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Legislation Review Committee

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Mel Keenan, Senior Committee Officer
Rachel White, Committee Officer

Panel of Legal Advisers

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Mr 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

02 9230 3418

Facsimile

02 9230 3052

Email

legislation.review@parliament.nsw.gov.au

URL

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.

Part One – Bills

SECTION A: COMMENT ON BILLS

1. CRIMINAL PROCEDURE FURTHER AMENDMENT (EVIDENCE) BILL 2005

Date Introduced: 23 March 2005
House Introduced: Legislative Assembly
Minister Responsible: The Hon Bob Debus MP
Portfolio: Attorney General

Purpose and Description

1. The Bill amends the *Criminal Procedure Act 1986* (the CPA) to:
 - impose a duty on a court hearing any criminal proceeding to disallow improper questions that are put to witnesses in cross-examination;
 - prevent the circulation, and the unauthorised copying, of sensitive evidence;
 - require any part of proceedings for a sexual offence in which evidence is given by the complainant to be held in camera;
 - confer an entitlement on a complainant in such a case to have one or more persons present near the complainant when giving evidence;
 - simplify and standardise the coverage of various provisions of the Act that relate to the protection of a complainant in sexual offence proceedings; and
 - make it clear that a complainant in a sexual offence proceeding is entitled to give evidence by use of arrangements to restrict contact between the complainant and the accused person, instead of by the use of closed-circuit television, whether or not closed-circuit television facilities are available in the proceedings.
2. The Bill also consequentially amends the *Children (Criminal Proceedings) Act 1987*, the *Crimes Act 1900*, the *Evidence Act 1995* (Evidence Act) and the *Evidence (Children) Act 1997*; provides for savings and transitional matters; and makes minor amendments by way of statute law revision.

Background

3. The Bill is part of the Government's program of the reform of the law relating to sexual assault prosecutions.
4. It was stated in the second reading speech that:

Criminal Procedure Further Amendment (Evidence) Bill 2005

[s]exual assault complainant evidence must include precise and explicit details of sexual acts and of intimate sexual violence...There are many reasons for the low rate of reporting by sexual assault victims: a fear of reprisals; a wish to protect the offender; to keep the family together; shame; embarrassment; and, in some cases, fear or suspicion of the criminal justice system.

By making it easier for complainants to give evidence...these reforms will encourage reporting and encourage those victims who do choose to report to see the legal process through.¹

5. The Attorney General also stated that the Government is committed to the process of reform:

without sacrificing any of the principles, such as the right to a fair trial, that we as a society hold dear.²

The Bill

Improper questions

6. The Bill provides that a court must disallow a question put to a witness in cross-examination, or to inform the witness that it need not be answered, if the question:
- (a) is misleading or confusing;
 - (b) is unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive;
 - (c) is put to the witness in a manner or tone that is belittling, insulting or otherwise inappropriate; or
 - (d) has no basis other than a sexist, racial, cultural or ethnic stereotype [proposed new s 275A(1)].³
7. However, a question is *not* a disallowable question merely because it:
- challenges the truthfulness of the witness or the consistency or accuracy of any statements made by the witness; or
 - requires the witness to discuss a subject that could be considered to be distasteful or private [proposed new s 275A(3)].
8. As a result of this amendment, s 41 of the *Evidence Act 1995* will no longer apply to the cross-examination of witnesses in criminal proceedings, but will continue to apply to civil proceedings [proposed new s 275A(7)].⁴

¹ The Hon R J Debus MP, *Legislative Assembly Hansard*, 23 March 2005.

² The Hon R J Debus MP, *Legislative Assembly Hansard*, 23 March 2005.

³ The factors which may currently be taken into account by the court in determining whether a question should be disallowed are extended to include the witness's ethnic and cultural background, the language background and skills, and level of maturity and understanding: proposed s 275A(2) of the *Criminal Procedure Act 1986*. The duty imposed on the court by the new provision applies whether or not an objection is raised to a particular question: a failure to exercise that duty will not affect the admissibility of any evidence given in response to a question.

⁴ Section 41(1) of the *Evidence Act 1995* provides that a court *may* disallow a question put to a witness in cross-examination, or inform the witness that it need not be answered, if the question is:

