to authorise the exercise in public places of special police powers in relation to large-scale public disorders. The Commissioner or a Deputy or Assistant Commissioner of Police may authorise the use of the special powers in a targeted area (or on a road leading to an area) if there is a large-scale public disorder occurring (or a threat of such a disorder in the near future) in the area, and is satisfied that the powers are reasonably necessary to prevent or control the public disorder [s 87D].[12]

14. Such an authorisation may be given for a maximum total period of 48 hours, but may be extended beyond that period with the approval of the Supreme Court [s 87G]. Thus, a "locked-down" area may be cordoned off or road-blocked for two days by NSW Police, without reference to a court, or to the Minister.

15. The special powers under the Bill include a power to cordon off a targeted area (so as to prevent persons entering or leaving the area) or to set up a roadblock on targeted roads (so as to prevent persons travelling by vehicle to participate in a public disorder). In a targeted area or at a roadblock, police officers may exercise powers to stop and search persons and vehicles, require persons to disclose their identity and to seize and detain vehicles, mobile phones and other communication devices for up to 7 days [s 87I – s 87M].

16. In addition, a court may, on the application of a police officer, authorise the continued detention of a vehicle, mobile phone or other communication device under s 87M(1)(a) for an additional period not exceeding 14 days, if satisfied that its continued detention will assist in preventing or controlling a public disorder. More than one extension of the detention may be authorised under this subsection, so long as each extension does not exceed 14 days [s 87M(1)(b)].

Offences of assault, riot and affray

17. The Bill amends the *Crimes Act 1900* as follows:

- the maximum penalty for assault is increased (where the assault is committed during a large-scale public disorder) from 2 years imprisonment to 5 years, or to 7 years if it occasions actual bodily harm [amended s 59A]; and
- the maximum penalty for the offence of riot [s 93B] is increased from 10 years imprisonment to 15 years, and for the offence of affray [s 93C] is increased from 5 years imprisonment to 10 years.

18. The offence of ***riot*** occurs where 12 or more persons who are present together use or threaten unlawful violence (whether or not simultaneously) for a common purpose – which may be inferred from conduct - and the conduct of them, taken together, is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety, each of the persons using unlawful violence for the common purpose.

[12] The Premier noted in the second reading speech that the disorder "need not be constituted by one big incident, but can be constituted by several smaller incidents in different locations": Hon M Iemma MP, Legislative Assembly *Hansard*, 15 December 2005.

19. The offence of ***affray*** occurs where a person uses or threatens unlawful violence towards another, and whose conduct is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety. Such threats may not consist of words alone [s 93C(3)]. If two or more persons use or threaten the unlawful violence, it is the conduct of them taken *together* that must be considered.

20. Furthermore:

- neither riot nor affray requires that a person of reasonable firmness need actually be, or be likely to be, present at the scene – they are simply hypothetical [s 93B(4) & s 93C(4)];
- either offence may be committed in private as well as in public places [s 93C(5) & s 93D(5); and
- each offence contains a mental element of intent [s 93D].

21. The Committee notes that the new maximum penalty for affray applies generally: there is no need for it to occur during a public disorder.

Bail - public disorder offences

22. The Bill amends the *Bail Act 1978* to provide a presumption against bail for the offence of riot or any other offence punishable by imprisonment for 2 years or more that is committed in the course of the accused participating in a large-scale public disorder, or that is committed in connection with the exercise of police powers to prevent or control such a disorder or the threat of such a disorder [new s 8D].

23. The Committee notes that the Bill inserts a new cl 33 into Sch 1 to the Act to the effect that s 8D extends to a grant of bail to a person in respect of an offence committed before its commencement, whether the person was charged with that offence before or after that commencement. Moreover, the operation of cl 33 extends to a review under Part 6 of the Act of a bail decision made before that commencement [Sch 1 cl 33(2)].

24. However, the Committee also notes that a *presumption* against bail does not necessarily mean that it will be appropriate for bail to be refused. In the wake of the application of s 8D by a magistrate, on 27 January 2006 Justice Sully of the NSW Supreme Court overturned a refusal of bail on charges of riot and affray, noting that the amendments did not remove a person's right to bail.[13]

Police powers with respect to vehicles

25. New Division 3 of Part 6A is entitled "Special powers to prevent of control public disorders". However, the Bill also makes *on-going* provision for any police officer to use the special powers under that Division in relation to a vehicle (and any person or thing in or on the vehicle) that he or she has stopped, regardless of whether the use of special powers has been authorised [s 87N].

26. A police officer may exercise the special powers in such circumstances, if he or she:

[13] http://www.smh.com.au/text/articles/2006/01/27/1138319450060.html

- has reasonable grounds for believing that there is a large-scale public disorder occurring or a threat of such a disorder occurring in the near future;
- suspects on reasonable grounds that the occupants of the vehicle have participated or intend to participate in the public disorder;
- is satisfied that the exercise of those powers is reasonably necessary to prevent or control the public disorder; and
- is satisfied that the urgency of the circumstances require the powers to be exercised without an authorisation [s 87N(2)].

Oversight

27. The operation of the Bill is subject to oversight by way of:
    - monitoring reports by the Ombudsman 18 months after the commencement of the powers [s 87O]; and
    - a sunset provision repealing Part 6A on the second anniversary of the commencement of the part, ie, 15 December 2007 [s 87P].

28. Given the extraordinary police powers provided for, and their potential to significantly trespass on fundamental rights, the Committee is of the view that providing a time limit for the operation of the provisions inserted by the Bill is appropriate.

Issues Considered by the Committee

Trespasses on personal rights and liberties [s 8A(1)(b)(i) *LRA*]

29. The Bill trespasses, to a significant degree, on a number of fundamental rights and liberties, recognised under common law and international law. Whether such trespasses are "undue" in part requires consideration of the existence of the threat of public disorder, the extent of that threat, and the effectiveness of the provisions in the Bill in addressing that threat.

Right to silence: s 87L

30. A police officer may request a person whose identity is unknown to the officer to disclose his or her identity if:
    (a) the person is in an area that is the target of an authorisation (whether or not in or on a vehicle); or
    (b) the person is in or on a vehicle on a road that is the target of an authorisation,

    and the police officer reasonably suspects that the person has been involved or is likely to be involved in a public disorder [s 87L(1)].

31. A person who is so requested to disclose his or her identity must not, without reasonable excuse, fail or refuse to comply with the request. The maximum penalty is 50 penalty units (currently $5,500) or 12 months' imprisonment [s 87L(2)].

32. The right to silence is an important rule of law and a basic human right.[14] Nonetheless, there are occasions where the public interest in requiring a person to identify him or herself to a police officer justifies the person being compelled to do so.

33. For example, s 171 of the *Road Transport (General) Act 2005* already provides that an authorised officer may require the driver of a vehicle to do any or all of the following:

- produce his or her driver licence;
- state his or her name; or
- state his or her home address.

34. Refusing to comply with such a request, or stating a false name or home address, is an offence with a maximum penalty of 20 penalty units (currently $2,200) [s 171(2)].

35. The Committee notes that the right to silence when questioned is an important rule of law principle and a fundamental human right.

36. However, the Committee notes that this right may appropriately be modified or abrogated when in the public interest.

37. Having regard to the aims of the Bill, and the precedents with respect to vehicles, the Committee does not consider s 87L unduly trespasses on a person's fundamental right to silence.

Right to peaceful assembly: s 87D

38. The right to peaceful assembly is a further right established by long custom at common law[15] and also at international law.[16] The Committee is concerned that the process of authorisation and the exercise of powers thereunder pose two threats to this right.

39. The first is that the very breadth of the Bill's scope may well result in situations where people not involved in riots or *any* kind of protest, affray or assault, but who are merely bystanders or residents of the targeted area, will be the subject of these powers, eg, searches under s 87J and s 87K.

40. The Committee's concerns are heightened by the fact that, as noted above, the special powers may be exercised by any police officer, whether or not the officer has been provided with or notified of the terms of the authorisation [s 87H(2)].[17] In practice,

[14] The law and policy governing the right to silence is reviewed in the Legislation Review Committee's Discussion Paper, *The Right to Silence* (2005), www.parliament.nsw.gov.au/lrc#inquiries.

[15] Is New South Wales, the right is now governed by statute, the *Summary Offences Act 1988*. See also Hunt J in *Commissioner of Police v Allen* (1984) 14 A Crim R 244; and, more recently, Simpson J in *Commissioner of Police v Rintoul* [2003] NSWSC 662.

[16] Article 21 of the ICCPR provides that no restrictions shall be placed upon the right of peaceful assembly, other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

[17] An authorisation under Part 6A may be given by the Commissioner of Police or by a Deputy or Assistant Commissioner of Police. Such an authorisation may be given orally or by instrument in writing [s 87F(3)]. If

the ambit of the authorisation might be expanded as a result of a genuine mistake by such a police officer as to its terms.

41. The second is that, pursuant to s 87D, an authorisation may be given not only where a public disorder is in fact occurring, but where there is a "threat" of a public disorder occurring in the near future.[18]

42. Whilst the Bill is specifically aimed at riots and civil disturbances - which would tend to be self-evident – the existence of a threat is a matter of opinion, albeit one which ought reasonably to be based on experience and observation. If, for example, a senior police officer believed that a political protest posed a *threat* of public disorder, a targeted area could be declared. Protestors could be detained, their names taken and their mobile phones seized. They could be personally searched, and prevented from leaving the cordoned-off area, where "it is reasonably necessary to do so to avoid a risk to public safety or to the person's own safety" [see s 87I(2)].

43. Such a power to significantly interfere with people's civil rights needs to have sufficient checks to ensure that it is only exercised when required to ensure public safety.

44. The Committee notes that the special powers under the Bill and the manner in which they may be exercised have the potential to significantly trespass on the personal right of peaceful assembly.

45. The Committee considers that such special powers must have sufficient checks to ensure that they are only exercised when required to ensure public safety.

46. The Committee notes that the authorisation of special powers can be given by the Commissioner of Police or by a Deputy or Assistant Commissioner of Police where the relevant officer has reasonable grounds for believing that there is a large-scale public disorder occurring or a threat of such a disorder occurring in the near future, and is satisfied that the exercise of those powers is reasonably necessary to prevent or control the public disorder.

47. The Committee refers to Parliament the question as to whether the terms of the Bill unduly trespass upon the right to peaceful assembly.

Privacy: s 87J and s 87K

48. Pursuant to s 87J(1) and s 87K(1), a police officer may, without a warrant, stop and search:

- a vehicle;

the authorisation is given orally, it must be confirmed by instrument in writing as soon as it is reasonably practicable to do so: s 87F(3).

[18] Note that an authorisation must:
- state that it is given under Division 3 Part 6A;
- describe the general nature of the public disorder or threatened public disorder to which it applies (including the day or days it occurs or is likely to occur);
- describe the area or specify the road targeted by the authorisation; and
- specify the time it ceases to have effect: s 87F(4).

- anything in or on the vehicle;
- a person; and
- anything in the possession of or under the control of the person,

simply if the person or vehicle is in an area or on a road that is the target of an authorisation. There is no requirement that the police officer has any suspicion relating to the person or vehicle.

49. A police officer may detain any such person or vehicle for so long as is reasonably necessary to conduct a search [s 87J(2) and s 87K(3)].

50. Traditionally at common law, the inviolability of a person's property was protected by the need for an appropriately-defined warrant issued by a judicial authority to whom the relevant facts had been provided.[19] Although the circumstances of a public disorder would tend to militate against obtaining a warrant, the Committee is concerned that people may be stopped and searched merely on the basis of their presence in an area, regardless of whether a police officer has any cause to suspect that they are, or were, involved in the disorder.

51. It was noted in the debate on the Bill in the Legislative Council that the Government deliberately decided the powers contained in s 87J and 87K should be random powers, not to be "fettered by reasonable suspicion".[20]

52. The Committee notes that simply being present in an authorised area is sufficient to subject a person and/or that person's vehicle to being stopped and searched by any police officer.

53. The Committee notes that the exercise of the powers under s 87J and s 87K is a significant trespass on the personal right to privacy.

54. The Committee refers to Parliament whether the absence of any reasonable suspicion requirement in s 87J and s 87K constitutes an undue trespass on a person's right to privacy.

The Committee makes no further comment on this Bill.

