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Legislation Review Committee

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No 9 of 2006

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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 iii).

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 iii).

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. Appropriation Bill 2006; Appropriation (Parliament) Bill 2006; Appropriation (Special Offices) Bill 2006; Duties Amendment (Abolition of State Taxes) Bill 2006; State Revenue and Other Legislation Amendment (Budget Measures) Bill 2006

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

2. Education Amendment (Financial Assistance to Non-Government Schools) Bill 2006

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

3. Snowy Hydro Corporatisation Amendment (Parliamentary Scrutiny of Sale) Act 2006

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

4. Snowy Hydro Corporatisation Amendment (Protect Snowy Hydro) Bill 2006

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

5. Threatened Species Conservation Amendment (Biodiversity Banking) Bill 2006

Biobanking Assessment Methodology: Proposed section 127B

10. The Committee notes that the Bill delegates to the Minister the power to make the rules for the biobanking assessment methodology, which is central to the operation of the scheme.

11. The Committee notes that the methodology must conform to any requirements in the regulations, but notes that the Parliament has no power to impose such requirements but only to disallow any requirements so made.

12. The Committee refers to Parliament the question of whether so delegating the power to make rules for the biobanking assessment methodology insufficiently delegates the exercise of legislative power to parliamentary scrutiny.

6. Transport Administration Amendment (Travel Concession) Bill 2006

Regulations may oust the *Anti-Discrimination Act 1977*: proposed s 39(1A) and s 88(3A)

14.	The Committee refers to Parliament the question of whether allowing regulations to disentitle classes of person to travel concessions regardless of whether to do so would be otherwise contrary to the *Anti-Discrimination Act 1977* constitutes an inappropriate delegation of legislative power.

SECTION B: Ministerial Correspondence — Bills Previously Considered

7. Children (Detention Centres) Bill 2006

9.	The Committee thanks the Minister for his reply.

8. Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Act 2006

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

9. Local Government Amendment (Waste Removal Orders) Bill 2006

8.	The Committee thanks the Minister for his reply.

Part One – Bills

SECTION A: COMMENT ON BILLS

1. APPROPRIATION BILL 2006; APPROPRIATION (PARLIAMENT) BILL 2006; APPROPRIATION (SPECIAL OFFICES) BILL 2006; DUTIES AMENDMENT (ABOLITION OF STATE TAXES) BILL 2006; STATE REVENUE AND OTHER LEGISLATION AMENDMENT (BUDGET MEASURES) BILL 2006

Date Introduced:	6 June 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Michael Costa MLC
Portfolio:	Treasurer

The Bills passed all stages in the Legislative Assembly on 6 June 2006 and in the Legislative Council on 7 June 2006, and received the Royal Assent on 20 June 2006.

Purpose and Description

Appropriation Bill 2006

1. The Bill appropriates various sums of money required for the recurrent services and capital works and services of the Government during the 2006–07 financial year. The Bill relates to appropriations from the Consolidated Fund. It contains an additional appropriation, which allocates the additional revenue raised in connection with changes to gaming machine taxes to the Minister for Health for spending on health related services.

Appropriation (Parliament) Bill 2006

2. The Bill appropriates out of the Consolidated Fund sums for the recurrent services and capital works and services of the Legislature for the year 2006-07.

Duties Amendment (Abolition of State Taxes) Bill 2006

3. The Bill amends the *Duties Act 1997 so* as to:

- abolish duty on the hire of goods with effect on 1 July 2007;
- abolish duty on leases with effect on 1 January 2008;

- abolish duty on marketable securities that are currently dutiable with effect on 1 January 2009;
- reduce by 50% the duty payable on mortgages with effect on 1 January 2010;
- abolish duty on mortgages with effect on 1 January 2011; and
- abolish duty on the transfer of business assets (other than real property) statutory licences or permissions, and poker machine entitlements with effect on 1 July 2012.[1]

State Revenue and Other Legislation Amendment (Budget Measures) Bill 2006

4. The Bill makes the following amendments:

- amends the *Gaming Machine Tax Act 2001* to change the gaming machine taxes payable by registered clubs;
- repeals the *Appropriation (Health Super-Growth Fund) Act 2003*, closes the Fund under that Act, and transfers its contents to the General Government Liability Management Fund established under the *General Government Liability Management Fund Act 2002*;
- amends the *Land Tax Management Act 1956* to enable land tax to be assessed on the basis of an average valuation of land, and to make further provision for the calculation of the tax free threshold;
- amends the *NSW Self Insurance Corporation Act 2004* to allow the Treasurer to direct that funds that are surplus to the requirements of the Self Insurance Fund be paid out of that Fund and used and applied for the purposes of the Crown Finance Entity;
- amends the *Taxation Administration Act 1996* for statute law revision purposes, and to make it clear that persons who overpay land tax on the basis of a land value that is later changed are entitled to a refund, and interest, on the overpayment;
- makes amendments to the *Pay-roll Tax Act 1971* and the *Public Finance and Audit Act 1983* that are mainly consequential on the enactment of the *Public Sector Employment Legislation Amendment Act 2006*;
- provides for certain cultural institutions to be subject to Ministerial control as is the case with other similar institutions; and
- expands the membership of Tourism New South Wales.

[1] Duty on lease premiums is retained. The payment of a premium in respect of a lease will continue to be treated in a similar manner to a transfer of land. The Bill also provides for a number of transitional matters regarding the application of the duties referred to above prior to their abolition, particularly with respect to mortgage duty, and provides for anti-avoidance measures.

Appropriation (Special Offices) Bill 2006

5. The Bill appropriates out of the Consolidated Fund sums for the recurrent services and capital works and services for the year 2006–07 for the Independent Commission Against Corruption, the Ombudsman's Office, State Electoral Office, and Office of the Director of Public Prosecutions.

Issues Considered by the Committee

6. 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 these Bills.

2. EDUCATION AMENDMENT (FINANCIAL ASSISTANCE TO NON-GOVERNMENT SCHOOLS) BILL 2006

Date Introduced:	7 June 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Carmel Tebbutt MP
Portfolio:	Education and Training

Purpose and Description

1. The Bill's object is to amend the *Education Act 1990* [the Act] so as to prohibit non-government schools that operate for profit from receiving financial assistance from the State.