- (a) misleading; or

Sensitive evidence

9. Under the Bill, a thing that contains or displays an image of a person (referred to as the *protected person*) is *sensitive evidence* if:
- (a) the image is obscene or indecent;
 - (b) providing a copy of the image to another person without the protected person's consent would interfere with the protected person's privacy; or
 - (c) the image was taken after the death of the protected person [proposed new s 281B(1)].⁵
10. The Bill prevents the unauthorised circulation or copying of such sensitive evidence by:
- (a) allowing a prosecuting authority to refuse to provide an accused person with a copy of the sensitive evidence [proposed new s 281C]; but providing for an alternative means by which the accused person is to be given access to view, but not copy, the sensitive evidence [proposed new s 281D];
 - (b) allowing the prosecuting authority to retain or regain possession of sensitive evidence, or copies of sensitive evidence, tendered in criminal proceedings [proposed new s 281E]; and
 - (c) creating offences for the unauthorised or improper copying or circulation of sensitive evidence [proposed new s 281F].
11. The Attorney General noted that the aim of these amendments is:
- not only to prevent the re-victimisation of sexual assault complainants and to prevent them from feeling further embarrassment and shame but also to protect the privacy and dignity of all other victims, including those who have tragically lost their lives.⁶

Evidence of complainant in sexual offence proceedings to be given in camera

12. The Bill provides that any part of proceedings in respect of a prescribed sexual offence in which evidence is given by a complainant must be held in camera, unless the court otherwise directs [proposed new s 291].
13. This applies even if the complainant gives evidence by means of closed-circuit television, or other technology, or under any alternative arrangements available to the complainant [proposed new s 291(2)].⁷

(b) unduly annoying, harassing, intimidating, offensive, oppressive or repetitive.

⁵ The following are examples of sensitive evidence:

- (a) a photograph of an alleged sexual assault victim, taken in connection with a criminal investigation or criminal proceedings, that shows the person's genitalia or otherwise shows the person in a state of undress;
- (b) a video, held or seized by a prosecuting authority, showing a person committing a sexual offence;
- (c) a computer hard drive, held or seized by a prosecuting authority, containing images of child pornography;
- (d) a photograph of a deceased person taken in connection with a post mortem examination; and
- (e) a photograph of a deceased person taken at a crime scene: proposed s 281B(2).

⁶ The Hon R J Debus MP, *Legislative Assembly Hansard*, 23 March 2005.

Criminal Procedure Further Amendment (Evidence) Bill 2005

14. The court may direct the evidence to be given in open court only if a party to the proceedings requests it, and the court is satisfied that:
 - (a) special reasons in the interests of justice require the part of the proceedings to be held in open court; and
 - (b) the complainant consents to giving his or her evidence in open court [proposed new s 291(3)].
15. The Bill specifically states that the principle that proceedings for an offence should generally be open or public in nature, or that justice should be seen to be done, does *not* of itself constitute such special reasons [proposed new s 291(4)].

Support person or persons for complainant in sexual offence proceedings

16. The Bill confers on a complainant who gives evidence in sexual offence proceedings an entitlement to have one or more persons chosen by the complainant present near the complainant, and within the complainant's sight, when the complainant gives evidence in the proceedings [proposed new s 294C].
17. An accused person may object to a complainant's choice of support person if the choice is likely to prejudice the accused person's right to a fair trial, eg, if the proposed support person is a witness [proposed new s 294C(4)].

Simplification and standardisation of sexual offence provisions

18. At present, various provisions of the CPA provide a complainant in proceedings for a sexual offence with special protections when it comes to giving evidence, being questioned by or on behalf of the accused person, and other matters. However, there is no standard definition of the types of offences to which those provisions apply.
19. The Bill provides for a new, comprehensive definition of ***prescribed sexual offence*** to cover *all* offences of a sexual nature (including repealed offences) under the *Crimes Act 1900* and various related offences.⁸

Arrangements for giving evidence of complainant

20. Currently, the CPA allows a complainant in sexual offence proceedings to give evidence from a place other than the courtroom by means of closed-circuit television facilities or other technology that enables communication between that place and the courtroom. If such technology is unavailable, the complainant may give evidence by use of alternative arrangements to restrict contact between the complainant and the accused person.

⁷ The court retains a discretion to direct that other parts of the proceedings, or the entire proceedings, be held in camera: proposed s 291A(1).

⁸ The various provisions of the *Criminal Procedure Act 1986* which provide special protection to a complainant in proceedings for a sexual offence, including the proposed new provision to allow a record of the original evidence of a complainant to be tendered as evidence in any retrial proceedings and existing provisions relating to compellability of child complainants and sexual assault communications privilege, are amended so that they all apply in respect of all proceedings for a prescribed sexual offence.

21. The Bill clarifies that the complainant is entitled to choose to give evidence by use of those alternative arrangements whether or not the technology is available for the giving of evidence by closed-circuit television [proposed new s 294B(3)].