[19] At international law the concept is expressed in Article 17 of the ICCPR, which provides that:
1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

[20] Hon J J Della Bosca MLC, Special Minister of State, Legislative Council *Hansard*, 15 December 2005

5. POLICE AMENDMENT (DEATH AND DISABILITY) BILL 2005

Date Introduced:	29 November 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Carl Scully MP
Portfolio:	Police

Pursuant to a suspension of Standing Orders, the Bill passed all stages in the Legislative Assembly on 29 November 2005 and in the Legislative Council on 30 November 2005. Under s 8A(2), the Committee is not precluded from reporting on a Bill because it has passed a House of the Parliament or become an Act.

Purpose and Description

1. The Bill amends the *Police Act 1990* and the *State Authorities Superannuation Act 1987* to introduce a new death or incapacity benefits scheme for police officers.

Issues Considered by the Committee

2. The Committee has not identified any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

The Committee makes no further comment on this Bill.

6. WORKERS COMPENSATION LEGISLATION AMENDMENT (MISCELLANEOUS PROVISIONS) BILL 2005

Date Introduced:	29 November 2005
House Introduced:	Legislative Assembly
Minister Responsible:	Hon John Della Bosca
Portfolio:	Commerce

The Bill passed all stages in the Legislative Assembly on 29 November 2005 and in the Legislative Council on 30 November 2005. On 7 December 2005 it received the Royal Assent.

Purpose and Description

1. The Act amends the *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act) and the *Workers Compensation Act 1987* (the 1987 Act) with respect to dispute resolution procedures, insurance obligations, workers, costs and compensation for back injuries.

Issues Considered by the Committee

2. The Committee has not identified any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

The Committee makes no further comment on this Bill.

SECTION B: MINISTERIAL CORRESPONDENCE — BILLS PREVIOUSLY CONSIDERED

7. COMPANION ANIMALS AMENDMENT BILL 2005

Date Introduced:	15 November 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Kerry Hickey MP
Portfolio:	Local Government

Background

1. The Committee reported on this Bill in *Legislation Review Digest No. 15 of 2005.*

2. The Committee wrote to the Minister on 25 November 2005 in relation to clauses 32, 74 and 85, which amended existing offences and increased the penalties. The Committee was concerned that these offences appeared to impose strict liability while being punishable by high monetary penalties and/or terms of imprisonment.

3. The Committee sought the Minister's advice as to the need:

   - to impose strict liability for these offences, rather than requiring a fault element such as intention or recklessness; or

   - to impose such high penalties for strict liability offences.

The Minister's reply

4. In his letter received on 5 January 2006, the Minister advised that strict liability offences "are not uncommon with respect to regulation of activities that are potentially a danger to public health or safety". He also advised that the Bill merely increased the penalties for these offences, which already existed under the Act.

5. The Minister stated that, in setting the new penalty rates, several factors were taken into account, including:

   - anecdotal evidence suggesting that the courts have not treated offences under the Act with the level of seriousness that is justified
   - significant increases in the [CPI] since the penalties were set under the Act and
   - the seriousness with which the community views dog attacks…

6. Further, the Attorney General's Department were consulted on the proposed penalty increases and did not raise any adverse comment.

The Committee's comments

7. The Committee thanks the Minister for his reply.

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

25 November 2005

Our Ref: LRC1632

The Hon Kerry Hickey MP
Minister for Local Government
Level 19, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister

Companion Animals Amendment Bill 2005

Pursuant to its obligations under s 8A of the *Legislation Review Act 1987*, the Committee has considered the above Bill. The Committee will be reporting its consideration of the Bill in its *Legislation Review Digest No 15 of 2005*.

The Committee resolved to write to you in relation to clauses 32, 74 and 85, which amend offences under the *Companion Animals Act 1998* and increase penalties for those offences, and clause 33 which creates a new offence with a very high maximum penalty of 500 penalty units or 2 years imprisonment or both.

These offences appear to impose strict liability, whereby they may be committed even if the person neither intended to do the action nor was reckless or criminally negligent regarding the action that constituted the offence. The Committee has commented that strict liability should be imposed only after careful consideration of all available options. Further, they should be subject to defences where contravention appears reasonable and have only limited monetary penalties and no terms of imprisonment.

The Committee notes the important public interest in protecting people from dangerous dogs and ensuring that owners of such dogs take every precaution to protect the public from their animal. However, the Committee is of the view that very high penalties, especially terms of imprisonment, are generally inappropriate for strict liability offences.

The Committee seeks your advice as to the need to impose strict liability in relation to these offences with such high penalties, rather than requiring a fault element such as intention, recklessness or criminal negligence where such high penalties may be imposed or providing for more moderate penalties where fault is not required, or both.

Yours sincerely

Allan Shearan

Allan Shearan MP
Chairman

Parliament of New South Wales · Macquarie Street · Sydney NSW 2000 · Australia
Telephone (02) 9230 2899 · Facsimile (02) 9230 3052 · Email legislation.review@parliament.nsw.gov.au

New South Wales

The Hon. Kerry Hickey MP
Minister for Local Government

RECEIVED
5 JAN 2006
LEGISLATION REVIEW COMMITTEE

Ref: 05/0230
MIN: 05/1300
Doc ID: A38767

15 DEC 2005

Mr A Shearan MP
Chairman
Legislation Review Committee
Parliament of NSW
Macquarie Street
SYDNEY NSW 2000

Dear Alan Mr Shearan

I refer to your letter dated 25 November regarding the Legislation Review Committee's consideration of the Companion Animals Amendment Bill 2005 (the Bill). As you would be aware, the Bill was assented to on 29 November 2005.

In particular, you write in relation to the increased penalties for offences under sections 16, 16(1A), 51(2) and 56(2) of the Act (items [32], [33], [74] and [85] of the Bill) and seek advice "as to the need to impose strict liability in relation to these offences".

I am advised that strict and absolute liability offences are not uncommon with respect to regulation of activities that are potentially a danger to public health or safety. In these situations the law is concerned with, and demands the highest standard of care from, particular groups of people engaged in activities which require special precautions such as the ownership of dangerous and restricted dogs. The amending legislation therefore addresses continuing community concern about the number of dog attacks, particularly on young children.

In any case, it should be noted that the subject offences were already in place under the *Companion Animals Act 1998* at the time the Bill was introduced, including the offence under section 16(1A) (item [33] of the Bill). The Bill merely proposed to increase the maximum monetary penalties that may be imposed for these offences and to make the offence under section 16(1A) applicable to restricted dogs.

In setting the new penalty amounts, the following factors were taken into account:

- anecdotal evidence suggesting that the courts have not treated offences under the Act with the level of seriousness that is justified
- significant increases in the Consumer Price Index since the penalties were set under the Act and

Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000

- the seriousness with which the community views dog attacks due to the potential for very serious outcomes for persons that are attacked.

Furthermore, following the Government's announcement in May 2005 that it would introduce legislation to ban restricted dogs and strengthen enforcement powers available to councils especially for offences by dangerous and restricted dogs, the Department of Local Government prepared a Principles Paper.

The Paper summarised proposed reforms to the Act that were developed in close consultation with peak companion animals stakeholders. The proposals included increasing maximum penalty amounts under the Act by up to 3 times. The Paper was scrutinised by the Attorney General's Department, which made no adverse comment on the proposed increases.

With respect to the maximum penalty of 2 years imprisonment under section 16(1A), it should be noted that this penalty was already in place under the principal Act and was not inserted or altered by the amending legislation.

The Bill was the Government's response to the clear desire of the community to have safer streets. Dog owners must understand the responsibility they have to the community if they want to own a dog that is a high risk to public safety.

The community has made it clear that dog-related offences are very serious as they can lead to significant injuries and death and the penalties in the *Companion Animals Amendment Act 2005* are in line with these expectations.

I trust that this information clarifies the Committee's concerns.

Yours sincerely

Kerry Hickey MP
Minister

8. CONFISCATION OF PROCEEDS OF CRIME AMENDMENT BILL 2005

Date Introduced:	21 September 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Bob Debus MP
Portfolio:	Attorney General

Background

1. The Committee reported on this Bill in *Legislation Review Digest No. 11 of 2005.* It wrote to the Attorney General on 10 October 2005 to raise a number of issues, to which the Attorney replied on 29 November 2005. These issues, and the Attorney's response, are set out below.

Issues raised and the Attorney General's reply

2. *Strict liability offences and terms of imprisonment*:

3. The Committee sought clarification as to the need to prescribe a term of imprisonment for new strict liability offences made under the Bill.

4. The Attorney General explained that similar existing offences attract similar penalties and "there is no compelling reason" not to follow these precedents.

5. *Self incrimination under proposed section 51A*

6. The Committee sought advice as to why there is no restriction on the use of self-incriminating information that a person may be compelled to give to the Public Trustee or Commissioner under proposed section 51A in civil proceedings or its derivative use in criminal proceedings.

7. The Attorney General replied that freezing notices under that section are similar to restraining orders and the freezing notices provisions are modelled on restraining order provisions under the *Confiscation of Proceeds of Crime Act.* Further, "[t]here is no compelling reason why the consequences for giving a statement in connection with a freezing notice should be different to those for a restraining order."

8. Discrimination and lack of appeal rights under new DSO regime

9. In relation to the new scheme for Damages Supervision Orders (DSOs) under the Bill, the Committee sought advice as to the public interest justifications for:

   (a) discriminating against a person on the ground of mental illness as contemplated by the amendments;

   (b) enabling a court to order a DSO in respect of a person who is able to manage their own affairs and property; and

   (c) failing to provide for a right of appeal against a DSO.

10. The Attorney General advised that the regime is to ensure that damages awarded for medical care and costs are used for their intended purpose. A court will make a supervision order if it is in the best interests of the person concerned. The regime is in the interests of mentally ill offenders and the public. The regime will ensure that mentally ill offenders who receive damages awards have funds available to meet their continuing medical and care needs without having to rely on the public purse. Both the Public Trustee and Protective Commissioner were consulted during the development of the Bill.

11. Reversal of onus of proof

12. In relation to offences under sections 193B - 193D, the Committee sought advice on the need to place a legal burden of proof on a defendant in relation to these offences rather than leaving the burden of proof with the prosecution or placing an evidential burden on the defendant.

13. The Attorney General advised that the money laundering reforms in the Bill are intended to ensure that there are consistent laws across Australia, implement an agreement reached by COAG and are consistent with OECD standards on money laundering.

14. Forfeiture rule

15. In relation to the amendment to the forfeiture rule allowing the Supreme Court to order that it is to apply to a person found not guilty of murder because of mental illness, the Committee sought advice as to:

    (a) the public interest justification for extending the forfeiture rule to a person who has been found not guilty of murder because of mental illness; and

    (b) why the Bill gives no guidance to the Court on the circumstances in which justice might require the Supreme Court to apply the forfeiture rule to a person who has been found not guilty of murder because of mental illness.

16. The Attorney General advised that the amendment enables the Supreme Court to apply the forfeiture rule if it is satisfied that justice requires it. The Supreme Court regularly exercises discretion in the "interests of justice". In this case, the Court is required to consider the conduct of the offender and the deceased person and the effect of applying the rule on the offender or any other person.

The Committee's comments

17. The Committee thanks the Attorney General for his reply.

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

10 October 2005

Our Ref: LRC 1526
Your Ref:

The Hon Bob Debus MP
Attorney General
Level 36 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Attorney General

CONFISCATION OF PROCEEDS OF CRIME AMENDMENT BILL 2005

Pursuant to its obligations under s 8A of the *Legislation Review Act 1987*, the Committee has considered the above Bill. The Committee will be reporting its consideration of the Bill in its *Legislation Review Digest No 11 of 2005*.

The Committee has resolved to write to you to express its concerns and seek your advice on the following matters.

Strict Liability Offences - Schedule 1[59], Schedule 2[2] (proposed section 54G) & Schedule 3 (proposed section 193C)

The Committee notes that these proposed offences appear to be strict liability offences and prescribe a term of imprisonment.

The Committee is of the view that, except in extraordinary circumstances, it is inappropriate for an offence of strict liability to be punishable by a term of imprisonment.

The Committee seeks clarification as to the need to prescribe a term of imprisonment for each of these strict liability offences.

Self-incrimination - Schedule 1[60]

The Committee also notes that proposed section 51A requires a person to give to the Public Trustee or the Commissioner certain information in relation to property and that the person cannot refuse to do so on the ground that the information might tend to incriminate them.

The Committee notes that such information cannot be used in criminal proceedings against the person, except a proceeding in respect of the falsity of the statement. However, it is silent on the use of the statement against the person in civil proceedings or its derivative use in criminal proceedings.