Background

2. The following background was provided in the second reading speech:

> The community as a whole has a very significant stake in non-government schools - almost $733 million annually in 2005-06 - and has a right to know how schools are using this investment. In particular, it has a right to know that schools that get taxpayer funding are using it with the best interests of children and young people as their number one priority.
>
> ...[The Bill] is about providing clarity and getting the settings right for the future. The bill makes clear what the community's investment in schools is for. It makes clear that the State Government will not provide funding for schools that operate for profit. The basic principle underpinning our State funding framework is addressing school need. We do not and should not fund non-government schools with a view to improving an investor's bottom line.[2]

The Bill

3. The Bill amends the Act by providing that:

- the payment of financial assistance to a non-government school which operates for profit is prohibited [proposed s 21A(1)];
- a non-government school is taken to operate for profit if any part of its proprietor's assets or income is paid to any other person [proposed s 21A(2)];
- despite proposed s 21A(2), a non-government school is not taken to operate for profit as a result of certain kinds of payments being made to other persons, such as payments not exceeding reasonable market value for property, goods or services required in relation to the running of the school [proposed s 21A(3)]; and
- the Minister administering the Act may require a non-government school which receives financial assistance to furnish the Minister with information as to its

[2] Hon C M Tebbutt MP, Minister for Education and Training, Legislative Assembly *Hansard*, 7 June 2006.

contracts and other arrangements for the provision of goods and services [proposed s 21A(4)].

4. Proposed s 21A applies to new non-government schools immediately, and to existing non-government schools as from 1 January 2007 [proposed Sch 3 Part 7].

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.

3. SNOWY HYDRO CORPORATISATION AMENDMENT (PARLIAMENTARY SCRUTINY OF SALE) ACT 2006

Date Introduced: 6 June 2006

House Introduced: Legislative Council

Member Responsible: The Hon Ian Cohen MLC

Purpose and Description

1. The Act's object is to require the approval of both Houses of Parliament before shares in the Snowy Hydro Company held by the State of New South Wales may be sold or otherwise disposed of.

2. The Act passed all stages in the Legislative Council on 7 June 2006 and in the Legislative Assembly on 8 June 2006. It received the Royal Assent on 13 June 2006. 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.

Issues Considered by the Committee

3. 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.

4. SNOWY HYDRO CORPORATISATION AMENDMENT (PROTECT SNOWY HYDRO) BILL 2006

Date Introduced: 6 June 2006
House Introduced: Legislative Assembly
Member Responsible: Russell Turner MP

Purpose and Description

1. The Bill's object is to protect Snowy Hydro by requiring the approval of both Houses of Parliament before shares in the Snowy Hydro Company held by the State of New South Wales may be sold or otherwise disposed of.

Background

2. According to the second reading speech, the Bill aims to ensure that the sale of shares in the Snowy Hydro Company cannot occur without the approval of both Houses of Parliament, thereby reflecting "community concerns".[3]

The Bill

3. The Bill amends the *Snowy Hydro Corporatisation Act 1997* by inserting a new s 5A:

> Shares in the Snowy Hydro Company held by the State of New South Wales must not be sold or otherwise disposed of unless the disposal is approved by resolution of each House of Parliament.

Issues Considered by the Committee

4. 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] Mr R W Turner MP, Legislative Assembly *Hansard*, 6 June 2006.

5. THREATENED SPECIES CONSERVATION AMENDMENT (BIODIVERSITY BANKING) BILL 2006

Date Introduced:	8 June 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Bob Debus MP
Portfolio:	Environment

Purpose and Description

1. The object of this Bill is to establish a biodiversity banking and offsets scheme (the ***biobanking scheme***).

2. The biobanking scheme has the following key elements:

   (a) the establishment of biobank sites on land by means of biobanking agreements entered into between the Minister for the Environment and the owners of the land concerned;

   (b) the creation of biodiversity credits in respect of management actions carried out or proposed to be carried out on or in respect of biobank sites that improve biodiversity values;

   (c) a system that enables those biodiversity credits, once created and registered, to be traded (including by being purchased by developers) and used as an offset against the impact of proposed development on biodiversity values; and

   (d) the establishment of a biobanking assessment methodology, by order of the Minister published in the Gazette, for the purpose of determining both the number of biodiversity credits that may be created in respect of management actions or proposed management actions and the number of biodiversity credits that must be retired in connection with a development to offset the impact of the development and ensure that it improves or maintains biodiversity values.

3. The Bill provides for a procedure under which a person may apply to the Director-General of the Department of Environment and Conservation (***the Director-General***) for a biobanking statement in respect of a development proposal.

4. If a biobanking statement is issued, it will not be necessary for the development to be assessed in accordance with the threatened species protection measures provided for by Parts 4 and 5 of the *Environmental Planning and Assessment Act 1979*. However, the developer may be required to purchase and retire sufficient biodiversity credits to ensure that the impact of the development on biodiversity values is offset and to take other onsite measures to minimise any negative impact on biodiversity values.

5. Biobanking statements may also be issued in respect of development approved under Part 3A of the *Environmental Planning and Assessment Act 1979*. Initially, participation by developers in the biobanking scheme is optional. However, the Bill

allows a State environmental planning policy to contain provisions that declare specified development or classes of development to be development for which biobanking is compulsory after an initial trial period for the scheme has elapsed.

Background

6. When introducing the Bill, the Minister for the Environment stated:

> The present threatened species law focuses our efforts on evaluating the impact of each individual development. We need to bring our laws and approach into line with the latest science. The death by a thousand cuts, that is the cumulative losses caused by hundreds of individual developments, must be reversed. At the same time, of course, we still need the social and economic benefits of development. Today, I am proposing biobanking as a new scheme to reconcile the economic interests of private landholders with biodiversity conservation.
>
> ...
>
> The scheme will send a strong price signal that maintaining and rehabilitating bushland can produce a valuable asset rather than producing a potential future liability. Biobanking works through counterbalancing the sum of small losses at many development sites with investment into consolidated, well-maintained and secure areas where the risk of extinction is greatly reduced. Before outlining the key elements of this bill, I should say that these reforms are the product of an ongoing and extensive consultation process involving stakeholders, scientists and future participants in the scheme. Environment groups, industry groups—including mining, property developers and infrastructure providers—councils, lawyers, economists, environmental consultants, local government and catchment management authorities have all been involved in the formulation of the scheme and will have an continuing role through to the scheme's implementation.[4]

Issues Considered by the Committee

Parliamentary scrutiny of legislative power [s 8A(1)(b)(v) *LRA*]

Biobanking Assessment Methodology: Proposed section 127B

7. Under the Bill, the Minister may make the biobanking assessment methodology by order published in the Gazette. The biobanking assessment methodology establishes rules regarding:

- the actions or proposed actions in respect of which biodiversity credits may be created,
- the creation of biodiversity credits or different classes of biodiversity credits in respect of management actions carried out on biobank sites,
- the circumstances in which development is to be regarded as improving or maintaining biodiversity values, including where the impact of that development is offset against the impact of management actions for which biodiversity credits are created,

[4] The Hon Bob Debus MP, Minister for the Environment, *Legislative Assembly Hansard*, 8 June 2006.