Issues Considered by the Committee

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

Retrospectivity: proposed Schedule 2 Part 8:

22. Proposed Sch 2 Part 8 to the CPA provides that the Bill's amendments extend to proceedings already instituted or partly heard.
23. The Committee is concerned to identify any retrospective effect of legislation that may adversely affect any person.
24. The Committee recently considered similar amendments in relation to the *Criminal Procedure Amendment (Evidence) Bill 2005*.⁹ The Committee noted the practice of the Queensland Scrutiny of Bills Committee of characterising the impact of proposed retrospectivity by considering whether an individual has legitimate expectations under the existing law, and whether he or she could reasonably rely on those expectations.¹⁰

Legitimate expectations

25. An accused person may be said to have a legitimate expectation that his or her trial will be conducted according to existing common law and statutory laws, in particular, the fair trial principle as elaborated by the High Court.¹¹
26. Part of this legitimate expectation is that such a trial would be conducted on the basis of the existing provisions of the CPA and the Evidence Act.
27. However, the application of proposed Sch 2 Part 8 to current proceedings means that such a legitimate expectation cannot be relied upon in relation to proceedings instituted or part heard *before* its commencement.

Right to a fair trial

28. As with the *Criminal Procedure Amendment (Evidence) Bill 2005*, the legitimate expectations of a defendant under the fair trial principle must be balanced against the needs of complainants of sexual assault, and of the community generally.
29. The rights of a defendant under the fair trial principle are not absolute, and are subject to "the interests of the Crown acting on behalf of the community".¹²

⁹ Legislation Review Digest No.3 of 2005.

¹⁰ See, eg, *Alert Digest* No. 2 of 1998 on the *Statute Law (Miscellaneous Provisions) Bill 1998* (Qld).

¹¹ See *Dietrich v R* (1992) 177 CLR 292.

¹² *Dietrich v R* (1992) 177 CLR 292 at 335, per Deane J; quoting *Barton v R* (1980) 147 CLR 75 at 101, per Gibbs ACJ and Mason J.

- 30. The Committee will always be concerned to identify where legislation has a retrospective effect that may impact adversely upon any person.**
- 31. The Bill's application to trials instituted or partly heard before its commencement impinges upon a defendant's legitimate expectation that the trial will be conducted in accordance with current criminal procedure and evidence law.**
- 32. Having regard to the provisions safeguarding rights of accused persons, the benefit to the community of ensuring that persons accused of sexual offences are effectively dealt with by the criminal justice system, and the continuing common law requirement of a fair trial, the Committee does not consider that the Bill trespasses unduly on personal rights and liberties.**

Strict liability offence: proposed s 281D(7)

33. The Bill introduces an offence relating to access to sensitive evidence for which there is no fault element. Such offences are commonly referred to as strict liability offences.
34. Proposed s 281D(7) provides that a person who is given access to a thing (containing sensitive evidence) by a prosecuting authority under s 281D must not, without the authority of the prosecuting authority:
- (a) copy, or permit a person to copy, the thing; or
 - (b) give the thing to another person; or
 - (c) remove the thing from the custody of the prosecuting authority.

The maximum penalty is 100 penalty units (currently \$11,000), or 2 years imprisonment, or both.

35. Proposed s 275A(8) also introduces a strict liability offence of printing or publishing any question that the court has disallowed under that section, with a maximum penalty of 60 penalty units (\$6,600).
36. In its report on the *Application of Absolute and Strict Liability Offences in Commonwealth Legislation*, the Senate Scrutiny of Bills Committee set out a number of "basic principles", including:
- fault liability is one of the most fundamental protections of criminal law; to exclude this protection is a serious matter;
 - strict liability should be introduced only after careful consideration on a case-by-case basis of all available options; ...
 - strict liability should, wherever possible, be subject to program specific broad-based defences in circumstances where the contravention appears reasonable, in order to ameliorate any harsh effect; ...
 - strict liability offences should be applied only where the penalty does not include imprisonment and where there is a cap on monetary penalties; the general Commonwealth criteria of 60 penalty units (\$6,600 for an individual and \$33,000 for a body corporate) appears a reasonable maximum.

37. It is not unlikely that there may be instances in which a person given access to a thing by a prosecuting authority may innocently or inadvertently offend against proposed s 281B(7). As it is currently drafted, such actions without any criminal intent would still render such a person liable to the penalty provisions of the section.

38. As a general rule, the Committee considers that strict liability:

- **should only be applied after careful consideration of all available options;**
- **should, wherever possible, be subject to defences in circumstances where the contravention appears reasonable; and**
- **should be applied only where the penalty does not include imprisonment and there is a reasonable limit to any monetary penalty.**

- 39. The Committee has written to the Attorney General seeking his advice as to the need for the provision of strict liability with a maximum penalty of 100 penalty units and 2 years imprisonment in relation to accessing sensitive evidence.**

Delegation of legislative powers [s 8A(1)(b)(iv) *LRA*]

Commencement on proclamation: clause 2

40. Clause 2 of the Bill provides that the ensuing Act will commence on proclamation.
41. The Committee notes that providing for an Act to commence on a day or days to be proclaimed delegates to the Government the power to commence the Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. However, there are often good reasons why such discretion is required.
42. The Committee has been advised by the Attorney General's Office that the ensuing Act is to commence on proclamation in order to allow time for the judiciary and the legal profession to be provided with information and training on the amendments introduced by the Bill.