Notwithstanding the important public interest of ensuring that property gained through criminal activity can be accurately identified and seized and forfeited,

Parliament of New South Wales · Macquarie Street · Sydney NSW 2000 · Australia
Telephone (02) 9230 2899 · Facsimile (02) 9230 3052 · Email legislation.review@parliament.nsw.gov.au

the Committee is of the view that the right not to be compelled to incriminate oneself should only ever be abrogated to the extent necessary to achieve a compelling public interest aim. That abrogation also should be proportionate to the aim sought.

For this reason, the Committee is of the view that potentially incriminating information given under compulsion should not normally be able to be used against the person in criminal or civil proceedings, directly or derivatively.

The Committee seeks your advice as to why there is no restriction on the use of self-incriminating information that a person may be compelled to give under proposed section 51A in civil proceedings or its derivative use in criminal proceedings.

Damages Supervision Orders - Proposed Division 2 of Part 7

The Committee notes that the proposed damages supervision order regime treats a person found not guilty of unlawful killing because of their mental illness less favourably than another person found not guilty of unlawful killing on the ground of a different exculpatory defence (eg, self defence). While such differential treatment is only to be imposed when the Court considers it to be in the person's interest, it is not linked to a person's capacity to manage their own affairs, for which there is already provision under the *Protected Estates Act*.

The Committee also notes that the Bill does not provide for a right of appeal against the ordering of a DSO, although the Committee notes that a person can seek revocation of the order.

This can be contrasted with the regime provided for under the *Protected Estates Act* under which a person subject to a management order can appeal the order in the Supreme Court or in the Administrative Decisions Tribunal.

The Committee is of the view that taking over control of a person's assets by the state is a serious infringement of that person's rights. Nonetheless, there are circumstances in which it is appropriate for the state to take control of a person's property and affairs and manage those affairs on behalf of that person. However, these circumstances are limited and must be compelling. Incapacity of a person to manage his or her own affairs is clearly one such circumstance.

In addition, the Committee is of the view that the extent of the infringement should be proportional to the objective sought. Safeguards should be provided to minimise the adverse effect of any infringement. Providing for review of a decision to impose a DSO would be such a safeguard.

The Committee seeks your advice as to the public interest justifications for:

a) discriminating against a person on the ground of mental illness as contemplated by the amendments;
b) enabling a court to order a DSO in respect of a person who is able to manage their own affairs and property; and
c) failing to provide for a right of appeal against a DSO.

Reversal of onus of proof – Schedule 3

Proposed sections 193B, 193C and 193D in Schedule 3 place a legal burden of proof on a defendant in relation to certain defences.

The Committee generally considers that, in those circumstances in which reversing the onus of proof is justified, no more than an evidential burden of proof should normally be placed on a defendant.

The Committee seeks your advice on the need to place a legal burden of proof on a defendant in relation to these offences rather than leaving the burden of proof with the prosecution or placing an evidential burden on the defendant.

Forfeiture rule - Schedule 4[5]

The Committee notes that the effect of the Supreme Court making a forfeiture application order under proposed section 11 is, for the purposes of forfeiture, to treat a person who has been found not guilty of murder as if they had been convicted of that murder.

The Committee is of the view that treating a person who has been found not guilty of a crime as if they had been convicted of that crime is a trespass on their fundamental rights.

The Committee notes that the forfeiture rule will not apply automatically to a person found not guilty of murder because of mental illness but must be ordered by the Supreme Court. The Committee also notes that the Court cannot order the application of the forfeiture rule unless it is satisfied that justice requires the rule to be applied in a particular case.

The Committee notes, however, that the Bill gives no guidance to the Court on what the interests of justice might require, leaving the matter entirely up to the discretion of the Court.

The Committee seeks your advice as to:

a) the public interest justification for extending the forfeiture rule to a person who has been found not guilty of murder because of mental illness; and

b) why the Bill gives no guidance to the Court on the circumstances in which justice might require the Supreme Court to apply the forfeiture rule to a person who has been found not guilty of murder because of mental illness.

Yours sincerely

Peter Primrose MLC
Chairman

NEW SOUTH WALES

ATTORNEY GENERAL

23 NOV 2005

Your ref: LRC1526

Our ref: 05/5543

The Hon Peter Primrose MLC
Chairman
Legislation Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

RECEIVED
29 NOV 2005
LEGISLATION REVIEW COMMITTEE

Dear Mr Primrose

Thank you for your letter of 10 October 2005, seeking my advice on various aspects of the *Confiscation of Proceeds of Crime Amendment Bill 2005* ("the Bill").

I provide the following advice. For ease of reference, I have used the same headings used in your letter.

Strict Liability Offences – Schedule 1 [59], Schedule 2 [2] (proposed s.54G) & Schedule 3 (proposed s.193C)

Schedule 1 [59]
Section 51(1) of the *Confiscation of Proceeds of Crime Act 1989* makes it an offence to hinder or obstruct the Public Trustee in performing his obligations under a restraining order. The offence carries a maximum penalty of 20 penalty units and/or 6 months imprisonment.

Clause [59] of the Bill extends s.51(1) by making it an offence to hinder or obstruct the Public Trustee or Police Commissioner in performing their obligations under a restraining order or a freezing notice. The amendment carries over the existing maximum penalty of 20 penalty units and/or 6 months imprisonment.

The amendment simply extends an existing provision to cover the Police Commissioner and freezing notices. There is no compelling reason why the penalty for hindrance or obstruction in relation to freezing notices should be different to that for hindrance or obstruction in relation to restraining orders.

Schedule 2 [2] (proposed s.54G)
Section 54G makes it an offence to hinder or obstruct the Public Trustee in performing his obligations under a damages supervision order. The offence carries a maximum penalty of 20 penalty units and/or 6 months imprisonment.

Level 36, Governor Macquarie Tower,
1 Farrer Place, Sydney NSW 2000
Telephone: (02) 9228 3071

Postal: PO Box A290, Sydney South NSW 1232
Facsimile: (02) 9228 3166

The offence and penalty attached to it follows existing offences for hindering and obstructing the Public Trustee. There is no compelling reason to depart from the precedent set by existing provisions.

Schedule 3 (proposed s.193C)
See comments below under the heading "Reversal of onus of proof – Schedule 3".

Self-incrimination – Schedule 1 [60]

Section 51A states that:

- a person directed by court order to give a statement to the Public Trustee or Police Commissioner setting out details of property that is the subject of a freezing notice, cannot refuse to do so on the basis of self-incrimination; and
- any statement given to the Public Trustee or Police Commissioner is not admissible against the person in criminal proceedings.

Freezing notices are a form of restraining order and the freezing notice provisions in the Bill are modelled on existing restraining order provisions in the *Confiscation of Proceeds of Crime Act*.

Section 51A follows existing section 45(7) for restraining orders. There is no compelling reason why the consequences of giving a statement in connection with a freezing notice should be different to those for a restraining order.

Damages Supervision Orders – Proposed Division 2 of Part 7

The *Civil Liability Act 2002* limits damages that may be awarded to a mentally ill offender for injuries arising from their criminal conduct to medical and care costs.

The Bill provides for damages supervision orders to ensure that damages awarded for medical and care costs are used for their intended purpose and are not simply dissipated by a mentally ill person.

A court will make a damages supervision order if it is in the best interests of the person concerned. The order will direct the Public Trustee to take control of the funds, hold the funds on trust for the person, and apply the funds to meet the medical and care costs of the person.

A mentally ill person may apply to the court for a damages supervision order to be revoked. A court can revoke an order if it is not in the best interests of the person for the order to continue. While I believe the current revocation provisions are adequate, I will keep this aspect of the legislation under review.

The damages supervision order regime is in the interests of mentally ill offenders and is also in the public interest. The regime will ensure that mentally ill offenders

who receive damages awards have funds available to meet their continuing medical and care needs, without having to rely on the public purse.

Both the Public Trustee and Protective Commissioner were consulted during the development of the Bill.

Reversal of onus of proof – Schedule 3

The money laundering reforms in the Bill implement an agreement reached by the Council of Australian Governments (COAG) at its Summit on Terrorism and Multi-Jurisdictional Crime to reform money laundering laws.

The reforms agreed to by COAG recognise that money laundering transcends jurisdictional boundaries both within Australia and internationally.

The reforms are intended to ensure that there are consistent money laundering laws across Australia, and that no differences exist between jurisdictions which can be exploited by criminals.

The reforms are also consistent with international standards for money laundering laws developed by the OECD's Financial Action Task Force on Money Laundering.

A number of jurisdictions have already implemented the money laundering reforms, while others are in the process of doing so.

The Bill fulfils the commitment by this Government to ensure that nationally consistent money laundering laws are put in place in New South Wales.

Forfeiture rule – Schedule 4 [5]

The common law forfeiture rule operates so that a person who commits an unlawful killing cannot benefit by inheriting from their victim. The rule does not, however, apply where a person is found not guilty of murder by reason of mental illness. Such a person can therefore still inherit from their victim.

The *Forfeiture Act 1982* currently allows the court to modify the effect of the forfeiture rule where a person would otherwise be prevented from inheriting.

The amendment to the *Forfeiture Act* contained in the Bill will allow the court to apply the forfeiture rule and prevent a person found not guilty of murder by reason of mental illness from inheriting.

The court may apply the forfeiture rule in these circumstances if it is satisfied that justice requires it. In determining whether justice requires the rule to be applied, the court must consider:

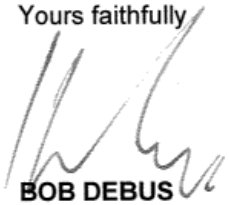
- the conduct of the offender;

- the conduct of the deceased person; and
- the effect of applying the rule on the offender or any other person.

I note that courts regularly exercise discretion in the interests of justice, and that there are existing statutes which require courts to exercise this type of discretion.

Thank you for raising these matters with me.

Yours faithfully



BOB DEBUS

9. CONSUMER CREDIT (NEW SOUTH WALES) AMENDMENT (MAXIMUM ANNUAL PERCENTAGE RATE) BILL 2005

Date Introduced:	19 October 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Diane Beamer MP
Portfolio:	Fair Trading

Background

1. The Committee reported on this Bill in *Legislation Review Digest No. 13 of 2005.*

2. In its report, the Committee noted that the Bill has the effect of altering the terms of existing contracts where the inclusion of all credit fees and interest charges in the calculation of the maximum annual percentage rate results in a maximum rate above that prescribed.

3. The Committee also noted that the purpose of including fees and charges within the maximum annual percentage rate is to prevent fringe lenders from imposing fees and charges far in excess of reasonable costs.

4. The Committee referred to Parliament the question as to whether the retrospective effect of the Bill unduly trespasses on personal rights and liberties.

5.

The Minister's letter

6. In her letter dated 16 December 2005, the Minister advised the Committee that, in view of the Committee's concerns on retrospectivity, the Government has passed an amendment to Schedule 2 [9] in Committee to clarify the intention of the Schedule.

7. The Minister advised that the amendment is to ensure a clear understanding of the requirements of the transitional provisions of the Act.

The Committee's comments

8. The Committee thanks the Minister for her letter and addressing its concerns about retrospectivity.

Minister for Western Sydney
Minister for Fair Trading
Minister Assisting the Minister for Commerce

MO: M05/6148

Mr A F Shearan MP
Chairman
Legislative Assembly Legislation Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Dear Mr Shearan

I refer to your correspondence of 4 November 2005 concerning the Legislation Review Committee Report on the Consumer Credit (New South Wales) Amendment (Maximum Annual Percentage Rate) Bill 2005.

It is not the Government's intention to require credit providers to re-open and recalculate the annual percentage rate on existing credit contracts, unless a credit provider wishes to introduce a new fee or charge, increase the interest rate or extend the terms of the credit contract (except under section 66 of the Consumer Credit Code).

In view of the Committee's concerns about retrospectivity, the Government has clarified the intention of Schedule 2 [9] by passing an amendment in committee which I have attached for the Committee's information. This amendment will ensure that there is clear understanding of the requirements of the transitional provisions.

I trust that this information is of assistance to the Committee.

Yours sincerely

The Hon Diane Beamer MP

16 DEC 2005

Level 33, Governor Macquarie Tower,
1 Farrer Place, Sydney NSW 2000
Tel: (02) 9228 4130 Fax: (02) 9228 4131
Email Address: minwestsyd@beamer.minister.nsw.gov.au

10. CRIMES AMENDMENT (ROAD ACCIDENTS) BILL 2005

Date Introduced:	21 September 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Bob Debus MP
Portfolio:	Attorney General

Background

1. The Bill[21] amended the *Crimes Act 1900* and various other Acts with respect to the obligations of drivers to stop and provide assistance where their vehicles are involved in accidents that cause death or injury.