- any impact on biodiversity values that cannot be offset by the retirement of biodiversity credits.
- assessing the impact or likely impact of management actions or development on biodiversity values,
- determining the number and class of biodiversity credits that can be created in respect of a management action, and the times at which they may be created,
- determining the number and class of biodiversity credits that are required to be retired in respect of development, as an offset against the impact of the development on biodiversity values, pursuant to the issue of a biobanking statement.

8. The assessment methodology therefore sets out numerous rules that are central to the operation of the biobanking system and affecting the value of biobanking credits. However, Parliament has no power to disallow any assessment methodology made.

9. An assessment methodology must comply with any requirements set out in the regulations, which may prescribe the circumstances in which the Minister is authorised to make an order that amends, repeals or replaces the biobanking assessment methodology.

10. The Committee notes that the Bill delegates to the Minister the power to make the rules for the biobanking assessment methodology, which is central to the operation of the scheme.

11. The Committee notes that the methodology must conform to any requirements in the regulations, but notes that the Parliament has no power to impose such requirements but only to disallow any requirements so made.

12. The Committee refers to Parliament the question of whether so delegating the power to make rules for the biobanking assessment methodology insufficiently delegates the exercise of legislative power to parliamentary scrutiny.

The Committee makes no further comment on this Bill.

6. TRANSPORT ADMINISTRATION AMENDMENT (TRAVEL CONCESSION) BILL 2006

Date Introduced:	6 June 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon John Watkins MP
Portfolio:	Transport

Purpose and Description

1. The Bill amends the *Transport Administration Act 1988* (the Act) to enable Regulations to prescribe classes of persons who are not entitled:

   - to subsidised travel under a scheme approved under the Act for Government-subsidised travel on passenger services; or
   - to be issued with a free travel pass or concessional travel pass under the Act.

2. Any such Regulations will have effect despite various approvals, directions and determinations under the Act, and despite the *Anti-Discrimination Act 1977* [the ADA].

Background

3. The following background was given in the second reading speech:

> [The Bill] seeks to enable the making of regulations that prescribe the classes of persons who are not entitled to subsidised travel under any scheme administered by the Director General of the Ministry of Transport and approved by the Government, or to a free or concessional travel pass issued by a government transport authority; to preserve existing eligibility criteria in relation to full fee paying overseas students and enable the Government to continue to target its concession resources to those it considers most in need; and, to provide for transitional arrangements so that current eligibility criteria in respect of full fee paying overseas students continues to apply while necessary regulations are made.
>
> These are minor legislative amendments involving changes to section 39 and section 88 of the Act, which will mean that government policy concerning who is not eligible for transport concessions can be written into law. This is a necessary step that simply preserves the status quo.[5]

4. It would appear that the Bill has been introduced in response to a recent decision of the NSW Administrative Decisions Tribunal [ADT], in which the applicants claimed that the Government's longstanding policy of not providing full-fee paying overseas university students with concessional travel on public transport services contravened the ADA, because it amounted to unlawful discrimination on the basis of nationality, which is one of the sub-categories of discrimination on the ground of race.[6]

[5] The Hon J A Watkins MP, Minister for Transport, Legislative Assembly *Hansard*, 6 June 2006.

[6] See *Sydney University Postgraduate Representative Association (SUPRA) & Ors v Minister for Transport Services & Ors* [2006] NSWADT 83, decided on 23 March 2006.

5. According to the applicants, the effect of the concessional fare system was that university students who were not of Australian nationality paid higher fares on public transport than similarly placed students who were of Australian nationality.[7]

6. The ADT found that the applicants' complaints were substantiated, ie, that the concessional fee scheme did constitute a form of discrimination based on nationality, prohibited by the ADA.[8]

7. Moreover, the ADT held that although s 54 of the ADA creates a defence of statutory authority to a complaint of unlawful discrimination, the Minister could not use his discretionary powers in the Act to circumvent the obligations placed upon service providers by the ADA.[9] Accordingly, neither the State Rail Authority nor the State Transit Authority could rely on the defence, given that:

> the wording of s 54 [of the ADA], when interpreted both literally and in accordance with the principle of legality, requires parliament to mandate that particular conduct occur, or to authorise the holder of a discretionary statutory power to exercise that power in a way which is contrary to the prohibitions in the *Anti-Discrimination Act*, before the defence of statutory authority may be made out.[10]

The Bill

8. The Bill allows regulations to disentitle classes of persons from government subsidised travel schemes and subsidised railway, bus or ferry travel.

9. The Bill also provides that, until the regulations otherwise provide, full fee paying overseas students are not entitled to be issued with certain kinds of concessional travel passes [proposed s 39(1A) and s 88(3A)].

10. According to the Bill's Explanatory note, the students concerned are:

> those who have been permitted to enter Australia on a visa issued on the basis that while in Australia they will be enrolled as full-time students at a tertiary educational institution, paying the full cost of their tuition, and will have sufficient funds to meet their educational and living costs in Australia.

Issues Considered by the Committee

Inappropriate delegation of legislative power [s 8A(1)(b)(i) *LRA*]

Regulations may oust the *Anti-Discrimination Act 1977*: proposed s 39(1A) and s 88(3A)

11. Proposed s 39(1A) and s 88(3A) specifically provide that any regulations made under those provisions have effect despite the provisions of the ADA.

12. The ADA is one of the most important legislative recognitions in New South Wales of the basic human right of equality of treatment and freedom from discrimination. In its preamble, the ADA is described as:

[7] [2006] NSWADT 83 at paragraph 44.
[8] [2006] NSWADT 83 at paragraph 103.
[9] [2006] NSWADT 83 at paragraphs 78-80.
[10] [2006] NSWADT 83 at paragraph 84.

an Act to render unlawful racial, sex and other types of discrimination in certain circumstances and to promote equality of opportunity between all persons.

13. The Committee notes that the purpose of these amendments is to allow regulations to disentitle full fee paying international students who have entered Australia having indicated that they are fully self-sufficient to travel concessions.[11] However, in doing so the amendments also allow regulations to be made to disentitle classes of persons to travel concessions in circumstances that may inappropriately discriminate against persons.