The Committee makes no further comment on this Bill.

2. CROWN LANDS AMENDMENT (ACCESS TO PROPERTY) BILL 2005*

Date Introduced: 3 March 2005
House Introduced: Legislative Assembly
Member Responsible: Mrs Judith Hopwood MP

Purpose and Description

1. This Bill amends the *Crown Lands Act 1989* to require that when determining or re-determining rent under the Act for a lease, licence or enclosure permit that provides water access to residential property, regard is had as to whether that water access is the only reasonable means of access to that property.

Background

2. The second reading speech states:

[T]he Bill amends the Crown Lands Act to add the definition of “water access only properties” so a distinction can be made between properties with water access only and properties with both road and water access.

Under changes announced by the Government last year, all Crown land lessees now have to pay a minimum rent of \$350 per year or market value, whichever is higher... The Bill requires that when the market value of the Crown land is being determined, in such a case there is regard for the fact that the Crown lease provides the only reasonable access to that property.¹³

The Bill

3. The Bill inserts proposed section 35A into the Act to provide that when determining or re-determining rent with respect to a lease, licence or enclosure permit that provides water access to the lease, licence or permit holder’s residential property, regard is had as to whether the lease, licence or permit provides the only reasonable means of access to that property.
4. The Bill also provides that proposed section 35A applies to a determination or re-determination of rent taking place after the commencement of the Bill even if the relevant lease, licence or permit came into effect before that date.

Issues Considered by the Committee

5. 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.

¹³ Mrs Judith Hopwood MP, *Legislative Assembly Hansard*, 3 March 2005.

3. PRISONER (INTERSTATE TRANSFER) AMENDMENT BILL 2005

Date Introduced: 23 March 2005
House Introduced: Legislative Assembly
Minister Responsible: The Hon John Hatzistergos MLC
Portfolio: Justice

Purpose and Description

1. The Bill amends the *Prisoners (Interstate Transfer) Act 1982* to make further provision with respect to interstate transfers at the request of prisoners. In particular, it broadens the range of matters that the Minister may have regard to when considering a request by a prisoner to be transferred to or from another State or Territory.

Background

2. In the second reading speech, Mr Gaudry MP stated that:

This Bill introduces amendments to Parts 2 and 4 of the *Prisoners (Interstate Transfer) Act 1982*... *The Prisoners (Interstate Transfer) Act 1982* commenced on 1 July 1984. The Act forms part of the national co-operative legislative scheme which permits inmates to be transferred between participating jurisdictions for two purposes: to stand trial or for welfare purposes.¹⁴

The Bill

3. At present, the national co-operative legislative scheme permits the transfer of prisoners between participating jurisdictions for the purposes of standing trial or for welfare purposes. A transfer for welfare purposes may be made at the request of the prisoner concerned and depends on the Minister forming the opinion that it is in the interests of the prisoner's welfare that the prisoner should be transferred.
4. The Bill amends the Principal Act to remove the limitation on the Minister's discretion in relation to transfer requests and provides instead that the Minister, when considering a request by a prisoner to be transferred to or from another State or Territory, may have regard to **any or all** of the following:
 - (a) the welfare of the prisoner concerned;
 - (b) the administration of justice in NSW or any other State;
 - (c) the security and good order of any prison in NSW or any other State;
 - (d) the safe custody of the prisoner;
 - (e) the protection of the community in NSW or any other State; and

¹⁴ Mr Bryce Gaudry MP, Parliamentary Secretary, *Legislative Assembly Hansard*, 23 March 2005.

(f) any other matter the Minister considers relevant.

5. The effect of these amendments is that there will be more grounds on which the Minister can reject or agree to a Prisoner's request for transfer than are currently available under the Act.

Issues Considered by the Committee

Delegation of legislative powers [s 8A(1)(b)(iv) *LRA*]

Commencement by proclamation: Clause 2

6. Clause 2 of the Bill provides that the ensuing Act will commence on proclamation.
7. The Committee notes that providing for an Act to commence on a day or days to be proclaimed delegates to the Government the power to commence the Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. However, there are often good reasons why such discretion is required.
8. The Committee has written to the Minister to seek his advice as to why the Bill is to commence on proclamation rather than an assent and to indicate a likely timeframe for commencement.

The Committee makes no further comment on this Bill.