2. The main object of the Bill was to replace the offence of failing to stop after an accident in s 70 of the *Road Transport (Safety and Traffic Management) Act 1999* [RT(SM) Act] with three new offences, namely:

   - failing to stop and assist where a vehicle driven by that person is involved in an impact causing the death of another person: maximum penalty 10 years' imprisonment;
   - failing to stop and assist where a vehicle driven by that person is involved in an impact causing grievous bodily harm to another person: maximum penalty 7 years' imprisonment; and
   - failing to stop and assist where a vehicle or horse driven/ridden by that person on a road or road related area is involved in an impact causing the death of, or injury to another person: maximum penalty 30 penalty units and/or imprisonment for 18 months for a first offence, or 50 penalty units and/or imprisonment for 2 years for a subsequent offence.

3. On 10 October 2005, the Committee wrote to the Attorney General to:

   (a) seek clarification on the liability of a driver, whose vehicle causes injury or death, leaving the scene of an accident under some mental incapacity;

   (b) seek his advice as to why drivers who are not responsible for their vehicle's impact occasioning death or injury are under a duty to assist while other persons at the scene, who may or may not have had some responsibility for the accident, have no such duty; and

   (c) seek his advice as to why the duty to assist under the Act is not put in terms of what is reasonable, and within a person's power, if that is the level of duty intended.

Minister's response

4. On 15 December 2005 the Committee received the Attorney General's response, which is set out in the following paragraphs.

[21] On 26 October 2005, the Bill received the Royal Assent as the *Crime Amendment (Road Accidents) (Brendan's Law) Act 2005*.

Objective *mens rea* standard

5. Existing principles of criminal responsibility apply to offences under s 52AB of the *Crimes Act* and s 70 *RT(STM) Act*, so that a person is not criminally liable if his or her acts are not voluntary and conscious.

6. Further, an accused is not responsible according to law if the *M'Naghten Rules* are made out. The M'Naghten Rules state:

> To establish a defence on the ground of insanity it must be clearly proved at the time of the committing of the act that the party accused was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he or she was doing or, if he or she did know it, that he or she did not know that what they were doing was wrong.

7. Where acts are voluntary and conscious, mitigating factors arising out of mental or psychological incapacity may be taken into account by courts in determining penalty.

Aggravated offences

8. The new penalties only apply in cases of very serious collisions where death and grievous bodily harm are occasioned. Liability may not be clear cut at the time of a collision, however, ensuring that assistance is given by drivers in the collision is of paramount importance.

9. Some drivers flee to avoid prosecution and penalties for dangerous driving offences. The failure of a driver to stop and assist may mean that crucial evidence is lost to the detriment of a dangerous driving prosecution.

10. The offence must apply where criminal responsibility for dangerous driving cannot be proved, perhaps due to the actions of a driver in fleeing.

11. A dangerous driving offence with a "fail to stop and assist" circumstance of aggravation would continue to provide an advantage to those who drive dangerously and evade criminal responsibility by their actions in fleeing the scene.

12. However, there are a range of safeguards so that the consequences may be appropriate and reflect the seriousness of the facts and circumstances of each case, including:

- police discretion to charge the new indictable s 52AB offences or the summary offence in s 70 *RT(STM) Act;*
- prosecution discretion as to whether to elect to proceed on indictment or prosecute at summary level; and
- the full range of sentencing options available to courts in sentencing.

Duty of care

13. The existing duty to stop and assist under s 70 of the *RT(STM) Act* applies to drivers only. The new offences in s 52AB of the *Crimes Act* do not change this. This is consistent with the position interstate, including Victoria, which has recently

increased the maximum penalty for failing to stop and assist after serious collisions to 10 years imprisonment.

14. Drivers who are directly involved in vehicle collisions may often have contributed to such collisions. Responsibility of drivers for a collision is a matter which may be unclear and disputed at the time of a collision. It is safer to apply the duty to all drivers involved rather than others at the scene in order to secure assistance. The application of the duty to non-drivers is less safe, as responsibility of non-drivers is likely to be a more uncertain and complex question.

15. Assistance which is "necessary" in the circumstances of each case allows the wide variety of individual factual situations to be taken into account in determining the assistance which is prima facie required. There are important subjective limiting words which follow in that the assistance required of the driver must be assistance which is "in his or her power to give."

16. Assistance which is necessary and within the power of the driver to give may be limited out of commonsense by the degree of hazard present. Each case will turn on its own facts.

17. In relation to this aspect of the offence, an objective test may not give full effect to the highly individual circumstances of each case. Coupling an objective test with a subjective test would add complexity particularly for juries before which the s 52AB offences will be tried.

18. As the Hon Diane Beamer MP, Minister for Western Sydney said in the second reading speech in the Legislative Assembly:

> The requirement is to stop and give any assistance necessary that is in the driver's power to give. That is not to say that people must stop to perform first aid when they are not qualified to do so, or rescue someone from a burning car in dangerous circumstances. Obviously commonsense judgment will be required.

19. Further, the common law recognises that in strictly limited circumstances of extraordinary emergency a person may be justified in not complying with a law if it would endanger life depending on the facts of the case. This applies to any offence.

Committee's response

20. The Committee thanks the Attorney General for his reply.

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

10 October 2005

Our Ref: LRC4374/CP1528

The Hon R J Debus, MP
Attorney General
Level 36, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Attorney,

Crime Amendments (Road Accidents) Bill 2005

Pursuant to its obligations under s 8A of the *Legislation Review Act 1987*, the Committee has considered the above Bill. The Committee will be reporting its consideration of the Bill in its *Legislation Review Digest* No 11 of 2005.

Objective *mens rea* standard

The Bill does not explicitly address the liability of a driver suffering from mental or psychological incapacity who leaves the scene of an accident. For example, it is not clear to the Committee how the objective test of "ought reasonably to know" of the death or injury of another person would be applied to a driver who was very confused or in a state of autonomism as a result of the physical or psychological impact of an accident. The Committee therefore seeks your clarification on the liability of a driver, whose vehicle's impact occasions injury or death, leaving the scene of an accident under some mental incapacity.

Aggravated offences

The Committee notes that the maximum penalties for failing to stop and assist under proposed s 52AB(1) and (2) are the same as the penalties for dangerous driving occasioning death or grievous bodily harm under s 52A (1) and (3) respectively, with a view to removing an incentive to flee the scene of an accident to avoid a more severe penalty.

Parliament of New South Wales · Macquarie Street · Sydney NSW 2000 · Australia
Telephone (02) 9230 2899 · Facsimile (02) 9230 3052 · Email legislation.review@parliament.nsw.gov.au

The Committee notes that s 52AB makes no distinction between a driver whose dangerous driving caused the accident and a driver who was not responsible for the accident where both leave the scene. Both would face maximum penalties of 10 or 7 years imprisonment.

The Committee seeks your advice as to why the more severe penalties in s 52AB (compared to those in proposed s 70) may apply to drivers who did not drive in a dangerous manner rather than being limited to some circumstance of aggravation, such as dangerous driving.

Duty of care

The Committee notes that the Bill places an obligation on the driver of a vehicle involved in an impact occasioning death or injury to provide any assistance that may be necessary, and that is in his or her power to give, regardless of whether the driver was responsible for that impact. No such obligation is placed upon other witnesses to the accident or, for example, any pedestrian who may have caused the accident.

The Committee seeks your advice as to why drivers who are not responsible for their vehicle's impact occasioning death or injury are under a duty to assist while other persons at the scene, who may or may not have had some responsibility for the accident, have no such duty.

The Committee also notes that, while the second reading speech stated that common sense judgement will be required in the application of the offences, the actual terms of the Bill appear to place a fairly onerous requirement of assistance that goes beyond that which is merely reasonable.

The Committee seeks your advice as to why the duty to assist is not put in terms of what is reasonable, and within a person's power, if that is the level of duty intended.

Yours sincerely

Peter Primrose MLC
Chairman

NEW SOUTH WALES

ATTORNEY GENERAL

2005/CLRD0800

The Hon Peter Primrose MLC
Chairman
Legislation Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

12 DEC 2005

Dear Mr Primrose,

Thank you for your letter of 10 October 2005 concerning the *Crimes Amendment (Road Accidents) Bill 2005* ("*the Bill*").

The amended Bill was passed by the Legislative Council on 18 October 2005 after having been passed in amended form by the Legislative Assembly on 12 October 2005. The Bill was amended to insert the words "(Brendans Law)" after the words "(Road Accidents)".

I wish to provide the following information in relation to matters raised in your letter concerning the new section 52AB of the *Crimes Act* and the amended section 70 of the *Road Transport (Safety and Traffic Management) Act 1999* (*RT(STM) Act*).

Objective *mens rea* standard

Existing principles of criminal responsibility apply to offences under section 52AB of the Crimes Act and section 70 *RT(STM) Act* so that a person is not criminally liable if their acts are not voluntary and conscious.

Further, an accused is not responsible according to law if the M'Naghten Rules are made out. The M'Naghten Rules state:

> *To establish a defence on the ground of insanity it must be clearly proved at the time of the committing of the act that the party accused was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he or she was doing or, if he or she did know it, that he or she did not know that what they were doing was wrong.*

Where acts are voluntary and conscious, mitigating factors arising out of mental or psychological incapacity may be taken into account by courts in determining penalty.

Level 36, Governor Macquarie Tower,
1 Farrer Place, Sydney NSW 2000
Telephone: (02) 9228 3071

Postal: PO Box A290, Sydney South NSW 1232
Facsimile: (02) 9228 3166

Aggravated offences

The new penalties only apply in cases of very serious collisions where death and grievous bodily harm are occasioned. Liability may not be clear cut at the time of a collision however ensuring that assistance is given by drivers in the collision is of paramount importance.

Some drivers flee to avoid prosecution and penalties for dangerous driving offences. The failure of a driver to stop and assist may mean that crucial evidence is lost to the detriment of a dangerous driving prosecution.

The offence must apply where criminal responsibility for dangerous driving cannot be proved, perhaps due to the actions of a driver in fleeing.

A dangerous driving offence with a 'fail to stop and assist' circumstance of aggravation would continue to provide an advantage to those who drive dangerously and evade criminal responsibility by their actions in fleeing the scene.

However, there are a range of safeguards so that the consequences may be appropriate and reflect the seriousness of the facts and circumstances of each case.

These safeguards include:

- Police discretion to charge the new indictable section 52AB offences or the summary offence in section 70 *RT(STM) Act*;
- Prosecution discretion as to whether to elect to proceed on indictment or prosecute at summary level; and
- The full range of sentencing options available to courts in sentencing.

Duty of care

The existing duty to stop and assist under section 70 of the *RT(STM) Act* applies to drivers only. The new offences in section 52AB of the *Crimes Act* do not change this. This is consistent with the position interstate including Victoria which has recently increased the maximum penalty for failing to stop and assist after serious collisions to 10 years imprisonment.

Drivers who are directly involved in vehicle collisions may often have contributed to such collisions. Responsibility of drivers for a collision is a matter which may be unclear and disputed at the time of a collision. It is safer to apply the duty to all drivers involved rather than others at the scene in order to secure assistance. The application of the duty to non-drivers is less safe as responsibility of non-drivers is likely to be a more uncertain and complex question.

Assistance which is "necessary" in the circumstances of each case allows the wide variety of individual factual situations to be taken into account in determining the assistance which is prima facie required. There are important subjective limiting

words which follow in that the assistance required of the driver must be assistance which is "in his or her power to give."

Assistance which is necessary and within the power of the driver to give may be limited out of commonsense by the degree of hazard present. Each case will turn on its own facts.

In relation to this aspect of the offence, an objective test may not give full effect to the highly individual circumstances of each case. Coupling an objective test with a subjective test would add complexity particularly for juries before which the section 52AB offences will be tried.

As the Hon Diane Beamer MP, Minister for Western Sydney said in the second reading speech in the Legislative Assembly:

> *The requirement is to stop and give any assistance necessary that is in the driver's power to give. That is not to say that people must stop to perform first aid when they are not qualified to do so, or rescue someone from a burning car in dangerous circumstances. Obviously commonsense judgment will be required.*

Further, the common law recognises that in strictly limited circumstances of extraordinary emergency a person may be justified in not complying with a law if it would endanger life depending on the facts of the case. This applies to any offence.

I trust this information clarifies the matters you have raised.