14. The Committee refers to Parliament the question of whether allowing regulations to disentitle classes of person to travel concessions regardless of whether to do so would be otherwise contrary to the *Anti-Discrimination Act 1977* constitutes an inappropriate delegation of legislative power.

The Committee makes no further comment on this Bill.

[11] The Hon J A Watkins MP, Minister for Transport, Legislative Assembly *Hansard*, 6 June 2006.

SECTION B: MINISTERIAL CORRESPONDENCE — BILLS PREVIOUSLY CONSIDERED

7. CHILDREN (DETENTION CENTRES) BILL 2006

Date Introduced:	23 May 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Tony Kelly MLC
Portfolio:	Juvenile Justice

Background

1. The Committee reported on this Act in Digest No 8 of 2006.

2. The Act made a number of amendments to the *Children (Detention Centres) Act 1987* [the CDC Act].[12] Specifically, the Act provides for a considerable increase in the amount of time for which a young offender may be held in isolation due to misbehaviour, doubling it from 12 to 24 hours for offenders over the age of 16, and quadrupling it from 3 to 12 hours for offenders under the age of 16 [amended s 21 of the CDC Act].

3. The Committee noted that Art 67 of the United Nations *Rules for the Protection of Juveniles Deprived of their Liberty* [the UN Rules] expressly forbids the use of solitary confinement for young offenders as a form of cruel, inhuman or degrading punishment.

4. The Committee also considered the recent Carlile Report in the United Kingdom, which recommended that:

   - prison segregation units should not be used for children; and
   - solitary confinement should never be used as a punishment.

5. The Committee wrote to the Minister, seeking his advice as to:

   (i) whether allowing the isolation of juvenile detainees under s 21 of the CDC Act is consistent with the requirements of the UN Rules; and

   (ii) if it is not consistent with those rules, the justification for the inconsistency.

Ministerial Reply

6. In his reply received 27 June 2006, the Minister stated that he considers that the amendments to the CDC Act were not inconsistent with the requirements of the UN Rules.

7. In his reply the Minister notes as follows:

[12] The Act also made minor and consequential amendments to the *Children (Criminal Proceedings) Act 1987*, the *Crimes (Administration of Sentences) Act 1999* and the *Freedom of Information Act 1989*.

> The Act provides for the segregation of detainees, as distinct from confinement. Segregation is not a punishment for misbehaviour. Segregation of detainees occurs in situations where a detainee exhibits extremely challenging behaviour, to the extent that he or she is a danger to himself, herself or to others.
>
> …There will be provision made for cessation of the segregation by the Centre Manager should he or she believe it is appropriate prior to the approved expiration of the segregation period…
>
> Any detainee subject to confinement is visible to, and able to communicate readily with, an officer. Should a detainee subject to confinement become distressed or attempt to self-harm, then appropriate intervention will take place by trained DJJ and Justice Health staff.

8. The Minister stresses that New South Wales remains the only jurisdiction in Australia to make the distinction between juvenile detainees who are younger or older than 16 years, and that the Act increases confinement periods relating to misbehaviour to a level consistent with other States.

Comment

9. The Committee thanks the Minister for his reply.

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

2 June 2006

The Hon Tony Kelly MLC
Minister for Juvenile Justice
Level 34, Governor MacquarieTower,
1 Farrer Place,
Sydney NSW 2000

Dear Minister

CHILDREN'S (DETENTION CENTRES) AMENDMENT BILL 2006

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 2006*.

The Committee has resolved to write to you for advice in relation to the following concerns.

The Committee notes that the Bill provides for a considerable increase in the amount of time for which a young offender may be held in isolation due to misbehaviour, doubling it from 12 to 24 hours for offenders over the age of 16, and quadrupling it from 3 to 12 hours for offenders under the age of 16.

The Committee also notes that Art 67 of the United Nations *Rules for the Protection of Juveniles Deprived of their Liberty* expressly forbids the use of solitary confinement for young offenders as a form of cruel, inhuman or degrading punishment.

The Committee seeks your advice as to:

(i) whether allowing the isolation of juvenile detainees under section 21 is consistent with the requirements of the United Nations *Rules for the Protection of Juveniles Deprived of their Liberty*; and

(ii) if it is not consistent with those rules, the justification for the inconsistency?

Yours sincerely

Allan Shearan MP
Chairman

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Telephone (02) 9230 2899 Facsimile (02) 9230 3052 Email legislation.review@parliament.nsw.gov.au

New South Wales

The Hon Tony Kelly MLC
Minister for Justice
Minister for Juvenile Justice
Minister for Emergency Services
Minister for Lands
Minister for Rural Affairs

RML 06-0195

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

Dear Mr Shearan

I refer to your letter dated 2 June 2006 in which you expressed concern regarding the *Children (Detention Centres) Amendment Bill* 2006. In response to the letter, I advise as follows:

Segregation, Confinement and Safeguards

The above Bill is now an Act, assented to on 8 June 2006 and is known as the *Children (Detention Centres) Amendment Act* 2006.

The Act provides for the segregation of detainees, as distinct from confinement. Segregation is not a punishment for misbehaviour. Segregation of detainees occurs in situations where a detainee exhibits extremely challenging behaviour, to the extent that he or she is a danger to himself, herself or to others.

The power to approve segregation beyond three hours will be reserved to the Director General of the Department of Juvenile Justice (DJJ). In such cases the Psychological staff in the Department will oversee the development of a behaviour management plan concerning the young person. An immediate notification is to be made to the Ombudsman, with a copy of the plan. The detainee is to be visited at least once in every twenty-four hour period by the Justice Health nurse, however, should the detainee be judged at risk of self harm, the standard procedure of five or ten minutes checks will be implemented. A referral may also be made to the Department of Health for psychiatric assessment of the young person.

There will be provision made for cessation of the segregation by the Centre Manager should he or she believe it is appropriate prior to the approved expiration of the segregation period.

Level 34, Governor Macquarie Tower
1 Farrer Place, Sydney NSW 2000
Ph: (02) 9228 3999 Fx: (02) 9228 3988

Room 809 Parliament House
Macquarie Street, Sydney NSW 2000
Ph: (02) 9230 2528 Fx: 9230 2530

Amendments to section 21 increase the maximum period of isolation to 12 hours (presently 3 hours) and 24 hours (presently 12 hours), respectively. In order to keep confinement periods to an appropriate length, the amendments draw a distinction between young people under, and above the age of 16 years.