4. PROTECTION OF AGRICULTURAL PRODUCTION (RIGHT TO FARM) BILL 2005*

Date Introduced: 24 March 2005
House Introduced: Legislative Assembly
Member Responsible: Mr Don Page MP

Purpose and Description

1. The object of this Bill is to provide for rural land use notices to be given to purchasers of land adjoining or adjacent to rural land and for those notices to be taken into account in any subsequent proceedings by such purchasers to limit or prohibit the use of that rural land for rural purposes.

Background

2. In his second reading speech, the Member introducing the Bill stated:

For many years farmers and landowners have been concerned about the threat to legal agricultural activities from neighbours who buy into a rural setting and then proceed to complain about existing agricultural activities next door. For example, on the North Coast of New South Wales many new residents are setting up bed-and-breakfast and cabin accommodation on land previously used for agricultural purposes or on land adjoining agricultural land. When their neighbours continue to undertake rural activities there is the potential for conflict over farm machinery noise, pest control and numerous other issues. In many cases, the new residents also raise their concerns about legal agricultural activities with various authorities, such as local and State governments, and request that they be closed down.¹⁵

The Bill

3. The Bill requires a vendor under a contract for the sale of land that adjoins or is adjacent to rural land to attach a rural land use notice to the contract before it is signed by or on behalf of the purchaser. Councils are to issue rural land use notices and keep copies in a public register.
4. The Bill requires the fact that a notice was given be taken into account by a court or other body determining proceedings brought by the owner to limit, prohibit, or otherwise impede the use of the adjoining or adjacent rural land for agricultural purposes.

¹⁵ Mr Donald Page MP, *Legislative Assembly Hansard*, 24 March 2005.

Issues Considered by the Committee

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

Strict Liability: Clause 4

5. The Bill imposes a maximum penalty of 100 penalty units (\$11,000) if a vendor under a contract for the sale of land that adjoins or is adjacent to rural land fails to attach a rural land use notice to the contract before it is signed by the purchaser.
6. For the vendor to be liable, there is no requirement that he or she intended to have committed the offence. Therefore, a vendor may be held liable even though he or she was not aware that any rural land adjoined or was adjacent to the land sold.
7. The Committee has previously expressed the view that providing strict liability is a very serious matter and should only be imposed after careful consideration of all available options, should be subject to defences wherever possible where contravention appears reasonable, and should only have limited monetary penalties.¹⁶
8. In regard to penalties, the Committee has noted 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 (\$6,600 for an individual).¹⁷

- | |
|---|
| <ol style="list-style-type: none">9. As a general rule, the Committee considers that strict liability should be applied only where there is a reasonable limit to any monetary penalty.10. The Committee refers to Parliament the question as to whether the 100 penalty unit (\$11,000) penalty for failing to attach a rural land use notice to a contract for the sale of land, without requiring any intention on the part of the vendor or providing defences for reasonable excuses, trespasses unduly on personal rights and liberties. |
|---|

The Committee makes no further comment on this Bill.

¹⁶ *Legislation Review Digest* No 3 of 2005.

¹⁷ Senate Standing Committee for the Scrutiny of Bills, *Sixth Report of 2002: Application of Absolute and Strict Liability Offences in Commonwealth Legislation*, 26 June 2002.

SECTION B: MINISTERIAL CORRESPONDENCE — BILLS PREVIOUSLY CONSIDERED

5. ROAD TRANSPORT (GENERAL) BILL 2004

Background

1. The Committee reported on this Bill in *Legislation Review Digest No. 1 of 2005*. On 17 February, the Committee wrote to the Minister to seek advice in relation to the following two matters.
 - Why an authorised officer, who is given significant powers under the Bill, need not be a member of staff of a public authority and why the Bill does not specify other requirements regarding the qualifications or attributes of persons who may be appointed as authorised officers under the Bill; and
 - Why there is a need for a power under the Bill to make regulations that can impose fees that may also comprise a tax.

Minister's Response

2. In his response, which the Committee received on 14 March 2005, the Minister stated that he is advised that:

[T]he definition of 'authorised officer' in the above Bill is not limited to those employed by the [RTA], as other road managers, for example, local councils and Police also undertake a road transport enforcement task. The Committee can be assured that it is the intent of the RTA and the Government that the provisions relating to enforcement powers in the Bill will only delegated tho those authorised officers who have received the appropriate training.

In regards the Committee's second point, ... this is a standard provision to provide legal certainty for the collection of fees in relation to services provided by the RTA. As [the Committee noted] an equivalent provision already exists in section 71 of the current *Road Transport (General) Act 1999* and this has worked well to date. Therefore, no changes from the status quo are proposed.