Yours sincerely

BOB DEBUS

11. STATE REVENUE LEGISLATION AMENDMENT BILL 2005

Date Introduced:	10 June 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Michael Costa MLC
Portfolio:	Treasury

Background

1. The Committee reported on this Bill in *Legislation Review Digest No. 8 of 2005.*

2. The Committee wrote to the Minister on 20 June 2005 in relation to section 117B, which makes it an offence of strict liability for a person engaged in the administration of the Fines Act to disclose personal information obtained in the course of that administration. The maximum penalty for this offence is 100 penalty units ($11,000). The Committee was of the view that this penalty was rather high for an offence that does not require the proof of criminal intent.

The Minister's reply

3. In his letter received on 11 January 2006, the Treasurer advised that the penalty under section 117B is consistent with the penalty for the similar offence under section 81 of the Taxation Administration Act 1996 of unauthorised disclosure of personal information. He also advised that aligning the penalty under section 117B of the Fines Act with the offence under section 81 of the Taxation Administration Act was supported by the Privacy Commissioner, the Attorney General's Department and the Crown Solicitor.

The Committee's comments

4. The Committee thanks the Minister for his reply.

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

20 June 2005

Our Ref: LRC1290
Your Ref:

The Hon Andrew Refshauge MP
Treasurer
Level 31 Governor Macquarie Tower
1 Farrer Place, Sydney NSW 2000

Dear Minister

STATE REVENUE LEIGSLATION AMENDMENT BILL 2005

Pursuant to its obligations under s 8A of the *Legislation Review Act 1987*, the Committee has considered the above Bill. The Committee will be reporting its consideration of the Bill in its *Legislation Review Digest No 8 of 2005*.

The Committee resolved to write to you in relation to proposed section 117B. In particular, the Committee is concerned that this provision creates a strict liability offence with a maximum penalty of 100 penalty units.

The Committee is of the view that strict liability offences should only be imposed when clearly in the public interest, and that the severity of punishment should reflect the lack of criminal intent.

In regard to penalties, the Committee notes the Commonwealth Attorney General's Department's guideline that if strict liability is applied the maximum penalty should in general be no more than 60 penalty units (which under Commonwealth law means $6,600 for an individual and $33,000 for a body corporate).

The Committee notes the important purpose of this offence, but is, nonetheless, of the view that 100 penalty units is rather high for an offence that does not include a statutory fault element where that penalty may be applied to individuals.

The Committee seeks your advice as to the need for a penalty of 100 penalty units in this case.

Yours sincerely

Peter Primrose

Peter Primrose MLC
Chairman

Parliament of New South Wales · Macquarie Street · Sydney NSW 2000 · Australia
Telephone (02) 9230 2899 · Facsimile (02) 9230 3052 · Email legislation.review@parliament.nsw.gov.au

Premier and Treasurer of New South Wales
Australia

RECEIVED
11 JAN 2006
LEGISLATION REVIEW COMMITTEE

Contact: Russell Agnew
Telephone: (02) 9228 4936
Our Reference: E24789
Your Reference: LRC1290

- 3 JAN 2006

The Hon Peter Primrose MLC
Chairman
Legislation Review Committee
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Mr Primrose

I refer to your letter to the former Treasurer, the Hon Dr Andrew Refshauge regarding the *State Revenue Legislation Amendment Bill 2005*.

The Bill made a number of amendments to revenue and other legislation, including the *Fines Act 1996*. In particular, the Bill inserted a new section 117B into the *Fines Act*. That section makes it an offence for a person engaged in the administration of the *Fines Act* to disclose personal information obtained in relation to a person in the course of administering or executing the *Fines Act*.

The maximum penalty for such unauthorised disclosure is 100 penalty units. This penalty is consistent with section 81 of the *Taxation Administration Act 1996* which imposes a maximum penalty of 100 penalty units for the unauthorised disclosure of information obtained under or in relation to the administration of a taxation law. The alignment of the penalty provision in the *Fines Act* with the penalty provision in the *Taxation Administration Act* was supported by the Privacy Commissioner, the Attorney General's Department and the Crown Solicitor.

Yours sincerely

Morris Iemma MP
Premier and Treasurer

LEVEL 39, GOVERNOR MACQUARIE TOWER, 1 FARRER PLACE, SYDNEY 2000, AUSTRALIA
TEL: (02)9228 5239 FAX: (02)9228 3935 URL: www.premiers.nsw.gov.au G.P.O. BOX 5341, SYDNEY 2001.

12. VOCATIONAL EDUCATION AND TRAINING BILL 2005

Date Introduced:	19 October 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Carmel Tebbutt MP
Portfolio:	Education & Training

Background

1. The Committee reported on this Bill in *Legislation Review Digest No. 13 of 2005.* It wrote to the Minister on 4 November 2005 in relation to two aspects of the Bill:

   - the reasons for it not containing an inclusive or indicative list of the public interest circumstances that might warrant a decision of the Vocational Education and Training Board (Board) to cancel or refuse accreditation taking immediate effect, without giving the person concerned an opportunity to be heard; and
   - the reasons for the level of fees the Board may impose in relation to accreditation, approval and related matters, not being disallowable by Parliament.

The Minister's reply

2. On the question of procedural fairness and defining the "public interest" circumstances that might warrant a Board decision taking immediate effect, the Minister stated:

> I am advised that the concept of "public interest" appears in many Acts of Parliament without definition, limitation, qualification or explanation. The Bill's use of "public interest" requirements justifying urgent action in exceptional circumstances is consistent with other legislation. Secondly, I am advised that inclusion in the Bill of examples of what constitutes being "in the public interest" would not limit the Board's ability to form the opinion that matters other than those examples justified urgent action… Thirdly, clause 47 of the Bill expressly allows for a review mechanism of relevant decisions made by the Board, including decisions having immediate effect.

3. In relation to the Bill delegating to the Board the power to set fees, without review or disallowance by Parliament, the Minister stated:

> The Board's power to determine fees… is a continuation of existing powers to be found in the Vocational Education and Training Accreditation Act 1990. For example the relevant wording of section 12(2)(c) of the Act:
>
> > "… and must be accompanied by such a fee, as the Board may determine…"
>
> has remained unchanged since its enactment in 1990. It was not considered necessary to change a system of fee determination that has operated satisfactorily since that time, particularly in view of the recent consultation with stakeholders...

The Committee's comments

4. The Committee thanks the Minister for her reply.

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

4 November 2005

Our Ref:LRC 1583
Your Ref:

The Hon Carmel Tebbutt MP
Minister for Education and Training
Level 33, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister

Vocational Education and Training Bill 2005

Pursuant to its obligations under s 8A of the *Legislation Review Act 1987*, the Committee has considered the above Bill. The Committee will be reporting its consideration of the Bill in its *Legislation Review Digest No 13 of 2005*.

The Committee resolved to write to you for advice as to the following matters. In relation to clauses 30(2) and 36(2), the Committee notes that a decision of the Board to cancel, suspend or impose conditions on accreditation or approval can have immediate effect, without giving the person concerned an opportunity to be heard, if the Board is of the opinion that it would be in the public interest.

Given the importance of the right to be heard and the possible adverse impact a decision to cancel or suspend accreditation might have on a person, the Committee seeks your advice as to why the Bill does not contain an inclusive or an indicative list of the public interest circumstances that might warrant a decision of the Board to cancel or refuse accreditation taking immediate effect.

The Committee also notes that the Bill delegates to the Board the power to set the amount of fees it may impose in relation to accreditation, approval and related matters and that any fee so set by the Board is not reviewable or disallowable by the Parliament.

The Committee seeks your advice as to as to why the level of fees the Board can impose under clauses 11(2), 13(3), 16(2), 18(9), 25(2), 27(2), 34(3) & (6) and 35(2) is not disallowable by the Parliament.

Yours sincerely

Allan Shearan MP
Chairman

Parliament of New South Wales · Macquarie Street · Sydney NSW 2000 · Australia
Telephone (02) 9230 2899 · Facsimile (02) 9230 3052 · Email legislation.review@parliament.nsw.gov.au

Carmel Tebbutt MP
Minister for Education and Training

New South Wales
Government

RECEIVED
29 NOV 2005
LEGISLATION REVIEW
COMMITTEE

MT 05/1972

Mr A F Shearan MP
Chairman
Legislation Review Committee
Legislative Assembly
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Dear Mr Shearan

I refer to your letter dated 4 November 2005 in relation to the *Vocational Education and Training Bill 2005*.

The Legislation Review Committee has sought my advice on two aspects of that Bill.

In relation to the first matter, as the Committee has noted, while a decision of the Vocational Education and Training Accreditation Board, whose existence is continued under the Bill, to cancel, suspend or impose conditions on registration, accreditation or approval would ordinarily not be taken without giving an adversely affected party a reasonable opportunity to make representations to the Board in relation to the proposed decision (clauses 15(1)(b), 30(1)(b) and 36(1)(b) of the Bill), the Bill does allow for a decision to be made without such opportunity being given if the Board is of the opinion that it is in the public interest for the decision to have effect immediately (clauses 15(2), 30(2) and 36(2) of the Bill).

As the Committee's report notes:

> "13. The Department [of Education and Training] has advised the Committee that the power in these clauses is intended to be used in circumstances in which, for example, public safety is at stake or in other equally serious circumstances."

You have asked me for advice as to why the Bill does not contain an inclusive or an indicative list of the public interest circumstances that might warrant a decision of the Board to cancel or refuse registration, accreditation or approval taking immediate effect.

Level 33, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 Ph: (02) 9228 5360 Fax: (02) 9228 5366

I am advised that the concept of "public interest" appears in many Acts of Parliament without definition, limitation, qualification or explanation. The Bill's use of "public interest" requirements justifying urgent action in exceptional circumstances is consistent with such other legislation. Secondly, I am advised that inclusion in the Bill of examples of what constitutes being "in the public interest" would not limit the Board's ability to form the opinion that matters other than those examples justified urgent action "in the public interest". Thirdly, clause 47 of the Bill expressly allows for a review mechanism of relevant decisions made by the Board, including decisions having immediate effect.

In relation to the second matter, you have sought advice as to why the level of fees the Board can impose under clauses 11(2), 13(3), 16(2), 18(9), 25(2), 27(2), 34(3), 34(6) and 35(2) is not disallowable by the Parliament.

As the Committee's report notes:

> "21. The Department has advised the Committee that after consultation with stakeholders in 2004, the Board made recommendations to the Minister, amongst other things, on a new level of fees it may levy under the legislation. The Minister endorsed the new fee schedule and agreed that the fee schedule be reviewed annually and adjustments be approved under delegation by the Deputy Director-General in line with changes to the Consumer Price Index."

The Board's power to determine fees as proposed in the Bill is a continuation of existing powers to be found in the *Vocational Education and Training Accreditation Act 1990*. For example, the relevant wording of section 12(2)(c) of that Act:

> "…. and must be accompanied by such fee, as the Board may determine …"

has remained unchanged since its enactment in 1990. It was not considered necessary to change a system of fee determination that has operated satisfactorily since that time, particularly in view of the recent consultation with stakeholders referred to by the Department in its advice to the Committee.

I trust that this advice is of assistance to the Committee.