New South Wales remains the only jurisdiction in Australia to make this distinction with regards to segregation and confinement of juvenile detainees.

It is important to note that the Act simply increases confinement periods relating to misbehaviour to a level consistent with other states. The proposed maximum is consistent with Queensland, and shorter than any other Australian state or territory, many of which do not specify a maximum time limit.

Any detainee subject to confinement is visible to, and able to communicate readily with, an officer. Should a detainee subject to confinement become distressed or attempt to self-harm, then appropriate intervention will take place by trained DJJ and Justice Health staff.

In my view the amendments to the *Children (Detention Centres) Act* are not inconsistent with the requirements of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

I trust that this answers the issues raised by the Legislation Review Committee.

Yours sincerely

Tony Kelly MLC
Minister for Juvenile Justice

8. DRUG MISUSE AND TRAFFICKING AMENDMENT (HYDROPONIC CULTIVATION) ACT 2006

Date Introduced:	25 May 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Bob Debus MP
Portfolio:	Attorney General

Background

1. The Committee considered this Bill at its meeting of 2 June 2006 and resolved to write to the Attorney General for advice on the following matters.

2. The Committee noted that the new aggravated offence of cultivating a prohibited plant by enhanced indoor means in the presence of children was extremely broadly drafted. Of particular concern to the Committee was the fact that the Bill appeared to reverse the onus of proof, contrary to the presumption of innocence, so that the prosecution was not required to prove endangerment to a child. Rather, the onus was placed on the defendant to disprove this essential element of the offence. The Committee also noted the very high penalties for this aggravated offence.

3. The Committee asked the Attorney General for advice as to the justification for reversing the onus of proof in this offence.

Minister's Response

4. In his response to the Committee, dated 2 August 2006, the Attorney General advised:

> The reversal of the onus of proof in the offences, in so far as the risk of harm is concerned, recognises the inherent risks to children of exposure to the hydroponic process, such as fire, electrocution, extreme heat, dangerous chemicals, insecticides and fumes as well as toxic gases and airborne bacteria…
>
> It has been an all too common feature of hydroponic cannabis houses raided by Police in recent years that children are forced to inhabit the same living areas as those in which the cultivation process occurs. It is easy to see that there is great scope for things to go wrong with possibly fatal consequences…
>
> The fact of exposure to the cultivation process or to substances stored for that purpose will have to be proved and a defence is available as a safeguard if there is no actual harm to the health and safety of the exposed child.

Committee's response

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

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

2 June 2006

Our Ref: LRC 1860

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

Dear Minister

DRUG MISUSE & TRAFFICKING AMENDMENT (HYDROPONIC CULTIVATION) BILL 2006

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 2006.*

The Committee resolved to write to you for advice on the following matter.

The Committee is of the view that the new aggravated offence of exposing a child to the cultivation of a prohibited plant or to substances being stored for use in that cultivation reverses the onus of proof. The Committee understands that the essence of the offence is intended to be exposure that endangers a child. However, the offence is drafted so that endangerment does not need to be proven by the prosecution. Rather, the onus is placed on the defendant to disprove this essential element.

Given the severity of the penalty and the range of possible circumstances where a child may be exposed to a prohibited plant or substances for the cultivation of a prohibited plant and not be endangered, the Committee questions whether this reversal of the onus of proof is appropriate and considers that it may unduly trespass on the fundamental right of a person to be presumed innocent.

The Committee seeks your advice as to the justification for reversing the onus of proof in this offence.

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

NEW SOUTH WALES

ATTORNEY GENERAL

2006/CLRD0335

Mr Allan Shearan MP
Chairman
Legislation Review Committee
Legislative Assembly
Parliament House
Macquarie Street
Sydney NSW 2000

2 AUG 2006

Dear Mr Shearan

Re: Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Act 2006

Thank you for your letter of 2 June 2006 concerning the offences in the Act that relate to the enhanced indoor cultivation of prohibited plants in the presence of children.

The aggravated offences take the same form as those included in the recent *Drug Misuse and Trafficking Amendment Act 2006*. The reversal of the onus of proof in the offences, in so far as the risk of harm is concerned, recognises the inherent risks to children of exposure to the hydroponic process, such as fire, electrocution, extreme heat, dangerous chemicals, insecticides and fumes as well as toxic gases and airborne bacteria. I acknowledge the Committee's concern that the sweeping ambit of the offences gives rise to a range of possible circumstances where a child may be exposed to a prohibited plant or substances stored for use in the cultivation process and not be endangered. The offences are deliberately broad in scope and recognise that harm is avoided more by good luck than good management in most cases.

It has been an all too common feature of hydroponic cannabis houses raided by Police in recent years that children are forced to inhabit the same living areas as those in which the cultivation process occurs. It is easy to see that there is great scope for things to go wrong with possibly fatal consequences. For example, there is an ever-present danger of fires caused by the illegal and unsafe electrical re-wiring that hydroponic houses typically feature. Heat globes used in hydroponic set-ups are usually about one metre off the ground – within easy reach of children. Some of the chemicals commonly stored for use in the hydroponic process – nitric acid, phosphoric acid, and potassium hydroxide – are highly corrosive and should be handled with extreme care and stored under strict conditions. They should not be stored in a child's bedroom, for example, or anywhere else where children can easily access them.

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

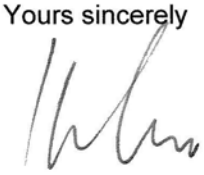
Postal: PO Box A290, Sydney South NSW 1232
Facsimile: (02) 9228 3166

The fact of exposure to the cultivation process or to substances stored for that purpose will have to be proved and a defence is available as a safeguard if there is no actual harm to the health and safety of the exposed child.

There are several other examples in NSW legislation of reverse onus offences, including section 527C of the *Crimes Act 1900* - commonly known as "Goods in Custody". Furthermore, the Commonwealth has also introduced a child endangerment offence carrying a reverse onus, where a child is exposed to the manufacture of a controlled drug or precursor. This offence is similar to those contained in the recent *Drug Misuse and Trafficking Amendment Act 2006*, upon which the present offences are based.

I trust that this letter has helped explain the rationale behind the new offences and the manner in which they have been drafted.

Yours sincerely



BOB DEBUS

9. LOCAL GOVERNMENT AMENDMENT (WASTE REMOVAL ORDERS) BILL 2006

Date Introduced:	23 May 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Kerry Hickey MP
Portfolio:	Local Government

Background

1. The Committee considered this Bill at its meeting of 2 June 2006 and published its report on the Bill in Digest No 8 of 2006.