Committee's Conclusion

3. The Committee thanks the Minister for his response.
4. The Committee remains concerned that the Bill provides for the appointment of authorised officers who need not be a member of staff of a public authority and does not specify other requirements regarding the qualifications or attributes of persons who may be so appointed and, as a consequence, exercise considerable powers.
5. The Committee notes that the examples cited by the Minister of non-RTA employees who may be appointed as 'authorised officers' are employees of public authorities, namely the Police Force or a local council.

6. The Committee also notes the Minister's assurance that "it is the intent of the RTA and the Government that the provisions relating to enforcement powers in the Bill will only be delegated those authorised officers who have received the appropriate training".

7. The Committee has written again to the Minister for advice as to the reasons why an authorised officer need not be a member of staff of a public authority.

8. In relation to the Minister's response to the Committee's concern with the Bill providing for regulations to impose a tax, the Committee's concerns remain, notwithstanding the fact that such a provision already exists in the *Road Transport (General) Act 1999*.

9. The Committee notes the Minister's explanation that this provision is necessary to provide legal certainty for the collection of fees in relation to services provided by the RTA. However, the Committee is of the view that the need for such a provision would not arise if any fees amounting to a tax were imposed by the Bill rather than by regulation.

10. The Committee remains of the view that taxes are properly imposed by the Parliament and that the imposition of taxes by regulation is an inappropriate delegation of legislative power.



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

17 February 2005

Our Ref: LRC1096

The Hon Michael Costa MLC
Minister for Roads
Level 31 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

Road Transport (General) Bill 2004

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 1 of 2005*.

The Committee has resolved to seek your advice on two matters of concern to the Committee.

First, as you know the Bill provides that the Roads and Traffic Authority (RTA) can appoint "authorised officers" who need not be a member of staff of the RTA or of a public authority. The Bill then allows for a wide range of significant powers to be conferred on authorised officers, including searching vehicles and certain premises, seizing records and issuing penalty notices. The Bill does not specify any requirements or qualifications regarding who may be appointed as an authorised officer.

The Committee has previously expressed the view that, when legislation gives people administrative powers that can significantly affect personal rights, it should include appropriate limits as to who may be authorised to exercise those powers.

The Committee seeks your advice as to why:

- (a) an authorised officer need not be a member of staff of a public authority; and
- (b) there are no other requirements regarding the qualifications or attributes of persons who may be appointed as authorised officers under the Bill.

The second matter the Committee wishes to raise with you concerns the regulation making power in the Bill, particularly the power for regulations to impose a fee in respect of services provided by the Authority despite the fact that the fee may also comprise a tax.

While the Committee notes that it is not uncommon for regulations to impose fees for service, it is of the view that taxes are properly imposed by the Parliament. The Committee is aware that an equivalent provision already exists in section 71 of the *Road Transport (General) Act 1999*. Nonetheless, it is of the view that the imposition of taxes by regulation is an inappropriate delegation of legislative power.

The Committee seeks your advice as to the need for a power to impose fees that may also comprise a tax.

Yours sincerely

A handwritten signature in black ink, reading "Peter Primrose". The signature is written in a cursive, flowing style.

Peter Primrose MLC
Chairman



Minister for Roads
Minister for Economic Reform
Minister for Ports
Minister for the Hunter

RECEIVED

22 MAR 2005

LEGISLATION REVIEW
COMMITTEE

M05/1508

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

14 MAR 2005

Dear Mr Primrose

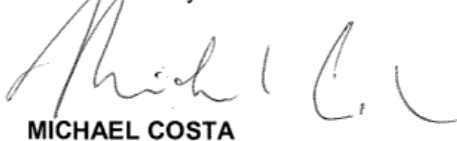
Thank you for your letter regarding the *Road Transport (General) Bill 2004*.

I'm advised the definition of 'authorised officers' in the above Bill is not limited to those employed by the Roads and Traffic Authority (RTA), as other road managers, for example, local councils and Police also undertake a road transport enforcement task. The Committee can be assured that it is the intent of the RTA and the Government that the provisions relating to enforcement powers in the Bill will only be delegated to those authorised officers who have received the appropriate training.

In regards to the Committee's second point I'm advised that this is a standard provision to provide legal certainty for the collection of fees in relation to services provided by the RTA. As you note, an equivalent provision already exists in section 71 of the current *Road Transport (General) Act 1999* and this has worked well to date. Therefore, no changes from the status quo are proposed.

If you require more information, you may wish to contact Mr Sean Kennedy, General Manager, Heavy Vehicle Reform and Compliance, RTA on 9218 6662.