Yours sincerely

Carmel Tebbutt 28 NOV 2005

Carmel Tebbutt MP
Minister for Education and Training

Part Two – Regulations

SECTION A: REGULATIONS ABOUT WHICH THE COMMITTEE IS SEEKING FURTHER INFORMATION

Regulation	Gazette reference		Information sought	Response Received
	Date	Page		
Centennial Park and Moore Park Trust Regulation 2004	27/08/04	6699	05/11/04 29/04/05	21/04/05 19/01/06
Companion Animals Amendment (Penalty Notices) Regulation 2005	19/08/05	4579	12/11/05	03/01/06
Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Regulation 2005	29/07/05	4033	12/09/05	
Hunter Water (General) Regulation 2005	01/09/05	6837	04/11/05	13/01/06
Protection of the Environment Operations (Waste) Regulation 2005	26/08/05	5745	04/11/05	01/12/05
Stock Diseases General (Amendment) Regulation 2005	30/06/05	3277	12/09/05	09/02/06
Workers Compensation Amendment (Advertising) Regulation 2005	15/06/05	2288	12/09/05	01/12/05

SECTION B: COPIES OF CORRESPONDENCE ON REGULATIONS

Regulation & Correspondence	Gazette ref
Centennial Park and Moore Park Trust Regulation 2004 • Letter dated 29/04/05 from the Committee to the Minister for Tourism and Sport and Recreation. • Letter dated 12/01/06 from the Minister for Tourism and Sport and Recreation to the Committee.	27/08/04 page 6699
Companion Animals Amendment (Penalty Notices) Regulation 2005 • Letter dated 12/09/05 from the Committee to the Minister for Local Government. • Letter dated 21/12/05 from the Minister for Local Government to the Committee.	19/08/05 page 4579
Hunter Water (General) Regulation 2005 • Letter dated 04/11/05 from the Committee to the Minister for Utilities. • Letter dated 09/01/06 from the Minister for Utilities to the Committee.	01/09/05 page 6837
Protection of the Environment Operations (Waste) Regulation 2005 • Letter dated 04/11/05 from the Committee to the Minister for the Environment. • Letter dated 29/11/05 from the Minister for the Environment to the Committee.	26/08/05 page 5745
Stock Diseases (General) Amendment Regulation 2005 • Letter dated 12/09/05 from the Committee to the Minister for Primary Industries. • Letter dated 07/02/06 from the Minister for Primary Industries to the Committee.	30/06/05 page 3277
Workers Compensation Amendment (Advertising) Regulation 2005 • Letter dated 12/09/05 from the Committee to the Minister for Commerce. • Letter dated 28/11/05 from the Minister for Commerce to the Committee.	15/06/05 page 2288

1. Centennial Park and Moore Park Trust Regulation 2004

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

29 April 2005

Our Ref: LRC925

The Hon S C Nori MP
Minister for Tourism and Sport and Recreation
Level 34 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

Centennial Park and Moore Park Trust Regulation 2004

I refer to your letter of 21 April 2005 regarding the above Regulation. The Committee has considered your response and has resolved to write to you again for further clarification.

You note in your letter that the focus of the Trust's policy is to educate, warn and infringe as a last resort. Despite this policy, the Committee notes that, according to the Regulatory Impact Statement prepared for the Regulation, Rangers for the Centennial Park and Moore Park Trust issued some 2,455 penalty notices in the 2003-04 financial year, collecting around $265,000.

In your letter, you also stated that the 10 penalty units for offences under the Regulation "is significantly less than the 40 penalty units imposed under the *Summary Offence Act 1998* for damage to or desecration of a protected place." The Committee considers that this does not explain why various offences in the Regulation, some of which are minor compared to desecration of a protected place, should have relatively severe penalties, in some cases exceeding penalties for equivalent offences under the *Summary Offences Act 1988*. The Committee also notes that damaging or desecrating protected places under s 8(2) of the *Summary Offences Act 1988* carries a maximum penalty of 20 penalty units.

In this regard, the Committee notes that clauses 16(n) and 18(b) impose a 10 penalty unit maximum fine for depositing or throwing any article or substance into any lake, pond, stream or ornamental water, or bathing, wading, washing or swimming in any lake, pond, stream or ornamental water (other than the fountain located in the Centennial Park Cafe forecourt area). In contrast, s 7 of the *Summary Offences Act* imposes only a maximum penalty of 4 penalty units for damaging, entering or causing any foreign material to enter, a fountain.

Parliament of New South Wales · Macquarie Street · Sydney NSW 2000 · Australia
Telephone (02) 9230 2899 · Facsimile (02) 9230 3052 · Email legislation.review@parliament.nsw.gov.au

Also, the maximum penalty of 10 penalty units for using indecent, obscene, insulting or threatening language under cl 25(a) contrasts with the maximum penalty of 6 penalty units for using offensive language in or near, or within hearing from, a public place or a school, unless the defendant had a reasonable excuse, under s 4A of the *Summary Offences Act*.

The Committee again seeks an explanation of why the Regulation prescribes the same maximum penalty for both significant and relatively trivial offences, particularly when some of those penalties are in excess of penalties set by Parliament for equivalent offences in the *Summary Offences Act*.

Yours sincerely

Peter Primrose MLC
Chairman

The Hon Sandra Nori MP
Minister for Tourism and Sport and Recreation
Minister for Women
Minister Assisting the Minister for State Development

RML B23182

Mr Peter Primrose MLC
Chairman
Legislation Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

RECEIVED
19 JAN 2006
LEGISLATION REVIEW COMMITTEE

Dear Mr Primrose

While I understood this matter had been addressed previously I take this opportunity to reply to your letter dated 15 December 2005 regarding the Centennial Park and Moore Park Trust Regulation 2004.

I understand you are seeking clarification of the appropriateness of penalty units and question why, if the Trust's policy is to educate, warn and infringe as a last resort, a considerable number of penalty notices are issued by the Trust.

I note your comment that "the Regulation prescribes the same maximum penalty for both significant and relatively trivial offences, particularly when some of those penalties are in excess of the penalties set by Parliament for equivalent offences in the *Summary Offences Act*", but reiterate that the enforcement of the Regulation assists the Trust in achieving its objectives to protect and enhance the environment; to provide a quality recreational experience for all park users; and to enhance visitor safety and enjoyment.

You cite as an example "depositing or throwing any article or substance into any lake, pond, stream or ornamental water, or water, or bathing, wading, washing or swimming in any lake, pod, stream or ornamental water (other than the fountain located in the Centennial Park Café forecourt area)". Centennial Parklands' ponds form part of the overall irrigation system for the Parklands, and support a wide array of flora and fauna. It is critical to the ongoing operation of the Parklands that the pond system be protected and it is for this reason that the penalty units are greater than that of a fountain as appropriate under s 7 of the *Summary Offences Act 1988*.

In determining the penalty units for each clause, the Trust assessed the legislative instruments of similar agencies such as the *Royal Botanic Gardens and Domain Trust Regulation 2002; Parramatta Park Trust Regulation 2002;* and *Sydney Olympic Park Regulation 2001*.

As you may note, the more severe penalties are issued with regard to the protection of flora and fauna, for example under s 16 (b) "remove, uproot, or cause damage to, or remove a part from, a tree, shrub, plant or other vegetation", the maximum penalty of $500 exists. The Trust considers that such a penalty is justified in protection of the essence and heritage of Centennial Parklands, that is, its landscape and wildlife.

Level 34, Governor Macquarie Tower, 1 Farrer Place, SYDNEY NSW 2000
Telephone: (61 2) 9228 5055 Facsimile: (61 2) 9228 4544

In your letter you comment that "despite the Trust's policy to educate, warn and infringe as a last resort the Trust issued 2,455 penalty notices in the 2003-04 financial year, collecting around $265,000." As Centennial Parklands attracts more than 5 million visits per year, the rate of infringement is negligible at 0.05%. I am advised that the majority of infringements are issued for parking related offences, usually in well signposted areas, and the practice of "educate, warn and infringe" applies for most offences listed under the Regulation.

Yours sincerely

SANDRA NORI MP
Minister for Tourism and Sport and Recreation
Minister for Women
Minister Assisting the Minister for State Development

12 JAN 2006

2. Companion Animals Amendment (Penalty Notices) Regulation 2005

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

12 September 2005

Our Ref: LRC1429

The Hon Kerry Hickey MP
Minister for Local Government
Level 19, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

Companion Animals Amendment (Penalty Notices) Regulation 2005

The Committee considered the above Regulation at its meeting of 12 September 2005, pursuant to its obligations under s 9 of the *Legislation Review Act 1987*.

The Committee resolved to write to you regarding the new penalties for penalty notice offences under the Regulation.

The Committee notes that the Regulation provides for penalty notice amounts that are over half or equal to the maximum penalty for a number of offences.

The Committee considers that the lack of discretion in the amount of the penalty notice that can be applied in particular circumstances makes a high amount generally inappropriate for penalty notices, especially for offences that may readily be committed inadvertently or with a reasonable excuse.

The Committee is also concerned that the penalty notice amounts may undermine the purpose of a penalty notice scheme by providing little incentive for offenders not to contest any penalty in court.

The Committee is further concerned that the penalty notice amounts do not appear to reflect the relative seriousness of the offences as set by Parliament in the maximum penalties for the offences. In particular, the Committee notes that the penalty notice amounts treat an offence under s 16(1) of the *Companion Animals Act 1998* as the same, irrespective of whether the dog concerned was restricted or dangerous.

The Committee is also concerned that the penalty notice amounts for some of the offences do not appear to reflect the relative risk to public safety of the conduct penalised, as compared to other penalty notice offences (eg speeding)

Parliament of New South Wales · Macquarie Street · Sydney NSW 2000 · Australia
Telephone (02) 9230 2899 · Facsimile (02) 9230 3052 · Email legislation.review@parliament.nsw.gov.au

that penalise conduct which has a potentially stronger connection with public safety risks.

The Committee notes that the Commonwealth Attorney General's Department and the Australian Law Reform Commission recommend that penalty notice amounts not exceed 20% of the maximum penalty for an offence.

Therefore, the Committee seeks your advice as to the reason for the level of the penalty notice amounts and, if it considered that the maximum penalties set by Parliament are inadequate, what action is being taken to address this.

Yours sincerely

Peter Primrose MLC
Chairman

New South Wales
The Hon. Kerry Hickey MP
Minister for Local Government

Mr Allan Shearan MP
Chairman
Legislation Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Ref: 05/1330
MIN: 05/0469
Doc ID: A31494

21 DEC 2005

Allan,
Dear Mr Shearan

I refer to the Legislation Review Committee's letters of 12 September and 15 December 2005 concerning the review of the recently amended Companion Animals Regulation 1999 (the Regulation) and the preliminary report that has been provided for comment. Due to an oversight, the delay in responding to you is regretted.

I would like to take the opportunity to provide further background on these amendments and respond to the concerns that have been raised.

On 3 May 2005 the Premier announced that legislation would be introduced to prohibit the breeding, sale, acquisition or supply of restricted dogs, which are predominantly pit bull terriers. The Government is also committed to providing stronger controls and enforcement powers to both protect the community from dogs that might pose a danger for various reasons and encourage responsible dog ownership.

Detailed consultation with the Local Government and Shires Associations, the Rangers Institute and peak companion animals stakeholders confirmed the community's desire for stronger penalties for irresponsible dog owners.

The increased penalty notice amounts for restricted and declared dangerous dogs are one part of an overall strategy to achieve this. These dogs are a high risk to public safety and the increase in penalty amounts reflects the community's concerns about how these dogs are managed in the community. The consequences of one of these dogs attacking are very serious for the person or animal that is attacked. Owners of these dogs need to understand that if they are irresponsible in how they control their dog, severe penalties apply.

The Government also created a new offence for minor dog attacks to give authorities greater power to deal decisively and efficiently with dog attacks dependent on the severity. Prior to the inclusion of this offence, councils were required to take all dog attack matters to court, which is very time consuming and results in councils not proceeding with minor cases.

Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Phone: (61 2) 9228 3333 • Fax: (61 2) 9228 5551

The concern about offences under section 16(1) of the Act being treated the same irrespective of whether the dog is restricted or declared dangerous is noted. The intention is that this offence should only be used for minor dog attacks and that serious dog attacks should still be dealt with in Court to enable a higher penalty to be imposed. The Department of Local Government has provided advice to councils to outline how this offence should be used.

It is acknowledged that some penalty notice amounts are now over 50% of the maximum penalty under the Act. This is a short-term situation. I expect to be introducing amending legislation in the upcoming parliamentary session that will increase the maximum penalty amounts for offences so that penalty amounts do not exceed 20% of the maximum penalty under the Act.

The Act provides strict control requirements for restricted and declared dangerous dogs due to the high risk they pose if they interact with humans and other animals. A declared dangerous dog will have already attacked or threatened to attack humans or other animals so there is a higher risk of a serious outcome if these dogs are involved in an attack.

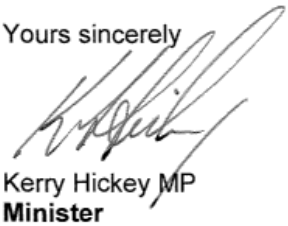
Owners of restricted and declared dangerous dogs are made aware of the control requirements and the penalties that apply to restricted and declared dangerous dogs. A dog owner that allows their restricted or declared dangerous dog to commit an offence has no right to claim that it was inadvertent or that there was a reasonable excuse. The outcome of an attack will be serious for the person or animal involved.

The Government is committed to encouraging responsible dog ownership through introducing new laws to better protect the community from dog attacks. There will also be a strong focus on educating members of the community, particularly children, on how to relate to dogs.

With the new laws and increased education, I am confident that dog owners can continue to enjoy the benefits of having a companion animal in their household, while the higher risk and more dangerous dogs are properly controlled.

I trust that this information clarifies the concerns raised.