2. The Bill amended the *Local Government Act 1993* to allow a Council to make a waste removal order requiring a resident to remove or dispose of waste from, or to refrain from keeping waste on, their premises in the interests of the protection of public health.

3. The Bill also exempted a Council making such an order from complying with certain procedural requirements, including the giving of prior notice and the making and clearing of representations by the person affected. Certain appeal rights, including appeals to the Land and Environment Court against making of the waste removal order continue to apply under the Bill.

4. The Committee referred these matters to the Parliament.

Minister's Letter

5. The Minister wrote to the Committee after receiving an embargoed copy of the Committee's report on this Bill. In noting the two matters referred by the Committee to Parliament, the Minister advised that:

> The Bill was prepared in response to practical difficulties experienced by local Councils when attempting to have premises cleaned up that pose an immediate health risk to the public.

6. He also noted that the Bill retains the right of persons issued with a waste removal order to have that decision reviewed by a court (Supreme Court or Land and Environment Court).

7. The Minister set out some of the other safeguards under the Bill including that a waste removal order cannot be issued unless a qualified environmental health officer has determined that there is a serious risk to public health or safety. Once such an assessment has been made the person who is the subject of the order is given an opportunity to do the work themselves, "unless the risk is so acute that immediate action is required". The Minister further advised that at that time the person has an

opportunity to seek an injunction from a court against the carrying out of the order until the court can examine whether or not the order has been issued properly.

Committee's Response

8. The Committee thanks the Minister for his reply.

The Committee makes no further comment on this Bill.

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

Ref:
MIN: 06/3476
Doc ID: A56790

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

09 JUN 2006

Dear Mr Shearan

I am writing in reply to your letter of 2 June 2006 regarding the embargoed copy of the Legislative Review Committee's report on the *Local Government (Waste Removal Orders) Bill 2006.*

I note the Committee has referred two matters back to Parliament:

1. Whether the proposed order 23A unduly trespasses on personal rights by removing the right to be notified of, and be heard in relation to, a waste removal order
2. Whether the Bill unduly trespasses on personal rights by removing all possibility of review of the making of a waste removal order.

I note that the Committee is of the view that the review of administrative decisions, especially external review, is an important mechanism to ensure the appropriate exercise of executive power.

The Committee has also stated that it is of the view that this is especially important if the person who is the subject of the decision has been denied an opportunity to make representations on their own behalf prior to the making of the order.

The Bill has been prepared in response to practical difficulties experienced by local councils when attempting to have premises cleaned up that pose an immediate health risk to the public.

The Bill retains the right of persons issued with an order 23A to have that decision reviewed by a court. The review may be requested by the Supreme Court as part of its original jurisdiction to review administrative decisions. The review may also be requested by the Land and Environment Court as part of its jurisdiction to hear matters where there has been a breach of the Local Government Act or where it is anticipated that a breach of that Act is about to occur.

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

An order cannot be issued before a qualified environmental health officer has attended the premises and carried out an assessment.

Under the existing provisions of the Act, council officers cannot enter premises without first providing reasonable notice, unless entry to the premises is required because of the existence or reasonable likelihood of a serious risk to health or safety or the case is one in which the general manager has authorised in writing entry without notice or they have a search warrant.

The Act already recognises that there are circumstances, such as those where there is serious risk to public health or safety, where notice is not required. Risks to public health or the health of individuals should be no exception.

Once an environmental health officer has made an assessment and determined that there is a risk or a likely risk to public health or the health of an individual, then an order to clean up the premises may be issued. The person to whom the order is issued is given the opportunity to do the work themselves, unless the risk is so acute that immediate action is required.

It follows that a person has an opportunity at that time to seek intervention from a court to have the action required by the order injuncted until the court can examine whether or not the order has been issued properly.

As previously indicated to the Committee, I am satisfied that where public health or the health of a neighbour is at risk, the public interest is weighted in favour of taking preventative or remedial action over the right of an individual to be heard as to whether the order should be issued, particularly where the right of judicial review of the Council's action has been retained.

Yours sincerely

Kerry Hickey MP
Minister

Part Two – Regulations

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

Regulation	Gazette reference		Information sought	Response Received
	Date	Page		
Conveyancing (Sale of Land) Amendment (Smoke Alarms) Regulation 2006	28/04/06	2387	25/08/06	
Gaming Machine Amendment (Payment of Prize Money) Regulation 2006	19/05/06	3088	25/08/06	
Photo Card Amendment (Fee and Penalty Notice Offences) Regulation 2006	23/06/06	4673	25/08/06	
Photo Card Regulation 2005	09/12/05	10042	28/04/06 25/08/06	21/08/05

SECTION B: COPIES OF CORRESPONDENCE ON REGULATIONS

Regulation & Correspondence	Gazette ref
Electricity (Consumer Safety) Regulation 2006 • Letter dated 28/04/06 from the Committee to the Minister for Fair Trading. • Letter dated 12/06/06 from the Minister for Fair Trading to the Committee.	03/02/06 page 537
Health Records and Information Privacy Regulation 2006 • Letter dated 28/04/06 from the Committee to the Minister for Health. • Letter dated 27/06/06 from the Minister for Local Government to the Committee.	10/03/06 page 1160
Motor Accidents Compensation Regulation • Letter dated 28/04/06 from the Committee to the Minister for Commerce. • Letter dated 24/07/06 from the Minister for Commerce to the Committee.	26/08/05 page 5609
Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2006 • Letter dated 03/08/06 from the Minister for Roads to the Committee. • Letter dated 25/08/06 from the Committee to the Minister for Roads. Please note that previous correspondence relating to this Regulation is available in *Digests* 1, 8, 13 and 17.	26/08/05 page 5745
Photo Card Regulation 2006 • Letter dated 28/04/06 from the Committee to the Minister for Roads. • Letter dated 21/08/06 from the Minister for Roads to the Committee. • Letter dated 25/08/06 from the Committee to the Minister for Roads.	09/12/05 page 10042

1. Electricity (Consumer Safety) Regulation 2006

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

28 April 2006

Our Ref: LRC1728

The Hon Diane Beamer MP
Minister for Fair Trading
Level 33, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

Electricity (Consumer Safety) Regulation 2006

On 28 April 2006, the Committee considered the Electricity (Consumer Safety) Regulation 2006 and resolved to write to you regarding clause 29. This clause provides for the return and compensation of electrical articles seized under section 29(1)(d) of the *Electricity (Consumer Safety) Act 2004*.