Yours sincerely



MICHAEL COSTA

Level 31, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Tel 9228 5665 Fax 9228 5699

6. ROAD TRANSPORT LEGISLATION (SPEED LIMITERS) AMENDMENT BILL 2004

Date Introduced: 8 December 2004
House Introduced: Legislative Assembly
Minister Responsible: The Hon Michael Costa MLC
Portfolio: Roads

Background

1. The Committee reported on the *Road Transport Legislation (Speed Limiters) Amendment Bill 2004* in Legislation Review Digest No 1 of 2005.
2. The Committee noted that the Bill provided for the ensuing Act to commence on a day or days to be appointed by proclamation and wrote to the Minister for Roads to seek his advice as to the reasons for commencing the Act by proclamation, and a likely commencement date of the Act.

Minister's reply

3. The Minister advised the Committee by letter dated 14 March 2005 (attached) that:
...[T]he decision to commence the Act by proclamation was made because of the complexity involved in implementing the provisions of the Act.
The Bill provides for a defence based on the road gradient. To enable the NSW Police to enforce the legislation, enforcement zones based on the gradients of major freight routes need to be provided by the Roads and Traffic Authority (RTA).
Arrangements also need to be put in place with the Infringement Processing Bureau to process the fines.
4. The Minister also advised that he anticipated that the Bill will be commenced in late 2005.

Committee's response

5. **The Committee thanks the Minister for his reply.**
6. **The Committee has also written a further letter to the Minister seeking advice as to what safeguards will exist to prevent persons being charged under s 69C(1) in circumstances where relevant information about the road gradient is not available to police and would have resulted in the defence in s 69C(3)(b) being applied.**

The Committee makes no further comment on this Bill.

Road Transport Legislation (Speed Limiters) Amendment Bill 2004



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

17 February 2005

Our Ref: LRC1097

The Hon Michael Costa MLC
Minister for Roads
Level 31 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

Road Transport Legislation (Speed Limiters) Amendment Bill 2004

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 1 of 2005*.

The Committee notes that this Bill provides that the ensuing Act is to commence on a day or days to be appointed by proclamation.

The Committee seeks your advice as to the reasons for commencing this Bill by proclamation, and a likely commencement date of the Act.

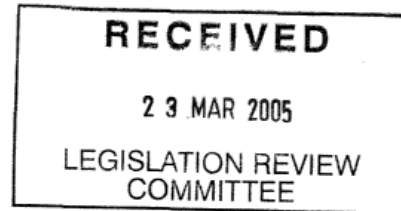
Yours sincerely

A handwritten signature in cursive script, reading 'Peter Primrose'.

Peter Primrose MLC
Chairman



*Minister for Roads
Minister for Economic Reform
Minister for Ports
Minister for the Hunter*



M05/1435

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

14 MAR 2005

Dear Mr Primrose

I refer to your letter regarding the commencement, by proclamation, of the Road Transport Legislation (Speed Limiters) Amendment Bill 2004.

I'm advised the decision to commence the Act by proclamation was made because of the complexity involved in implementing the provisions of the Act.

The Bill provides for a defence based on the road gradient. To enable the NSW Police to enforce the legislation, enforcement zones based on the gradients of major freight routes need to be provided by the Roads and Traffic Authority (RTA).

Arrangements also need to be put in place with the Infringement Processing Bureau to process the fines.

For these reasons a specific date has not been sent but it is anticipated that the date for commencing the Act by Proclamation will be in late 2005.

Yours sincerely

MICHAEL COSTA

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	
Institute of Teachers Regulation	21/01/05	183	01/04/05	
Occupational Health and Safety Amendment (Transitional) Regulation 2004	17/12/04	9354	01/04/05	
Road Transport (General) Amendment (Driver Licence Appeals) Regulation 2005	14/01/05	111	01/04/05	

Appendix 1: Index of Bills Reported on in 2005

	Digest Number
Civil Liability Amendment (Food Donations) Bill 2004	1
Civil Liability Amendment (Offender Damages) Bill 2005	2, 3
Classification (Publications, Films and Computer Games) Enforcement Amendment (X 18+ Films) Bill 2005*	3
Court Security Bill 2005	2
Crimes Amendment (Grievous Bodily Harm) Bill 2005	3
Criminal Appeal Amendment (Jury Verdicts) Bill 2004*	3
Criminal Procedure Amendment (Evidence) Bill 2005	3
Criminal Procedure Further Amendment (Evidence) Bill 2005	4
Crown Lands Amendment (Access to Property) Bill 2005*	4
Electricity Supply Amendment Bill 2005	2
Environmental Planning and Assessment Amendment (Development Contributions) Bill 2004	1
Independent Commission Against Corruption Amendment Bill 2005	2, 3
Law Enforcement (Powers and Responsibilities) Amendment (In-Car Video Systems) Bill 2004	1
Legal Profession Bill 2004	1
Marine Safety Amendment (Random Breath Testing) Bill 2004	1
National Parks and Wildlife (Adjustment of Areas) Bill 2005	3
Photo Card Bill 2004	1
Police Integrity Commission Amendment (Shaw Investigation) Bill 2005*	2
Prisoners (Interstate Transfer) Amendment Bill 2005	4
Protection of Agricultural Production (Right to Farm) Bill 2005*	4
Road Transport (General) Bill 2004	1, 4
Road Transport Legislation (Speed Limiters) Amendment Bill 2004	1, 4
Sheriff Bill 2005	2
Special Commission of Inquiry (James Hardie Records) Amendment Bill 2004	1
Standard Time Amendment (Co-ordinated Universal Time) Bill 2005	2
Transport Administration Amendment (Transport Levy For Major Events) Bill 2005	2
Transport Legislation Amendment (Implementation of Waterfall Rail Inquiry Recommendations) Bill 2005*	2
Water Efficiency Labelling and Standards (New South Wales) Bill 2005	3