Yours sincerely



Kerry Hickey MP
Minister

3. Hunter Water (General) Regulation 2005

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

4 November 2005

Our Ref: LRC1499

The Hon Carl Scully MP
Minister for Utilities
Level 36, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister

Hunter Water (General) Regulation 2005

At its meeting of 4 November 2005, the Legislation Review Committee considered the *Hunter Water (General) Regulation 2005* under s 9 of the *Legislation Review Act 1987* and, for the purposes of s 9(1A) of that Act, resolved to review and report to Parliament on the Regulation.

The Committee noted that the restrictions on doing plumbing and drainage work in the Regulation did not include exemptions relating to owners and occupiers of dwellings repairing taps or showerheads or installing water restricting or flow regulating devices as provided in clauses 7(1A) and 16(4) of the *Sydney Water Regulation 2000*.

The Committee understands from advice from your office that Hunter Water does not discourage owners and occupiers from fixing taps or showerheads. The Committee also notes that the NSW Code of Practice for Plumbing and Drainage states that "[a]n Authority may permit the changing of tap washers and fitting of water saving devices by the property owner or occupier, within its area of operations."

The Committee nevertheless notes that the terms of clauses 5, 6 and 15 each make it an offence, punishable by 200 penalty units for a corporation or 100 penalty units in any other case, for owners and occupiers to fix taps and showerheads, and that the terms of these offences are not dependent on any provisions of the Code.

The Committee therefore seeks your advice on the effect of the Regulation on owners and occupiers fixing taps and showerheads and installing water restricting devices to tap end fittings in dwellings.

Parliament of New South Wales · Macquarie Street · Sydney NSW 2000 · Australia
Telephone (02) 9230 2899 · Facsimile (02) 9230 3052 · Email legislation.review@parliament.nsw.gov.au

The Committee also noted that clause 16(2)(a) of the Regulation requires that water restriction notices be published in the Gazette ***or*** in a newspaper circulating in the area of operations of the Corporation.

The Committee further notes that the Hunter Water Customer Contract (which is a schedule to the Operating Licence) indicates that Hunter Water "will publish, in major newspapers throughout our Area of Operations, our drought supply conditions" and "will also make every reasonable effort to notify you in your next account of drought supply conditions, where applicable."

However, given that such notices create offences with penalties up to 50 penalty units ($5,500), the Committee considers it appropriate that the notices be required to be published in ***both*** the Gazette, to ensure the law is set out in a central public record, ***and*** in a newspaper circulating in the area.

Yours sincerely

Allan Shearan MP
Chairman

NEW SOUTH WALES

Minister for Police
Minister for Utilities
Leader of the House

RECEIVED
13 JAN 2006
LEGISLATION REVIEW COMMITTEE

DEUS Ref: 05/2536

- 9 JAN 2006

Mr Allan Shearan MP
Member for Londonderry
Chairman
Legislation Review Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Shearan

I refer to your letter regarding the Legislation Review Committee's concerns about several provisions in the *Hunter Water (General) Regulation 2005*.

I referred your Committee's concerns to the Department of Energy, Utilities and Sustainability. The Department has consulted with Hunter Water Corporation, and both have advised that they concur with the Committee's suggestions relating to the inclusion of clauses allowing the fitting of tap washers and water saving devices by owners and notifying water restrictions in both the Government Gazette and local newspapers.

I am advised that necessary steps will be taken to have the *Hunter Water (General) Regulation 2005* amended to include those provisions.

Thank you for bringing these matters to my attention.

Yours sincerely

CARL SCULLY MP
Minister for Utilities

Level 36, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 Telephone: (02) 9228 4455 Facsimile: (02) 9228 4633

4. Protection of the Environment Operations (Waste) Regulation 2005

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

4 November 2005

Our Ref: LRC1473
Your Ref:

The Hon Bob Debus MP
Minister for the Environment
Level 36 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister

Protection of the Environment Operations (Waste) Regulation 2005

The Committee considered this Regulation and resolved to write to you for advice in relation to the reversal of the onus of proof under clause 45 in relation to the offence of applying residue waste to certain land.

The Committee notes that this clause requires a defendant to "to establish" that the waste that was applied to the land had been lawfully sold as a soil improving agent or a trace element product within the meaning of the *Fertilisers Act 1985*. The defence requires the defendant to prove that the product applied to the land was not "residue waste" as defined, but another substance.

The Committee notes that the effect of this clause is to shift the onus of proof of a material element of the offence to the defendant, contrary to the presumption of innocence and the obligation of the prosecutor to prove the offence beyond reasonable doubt.

A provision reversing the onus of proof may not necessarily be contrary to the presumption of innocence if it is within reasonable limits. The Committee has generally considered that a reasonable limit for a reversal of the onus of proof would involve placing no more than an evidential burden of proof on a defendant, whereby the defendant points to evidence that suggests a reasonable possibility that the matter exists or does not exist.

However, by requiring a person to "establish" that the product applied was not "residue waste" but another product lawfully supplied as fertiliser places a legal burden of proof on the defendant requiring them to prove or disprove this matter to establish their innocence.

Parliament of New South Wales · Macquarie Street · Sydney NSW 2000 · Australia
Telephone (02) 9230 2899 · Facsimile (02) 9230 3052 · Email legislation.review@parliament.nsw.gov.au

The Committee seeks your advice on the need to place a legal burden of proof on a defendant in relation to this offence rather than leaving the burden of proof with the prosecution or placing an evidential burden on the defendant.

Yours sincerely

Allan Shearan MP
Chairman

NEW SOUTH WALES

MINISTER FOR THE ENVIRONMENT

In reply please quote: MOF20382

Mr Allan Shearan MP
Chairman of the Legislation Review Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

29 NOV 2005

Dear Mr Shearan

Thank you for your letter concerning the Protection of the Environment Operations (Waste) Regulation 2005. I understand that you are seeking advice in relation to clause 45 of the Regulation, in particular the onus of proof on a defendant who is charged with an offence of applying residue waste to land.

The Government considers it necessary to create an offence to apply residue waste to land in order to prevent the inappropriate application of waste to land under the guise of "beneficial re-use". These regulatory provisions aim to prevent potential contamination of land and water, and to protect human health.

There have been instances where potentially harmful wastes have been applied to land as fertilisers. For example, I am aware that in 2003 the Environment Protection Authority (EPA) received reports from local residents of foul odours emanating from a farming property. Investigations revealed that a farmer was receiving what he thought was fertiliser from a waste company. In fact, this material contained chemicals such as petroleum and heavy metals in unacceptable levels that exceeded the EPA guidelines. The application of toxic waste to land in this manner risks harm to agriculture, the environment and human health.

The NSW Government's policies on sustainability include encouraging the beneficial use of waste rather than simply disposing of it. However, this is appropriate only when the waste materials can be safely re-used or recycled and when such use would not cause harm to agriculture, the environment and human health.

The substances defined in the Regulation as residue waste are generally the by-products of industrial processes and may contain harmful contaminants. The Regulation defines "residue waste" to be any of the following substances (and includes any substance incorporating, mixed with or made from any of the following substances):

(a) fly ash or bottom ash from any furnace;
(b) lime or gypsum residues from any industrial or manufacturing process;
(c) residues from any industrial or manufacturing process that involves the processing of mineral sand;
(d) substances that have been used as catalysts in any oil refining or other chemical process;
(e) foundry sands and foundry filter bag residues;
(f) residues from any industrial or manufacturing process that involves the refining or processing of metals or metallic products; or
(g) any substance that is hazardous waste, industrial waste or Group A waste.

Level 36, Governor Macquarie Tower,
1 Farrer Place, Sydney NSW 2000
Telephone: (02) 9228 3071

Postal: PO Box A290, Sydney South NSW 1232
Facsimile: (02) 9228 3166

I understand that some of the above prohibited substances may contain toxic components such as heavy metals and/or persistent organic compounds such as certain pesticides, polycyclic aromatic hydrocarbons, polyhalogenated biphenyls, dioxins and furans.

A precautionary approach has been adopted in defining the categories of materials that are prohibited. However, the Department of Environment and Conservation recognises that there may be bona fide beneficial uses of these materials in certain circumstances, and so the Regulation also provides the EPA with the capacity to exempt certain persons, premises, areas and activities from the prohibition. This can either be granted as a specific exemption or as a general exemption.

Offence of applying residue waste to land – onus of proof

Under clause 45 of the Regulation it is an offence if a person applies residue waste, or causes or permits residue waste to be applied, to any land that is used for the purpose of growing vegetation including, but not limited to, land used for agricultural, horticultural, silvicultural, pastoral or environmental rehabilitation purposes. A person has a defence to this offence if they can establish that the waste that was applied to the land had been lawfully sold as a soil improving agent or a trace element product within the meaning of the *Fertilisers Act 1985*. Essentially, this defence covers the situation where a defendant has engaged in lawful agricultural practices.

It will be the defendant who has the knowledge of all the facts concerning how the substance that was applied to land was purchased, including for example, where it was purchased and from whom. It is an important component of the Act that fertilisers are sold by dealers in accordance with the requirements of Part 3 of the Act. Although possible, it would be very difficult for the prosecution to prove beyond reasonable doubt that a substance had not been sold within the meaning of the Act.

It is important to note that the defendant would only have to establish this defence on the balance of probabilities, rather than the higher standard of beyond reasonable doubt.

Further, the Committee should note that the EPA would always consider its prosecution guidelines when deciding whether or not to prosecute someone for this offence. The EPA would investigate whether or not a substance applied to land was lawfully sold as a soil improving agent or a trace element product within the meaning of the Fertilisers Act as part of its inquiry into whether a proposed prosecution had reasonable prospects of success. Although the EPA would undertake this inquiry, the specifics of this element of the offence would always be within the defendant's knowledge. However, the EPA would not take action where it had information that indicated a substance was, or was likely to come within the terms of this defence.

If you require any further information about this issue, please contact Mr Mark Gorta, Manager, Waste Management Section, Department of Environment and Conservation, on 9995 5622.

Yours sincerely

Bob Debus

5. Stock Diseases (General) Amendment Regulation 2005

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

12 September 2005

Our Ref: LRC 1368

The Hon Ian Macdonald, MLC
Minister for Primary Industries
Level 30 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister

Stock Diseases (General) Amendment Regulation 2005

Pursuant to its responsibilities under s 9 of the *Legislation Review Act 1987*, the Committee considered the above Regulation at its meeting of 12 September 2005.

The Committee notes that clause 10A of the Regulation purports to prescribe a maximum penalty for bovine spongiform encephalopathy-related offences higher than that which appears to be authorised by the regulation-making power in the *Stock Diseases Act 1923*.

The Committee seeks your advice regarding the extent to which the penalty provisions are valid, given this discrepancy.

The Committee's view is that, if the maximum penalty that may be imposed under subclauses 10A(2) and (3) of the Regulation is, in fact, 50 penalty units, it brings uncertainty, and thereby erodes confidence in the law to have it purport to impose a different amount.

Accordingly, the Committee seeks your advice regarding what action is being taken to resolve the matter expediently.

Yours sincerely

Peter Primrose

Peter Primrose MLC
Chairman

Parliament of New South Wales · Macquarie Street · Sydney NSW 2000 · Australia
Telephone (02) 9230 2899 · Facsimile (02) 9230 3052 · Email legislation.review@parliament.nsw.gov.au

MINISTER FOR NATURAL RESOURCES
MINISTER FOR PRIMARY INDUSTRIES
MINISTER FOR MINERAL RESOURCES

NEW SOUTH WALES

Level 33 Governor Macquarie Tower
1 Farrer Place SYDNEY NSW 2000 AUSTRALIA
Telephone: (02) 9228 3344
Facsimile: (02) 9228 3452
e-mail: macdonald.office@macdonald.minister.nsw.gov.au

MPI05/3794

The Hon. Peter Primrose MLC
Chairman
Legislation Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Dear Mr Primrose Peter

Thank you for your letter of 12 September 2005 concerning the maximum penalty that may be imposed under subclauses 10A(2) and (3) of the *Stock Diseases (General) Amendment Regulation 2005*. I apologise for the delay in responding to this correspondence.

On behalf of the Legislation Review Committee, you sought advice regarding the action to be taken to resolve the matter of a maximum of 100 penalty units being imposed under clauses 10A(2) and (3) of the Regulation in relation to the testing of stock for Bovine Spongiform Encephalopathy. This maximum penalty was higher than is authorised by the regulation making power in the *Stock Diseases Act 1923*.