The Committee recognises the importance of ensuring that consumer electrical articles are safe and comply with the Act. However, the Committee notes that 12 months may be an excessive period of time to deprive a person, without charge, of their personal property.

The Committee requests your advice as to whether a person may appeal against the seizure of their property, or the length of time for which it is seized. The Committee also seeks your advice as to the processes in place to ensure that a person is not unduly disadvantaged by clause 29 of the Regulation.

The Committee looks forward to receiving your advice on the above matters.

Yours sincerely

Allan Shearan

Allan Shearan MP
Chairman

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

RML: M06/2131

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

20 JUN 2006

Dear Mr Shearan

I refer to your correspondence of 28 April 2006 concerning clause 29 of the *Electricity (Consumer Safety) Regulation 2006*.

The *Electricity (Consumer Safety) Act 2004* and the *Electricity (Consumer Safety) Regulation 2006* commenced on 3 February 2006. Under section 26(1)(d), an authorised officer may seize an electrical article for testing to ascertain whether it is unsafe. Section 28(1) provides that if an article is seized, the Commissioner for Fair Trading must return it within 60 days, or such longer period as is prescribed by the regulation. The requirement to return it within this period applies unless the Commissioner has determined that the article is unsafe and commenced proceedings under section 29 for forfeiture of the article. It also does not apply if the Commissioner has commenced proceedings against a person for a breach of the legislation in connection with the article. Section 28(2) provides that compensation is to be paid if these proceedings are not commenced within the period mentioned above. Clause 29 prescribes the period of 12 months for the purposes of section 28(1).

In relation to whether there is a right of appeal, I am advised that the Electricity (Consumer Safety) Act and Regulation do not provide any express right of appeal to a person whose electrical article is seized under section 26(1)(d) or held by the Commissioner for up to 12 months pursuant to section 28(1) and clause 29(1).

Chapter 3 of the *Administrative Decisions Tribunal Act 1997* (sections 36-40) deals with the jurisdiction of the Administrative Decisions Tribunal. Section 38(1) provides that the Tribunal only has jurisdiction to review an administrative decision if legislation, other than the Administrative Decisions Tribunal Act, provides that applications may be made to the Tribunal for a review of the decision. As the Electricity (Consumer Safety) Act and Regulation do not provide a right of review to the Tribunal against decisions to seize electrical articles or hold seized electrical articles for up to 12 months, there is no right of appeal to the Tribunal against those decisions.

However, general administrative law principles would nevertheless apply to decisions to seize and hold seized electrical articles. In exercising these powers according to administrative law principles, the Commissioner would, for example, have to act reasonably, act for a proper purpose (e.g. use the power only for purposes authorised by the legislation), not apply the 12-month policy inflexibly, and take into account relevant considerations and not irrelevant considerations. The exercise of the Commissioner's powers in this regard could be challenged in the Supreme Court of New South Wales.

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

The 12 month period prescribed by clause 29 was referred to in the Regulatory Impact Statement when the draft regulation was released for public comment. It states that the 60 day period originally allowed in the Act is inadequate time to enable products to be tested and for investigations to be completed. No comments on the proposal were received.

In the case of tests, products seized by Fair Trading are normally sent to private laboratories for testing. These tests can be complex and dealt with in the same manner as any other work received by the laboratories. In some cases it may be necessary to send a product for testing to a laboratory in another region or state.

In the case of investigations, it is widely accepted that the vast bulk of electrical appliances are manufactured overseas and it can take some time to obtain information from such manufacturers. Also, importers may operate through a number of channels of distribution which can make the investigation both complex and time consuming.

Fair Trading advises that, in many cases, the retailer does not want the product back unless they are assured it is safe. This is because the retailer could be exposed to civil liability in the case of an accident or fatality. Many retailers report the matter back to the suppliers for their investigation. Retailers are often, like consumers, the victims of faulty manufactured products. Fair Trading also advises that the majority of appliances seized cost less than $200.

The 60 day period in which to undertake testing and commence proceedings that was initially allowed by section 28(1) is also at odds with period set in the Act for the commencement of prosecutions generally. In this regard, section 49 provides for a 2 year period after the date the offence is alleged to have been committed within which proceedings for an offence may be commenced.

In light of the above as well as the public safety objective of the legislation, and bearing in mind that if a product is returned within the 12 month period specified by clause 29 that the person is also entitled to compensation, it is considered that the clause is fair and reasonable.

I trust this information is of assistance.

Yours sincerely

The Hon Diane Beamer MP

2. Health Records and Information Privacy Regulation 2006

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

28 April 2006

Our Ref:LRC

The Hon John Hatzistergos MLC
Minister for Health
Level 31 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

Health Records and Information Privacy Records Regulation 2006

The Committee has considered the above Regulation and has resolved to write to you to express its concern about the privacy implications of the HealtheLink trials.

The Committee notes the inherent risk to personal privacy of placing personal and highly sensitive information on a central database that is widely accessible by health professionals and administrators. It also notes the obvious benefits of establishing an electronic database of health records.

The Committee also notes your advice to the Parliament on the security measures in place to protect the information collected for the database during the trials. However, to ensure that these security measures are effective, the Committee is of the view that there should be an independent and objective evaluation of the impact of the pilot program on privacy and the extent to which the safeguards applied during the trials ameliorate that impact. Such an independent evaluation will enhance public confidence in the trials and the scheme that is ultimately adopted as well as help to ensure the best possible privacy protection outcomes.

The Committee is of the view that the Privacy Commissioner would appear to be the appropriate authority to conduct this evaluation and to develop any

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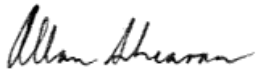
additional or alternative safeguards necessary to further protect the privacy of participants in the scheme.

The Committee seeks your advice as to:

1. Whether any independent and objective assessment of the privacy implications of the HealtheLink program is planned as part of the overall evaluation of the trials?
2. If no such independent assessment is planned, whether you will request the Privacy Commissioner or other appropriate independent body to conduct such an assessment?

Yours sincerely



Allan Shearan MP
Chairman

NEW SOUTH WALES

MINISTER FOR HEALTH

M06/3286

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

27 JUN 2006

Dear Mr Shearan

I write in response to your letter concerning the Health Records and Information Privacy Records Regulation 2006 and the Committee's concerns about the privacy implications of the Healthe*Link* trials.

The Electronic Health Record trial evaluation will be undertaken in consultation with The Council of Social Services of NSW (NCOSS) and the Privacy Commissioner. An independent third party will conduct the evaluation and will inform future decisions about implementation.