Appendix 2: Index of Ministerial Correspondence on Bills for 2005

Bill	Minister/Member	Letter sent	Reply	Digest 2004	Digest 2005
Child Protection (Offender Prohibition Orders) Bill 2004	Minister for Police	18/06/04		6	
Civil Liability Amendment (Offender Damages) Bill 2005	Minister for Justice	01/03/05	08/03/05		2, 3
Electricity Supply Amendment Bill 2005	Minister for Energy and Utilities	01/03/05			2
Independent Commission Against Corruption Amendment Bill 2005	Premier	01/03/05	02/03/05		2, 3
Legal Profession Bill 2004	Attorney General	17/02/05			1
Licensing And Registration (Uniform Procedures) Amendment (Photo ID) Bill 2004	Minister for Commerce	03/12/04	09/12/04	17	1
Marine Safety Amendment (Random Breath Testing) Bill 2004	Minister for Ports	17/02/05			1
Photo Card Bill 2004	Minister for Roads	17/02/05			1
Road Transport (General) Bill 2004	Minister for Roads	17/02/05	14/03/05		1, 4
Road Transport (General) Amendment (Licence Suspension) Bill 2004	Minister for Roads	18/06/04	01/12/04	9	1
Road Transport Legislation (Speed Limiters) Amendment Bill 2004	Minister for Roads	17/02/05	14/03/05		1, 4
Smoke-free Environment Amendment Bill 2004	Minister for Health	05/11/04		15	

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

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Civil Liability Amendment (Food Donations) Bill 2004	N			N	
Civil Liability Amendment (Offender Damages) Bill 2005	N,C				
Classification (Publications, Films and Computer Games) Enforcement Amendment (X 18+ Films) Bill 2005*	R				
Court Security Bill 2005				N	
Criminal Appeal Amendment (Jury Verdicts) Bill 2004*	R				
Criminal Procedure Amendment (Evidence) Bill 2005	N				
Criminal Procedure Further Amendment (Evidence) Bill 2005	C			N	
Electricity Supply Amendment Bill 2005				C	
Environmental Planning and Assessment Amendment (Development Contributions) Bill 2004			N	N	N
Independent Commission Against Corruption Amendment Bill 2005				C	
Law Enforcement (Powers and Responsibilities) Amendment (In-Car Video Systems) Bill 2004	R			N	
Legal Profession Bill 2004	N,C			N	
Marine Safety Amendment (Random Breath Testing) Bill 2004				C	
National Parks and Wildlife (Adjustment of Areas) Bill 2005				N	
Photo Card Bill 2004				C	
Police Integrity Commission Amendment (Shaw Investigation) Bill 2005*	N				

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Prisoners (Interstate Transfer) Amendment Bill 2005				C	
Protection of Agricultural Production (Right to Farm) Bill 2005*	R				
Road Transport (General) Bill 2004	N	C		C	
Road Transport Legislation (Speed Limiters) Amendment Bill 2004	N			C	
Sheriff Bill 2005				N	
Special Commission of Inquiry (James Hardie Records) Amendment Bill 2004	N,R				
Water Efficiency Labelling and Standards (New South Wales) Bill 2005	N			N	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 2005

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2005
Architects Regulation 2004	Minister for Commerce	21/09/04	30/11/04	1
Environmental Planning and Assessment Amendment (ARTC Rail Infrastructure) Regulation 2004	Minister for Infrastructure and Planning	26/10/04 17/02/05	01/02/05	1
Forestry Regulation 2004	Minister for Primary Industries	26/10/04 17/02/05	18/01/05	1
Passenger Transport (Drug and Alcohol Testing) Regulation 2004	Minister for Transport Services	30/04/04 01/03/05	17/02/05	2
Stock Diseases (General) Regulation 2004	Minister for Primary Industries	05/11/04	16/12/04	1
Sydney Olympic Park Amendment Regulation 2004	Minister for Sport and Recreation	05/11/04	03/12/04	1