The maximum number of penalty units imposed under this clause has now been corrected and is reduced to 50 penalty units by an amendment to the Regulation by the *Statute Law (Miscellaneous Provisions) Act (No 2) 2005 No 98* which was assented to on 24 November 2005.

Yours sincerely

Ian Macdonald

IAN MACDONALD MLC

6. Workers Compensation Amendment (Advertising) Regulation 2005

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

12 September 2005

Our Ref: LRC 1321

The Hon John Della Bosca MLC
Minister for Commerce
Level 30 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

Workers Compensation Amendment (Advertising) Regulation 2005

Pursuant to its responsibilities under s 9 of the *Legislation Review Act 1987*, the Committee considered this Regulation at its meeting on 12 September 2005.

The Committee resolved to write to you to express its concern that this Regulation may trespass unduly on personal rights and liberties. As this Regulation is similar to the *Legal Profession Amendment (Advertising) Regulation 2005*, the Committee is writing in similar terms to the Attorney in relation to that Regulation.

Access to Justice

The Committee has identified the following concerns with the Regulation. First, the Committee is of the view that expanding the blanket prohibition on the advertising of certain legal services could have the effect of denying some members of the general public information about where to go to for the expert advice they need in order to enforce their rights. It may also deny some members of the public the opportunity to find out about their rights in the first place.

Those most likely to have their rights adversely affected in this way are those with the fewest resources and least ability to gain this information from other sources. The fact that the Regulation includes community legal centres (CLC), albeit with two important but limited exceptions, may compound any trespass on the right to access to justice of these people as they are most likely to use the services of CLCs.

Parliament of New South Wales · Macquarie Street · Sydney NSW 2000 · Australia
Telephone (02) 9230 2899 · Facsimile (02) 9230 3052 · Email legislation.review@parliament.nsw.gov.au

CLCs work together with other community groups (eg the NSW Council of Social Service - NCOSS) in informing disadvantaged people of the services that are available to them, including legal services. The Committee notes that under the Regulation, NCOSS for example, could no longer share information about legal services of CLCs relating to work injury if that amounted to an advertisement. As the definition of "advertisement" under the Regulation is very broad, the prohibition could severely inhibit dissemination of information of this type, further limiting access to justice.

The Committee notes that the legal aid commission, which does similar work on a similar non-profit, public interest basis as CLCs, is exempted from the prohibition on advertising work injury services. By contrast, under this Regulation CLCs are only exempted in relation to one area of their work (ie discrimination) and while this exception is important, it is limited and somewhat arbitrary.

In fact, CLCs provide many of the legal services that legal aid commissions are no longer funded to provide. People with legitimate legal claims who cannot get help from legal aid and who cannot afford private legal services often go to CLCs for assistance. By plugging the gap in this way, CLCs play a unique role in providing access to justice.

Given the similarity between CLCs and the legal aid commission, and the very important role that CLCs play in providing access to justice to the disadvantaged, especially in a time of limited funding for legal aid, it is unclear to the Committee why CLCs are not treated in the same manner as legal aid commissions and exempted from the prohibitions on advertising under the legislation.

It is also not clear to the Committee that the objective of the Regulation could not have been achieved by alternative means that would not have the same adverse effect on the right to have access to justice.

Strict Liability

The Committee is concerned that the new offences under the Regulation appear to be strict liability offences and reiterates its view that strict liability offences should be:

- imposed only after careful consideration of all available options;
- subject to defences wherever possible where contravention appears reasonable; and
- have only limited monetary penalties.

The Committee notes with concern that the maximum penalties for the new strict liability offences under this Regulation are quite substantial and apply without distinction to individuals, non-profit community legal centres and corporations.

Reversal of onus of proof

The new offences under the Regulation reverse the onus of proof, inconsistent with the presumption of innocence, by providing in clause 78A that a lawyer or agent is taken to have published or caused to be published an advertisement

under the Regulation in two circumstances unless the lawyer or agent "proves" that they "took all reasonable steps to prevent the advertisement being published".

The Committee has commented on this issue previously and has generally considered that a reasonable limit for a reversal of onus of proof would involve placing no more than an evidential burden on a defendant, as defined in the Commonwealth Criminal Code (s 13.3). However, the Regulation, by requiring that a barrister or solicitor "prove" that they took all reasonable steps to prevent the publication of the advertisement, imposes the higher, legal burden of proof.

Unclear definition of material element of the offence

The Committee is also concerned that the new offence of publishing a work injury advertisement may not be sufficiently clearly defined under the Regulation. In particular, the definition leaves open a large area of uncertainty as to what sorts of publications might fall within the definition and so constitute a criminal offence.

Without a clear definition, it is difficult for members of the public to know what acts might constitute a criminal offence. If crimes are not clearly defined, people who genuinely believe that they are acting lawfully in a particular circumstance may find that they have, in fact, broken the law.

While the Committee is aware that there are some complex areas of criminal law in which it is difficult fully to define the elements of the crime, in the interests of fairness, every effort should be taken in drafting legislation that creates new offences to be as clear and precise as possible.

Advice sought

In relation to these concerns, the Committee seeks your advice as to:

1. Why, in the interests of the right to access to justice, CLCs are not exempt from the prohibition on advertising, both under clause 75 and under clause 80C, in the same manner as the legal aid commission, given their very close similarities;
2. The necessity for making the new offence under clause 80C a strict liability offence;
3. The justification for imposing such a high penalty for the new offence under new clause 80C, given that the offence does not include a statutory fault element and that the penalty may be applied to individuals;
4. The need to reverse the onus of proof so that an accused lawyer or agent must prove that they took all reasonable steps to prevent the publication of the advertisement;
5. The need to place a legal rather than an evidential burden of proof on a lawyer or agent under new clause 78A; and
6. Whether the definition of "advertisement" can be further defined both to reduce the "grey area" present in the current wording and to

limit the adverse effect of the Regulation on a person's right to access justice.

Yours sincerely

Peter Primrose MLC
Chairman

Special Minister of State
Minister for Commerce
Minister for Industrial Relations
Minister for Ageing
Minister for Disability Services
Assistant Treasurer
Vice President of the Executive Council

Ref: WC01341/05
A34988

The Hon Peter Primrose MLC
Chairman Legislation Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

28 NOV 2005

Dear Mr Primrose

I refer to your correspondence dated 15 September 2005 in relation to the *Workers Compensation Amendment (Advertising) Regulation 2005* (the Regulation) and the concerns you have raised with that legislation.

The Regulation strengthens the provisions of existing prohibitions on work injury services by lawyers and agents in Part 21 of the *Workers Compensation Regulation 2003* and extends those provisions to persons other than lawyers and agents.

The restrictions on non-lawyers have been implemented to prevent the apparent circumvention of the advertising restrictions by businesses that were not legal firms, but nevertheless targeted their advertising at persons who may have had work injury claims. This behaviour had the potential to completely undermine the restrictions on advertising in work injury matters.

As noted in the second reading speech introducing the *Legal Profession Legislation Amendment (Advertising) Act 2003*, the manner in which lawyers' services are advertised and marketed can have a detrimental effect on both the court system and the availability of affordable insurance. The Regulation is a necessary part of ensuring the ongoing viability of a scheme of insurance for injured workers.

It should be noted that the provisions of the Regulation are not intended to prevent legitimate public comment in good faith about work injury and are not intended to interfere with the delivery in good faith of legal education to the legal profession.

In response to the specific questions you raised:

1. *Why, in the interests of the right to access to justice, community legal centres are not exempt from the prohibition on advertising, both under clause 75 and under 80C, in the same manner as the Legal Aid Commission, given their very close similarities:*

Level 30 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000, Australia
Tel: (02) 9228-4777 Fax: (02) 9228-4392 E-Mail: office@smos.nsw.gov.au

The Regulation is limited to restricting advertising in relation to work injury services. Apart from this specific limitation and that relating to personal injury advertising, Community Legal Centres are able to advertise their legal services generally.

It was considered inappropriate to permit Community Legal Centres to advertise the availability of work injury and personal injury legal services when private lawyers and law firms are prohibited from doing so.

Exemptions for Community Legal Centres were granted for advertising services in connection with discrimination because it was specifically identified by the Combined Community Legal Centres Group (NSW) Ltd and the Shoalcoast Community Legal Centre Inc. as possible problems for them. The Government considered it was appropriate in these instances to clarify that such advertisements would not constitute an offence.

2. *The necessity for making the new offence under clause 80C a strict liability offence:*

   The strict liability offence under clause 80C is an appropriate one given the narrow distinction between the act of placing an advertisement and the intention to place an advertisement. The defence of honest and reasonable mistake of fact is available to those who inadvertently contravene a strict liability offence.

3. *The justification for imposing such a high penalty for the new offence under new clause 80C, given that the offence does not include a statutory fault element and that the penalty may be applied to individuals:*

   The Government considers the penalties are set at an appropriate level to deter persons from breaching the Regulation. Penalties need to take into account the financial benefit that may result from a breach and be set sufficiently high to be an effective deterrent.

4. *The need to reverse the onus of proof so that an accused lawyer or agent must prove they took all reasonable steps to prevent the publication of the advertisement:*

   The Government considered that requiring a lawyer or agent to prove they took all reasonable steps to prevent the publication of the advertisement was necessary in order to ensure the prohibition was effective and to prevent the few unscrupulous practitioners from 'turning a blind eye' to the placing of advertisements for their legal practice.

   A similar approach has been adopted in many other areas where there are comparable issues:

   - Tobacco advertising (section 61B, *Public Health Act 1991*);
   - Environmental matters (Chapter 5, *Protection of the Environment Operations Act 1997);*
   - Possession of stolen property (section 527C, *Crimes Act 1900*); and

- Occupational health and safety (section 26, *Occupational Health and Safety Act 2000*).

5. *The need to place a legal rather than an evidential burden of proof on a lawyer or agent under new clause 78A:*

   Please refer to the response in 4.

6. *Whether the definition of "advertisement" can be further defined both to reduce the "grey area" present in the current wording and to limit the adverse effect of the Regulation on a person's right to access justice:*

   The Government considers that the definition as currently drafted is as clear and precise as possible and does not unreasonably affect a person's right to access justice.

Yours sincerely

John Della Bosca MLC

Appendix 1: Index of Bills Reported on in 2006

	Digest Number
Crimes and Courts Legislation Amendment Bill 2005	1
Freedom of Information Amendment (Open Government-Disclosure of Contracts) Bill 2005	1
James Hardie (Civil Liability) Bill 2005	1
James Hardie (Civil Penalty Compensation Release) Bill 2005	1
James Hardie Former Subsidiaries (Winding up and Administration) Bill 2005	1
Law Enforcement Legislation Amendment (Public Safety) Bill 2005	1
Police Amendment (Death and Disability) Bill 2005	1
Workers Compensation Legislation Amendment (Miscellaneous Provisions) Bill 2005	1

Appendix 2: Index of Ministerial Correspondence on Bills

Bill	Minister/Member	Letter sent	Reply	Digest 2005	Digest 2006
Companion Animals Amendment Bill 2005	Minister for Local Government	25/11/05	15/12/05		1
Confiscation of Proceeds of Crime Amendment Bill 2005	Attorney General	10/10/05	23/11/05	11	1
Crimes Amendment (Road Accidents) Bill 2005	Attorney General	10/10/05	12/12/05	11	1
Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill 2005	Attorney General	23/05/05		6	
State Revenue Legislation Amendment Bill 2005	Treasurer	20/06/05	03/01/05	8	1
Vocational Education and Training Bill 2005	Minister for Education and Training	04/11/05	28/11/05	13	1

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2006

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Law Enforcement Legislation Amendment (Public Safety) Bill 2005	R,N				

Key

R Issue referred to Parliament
C Correspondence with Minister/Member
N Issue Noted

Appendix 4: Index of correspondence on regulations reported on in 2006

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2006
Centennial Park and Moore Park Trust Regulation 2004	Minister for Tourism and Sport and Recreation	29/04/05	19/01/06	1
Companion Animals Amendment (Penalty Notices) Regulation 2005	Minister for Local Government	12/09/05	21/12/05	1
Hunter Water (General) Regulation 2005	Minister for Utilities	04/11/05	09/01/06	1
Protection of the Environment Operations (Waste) Regulation 2005	Minister for the Environment	04/11/05	29/11/05	1
Stock Diseases (General) Amendment Regulation 2005	Minister for Primary Industries	12/09/05	07/02/06	1
Workers Compensation Amendment (Advertising) Regulation 2005	Minister for Commerce	12/09/05	28/11/05	1