NSW Health has been in close contact with Privacy NSW over the development of the trial policies and processes. Privacy NSW reviewed drafts of the Regulation and all comments made by the office were included in the final drafting of the regulation.

Joint briefings on the project were held with State and Federal Privacy Commissioners and future briefings are planned over the course of the pilot. A briefing was also held with the Australian Privacy Foundation earlier this year.

Both NCOSS and the NSW Privacy Commissioner are represented on the Electronic Health Record Steering Committee to ensure that the electronic health record complies with privacy regulations.

Should you require further information, please contact Ms Joanna Kelly, Director, Portfolio Management, on telephone 9391 9090 or email jkely@doh.health.nsw.gov.au

Yours faithfully

(John Hatzistergos)

Locked Mail Bag 961 North Sydney NSW 2059 Telephone (02) 9228 4977

3. Motor Accidents Compensation Regulation 2005

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

28 April 2006

Our Ref: LRC 1467

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

Dear Minister

Motor Accidents Compensation Regulation 2005

The Committee refers to the above and thanks you for your letter of 8 November 2005 to the Hon Peter Primrose MLC.

The Motor Accidents Authority's (MAA) attachment to the letter resolved most of the questions raised. However, certain issues listed below remain on which the Committee seeks further advice and clarification.

"Punitive" effects of the Regulation

In its original submission on the draft Regulation, the NSW Bar Association submitted to the MAA that the costs Regulations are "punitive", and create a disincentive to seek to reargue a CARS assessor's decision. The MAA responded that it was not clear from the Bar Association's submission how this was the case. In a letter to the Committee dated 5 March 2005 (attached), the Bar Association provided further information regarding its concerns.

The Bar Association noted that when an insurer has alleged contributory negligence, a claimant may be forced into a rehearing, even though he or she is prepared to accept the CARS assessor's award. The claimant is forced to run a court case and face a significant gap between solicitor/client and recoverable party/party costs: even where the insurer fails to obtain a larger finding of contributory negligence, the claimant is still restricted to the scale costs, unless the court considers the circumstances to be "exceptional".

The Bar Association noted that:

> This approach is inconsistent with all concepts of fairness and reasonableness. If a claimant is dissatisfied with the award of damages, seeks to rehear a case, and subsequently fails to improve on their position, there are significant cost penalties imposed under s 151 of the Act. However, the same cost penalties do not apply

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against an insurer who forces a rehearing on contributory negligence and does not improve on its position.

The Committee seeks your advice as to why:

- *a claimant who is willing to accept a CARS assessor's award may face a significant gap between solicitor/client and recoverable party/party costs when an insurer has alleged contributory negligence in such circumstance, even where the insurer fails to obtain a larger finding of contributory negligence; and*

- *there is no cost disincentive on an insurer pursuing such action if it is unsuccessful.*

The Bar Association stated that:

- the 2% loading allowed by stage 6 of the cost regulations does not adequately cover the costs of litigation, so that it is likely that a claimant will lose in unrecoverable legal costs much of an award gained by proceeding to rehearing; and
- the cost regulations make no allowances for delays in a District Court hearing, or for appeals. If the lodging of an appeal by an insurer is not sufficient for the Court of Appeal to find "exceptional circumstances", a claimant will recover no costs of the appeal, even if the insurer is wholly unsuccessful.

The Committee seeks clarification from you as to how these negative cost implications further the Act's objective of improving the processes by which injured people obtain compensation in respect of motor accidents.

The Committee also notes that both the District Court and Supreme Court have longstanding rules in relation to Offers of Compromise designed to promote and encourage settlement. If a party fails to do better than an opponent's Offer of Compromise, there is an exposure to additional costs.

The Committee seeks your advice as to why a similar system of Offers of Compromise was not adopted in respect of motor accident claims

Yours sincerely

Allan Shearan

Allan Shearan MP
Chairman

SUBMISSION TO LEGISLATION REVIEW COMMITTEE

In 2005, the Bar Association provided detailed submissions in relation to the proposed *Motor Accidents Compensation Regulation 2005*. Clarification has been sought as to the Association's description of the cost regulations as 'punitive', with particular regard to a court re-hearing following a CARS assessor's award. Further submissions are set out below.

TYPES OF REHEARING

Under the *Motor Accidents Compensation Act 1999,* there are effectively two mechanisms by which a case having been assessed at CARS can be reheard in court.

1. The claimant can seek a re-hearing. This is done by advising the insurer within 21 days of receipt of the assessor's Certificate of Assessment that the assessment is not accepted (s95 of the Motor Accidents Compensation Act).

2. An insurer can seek a rehearing. However, the insurer can only seek a rehearing in circumstances where contributory negligence of <25% has been alleged.

   There is an unresolved issue as to the scope of the rehearing to which an insurer is entitled. Insurers argue that where contributory negligence has been alleged and the insurer seeks a rehearing, being dissatisfied with the assessor's finding in relation to contributory negligence, then both contributory negligence and damages can be reargued on the rehearing. The alternate view is that an insurer is only entitled to a rehearing of the contributory negligence allegations and that the assessor's determination as to the quantum of damages remains binding on the parties.

   This issue has recently been considered by firstly the Judicial Registrar and on appeal by Judge Garling in the District Court. In *Yang v. Lee* both Judicial Registrar McDonald and Judge Garling held that an insurer was only entitled to have contributory negligence reassessed and that the CARS assessor's determination on damages was binding on rehearing (unless the claimant elected to rehear the question of damages). The case is currently on appeal, so there remains uncertainty as to the interpretation of s95.

It is worth noting that whilst a claimant clearly controls whether a rehearing occurs under 1. above, the claimant has no control over the second scenario where the insurer forces the matter to rehearing against the claimant's wishes.

RECOVERABLE COSTS ON REHEARING

There are two restrictions on costs applicable to a rehearing:

(a) Section 151 of the Motor Accidents Compensation Act provides that where a claimant does not improve upon a CARS assessor's award at court by either $2,000 or 20% (whichever is the greater), the claimant is not entitled to recover

any costs of the rehearing. If the claimant does not receive an amount greater than the assessor's award, the claimant is liable to pay the insurer's costs up to an amount of $25,000.

(b) The cost regulations limit the recovery of party/party costs on rehearing to 2% of the ultimate judicial award. A court award of $200,000 allows recoverable legal costs of $4,000. In addition, legal costs can be recovered on a scale of $2,550 per day for senior counsel and $1,750 per day for other counsel. The costs of conferences can be recovered at the rate of $150 per hour, but there is no separate allowance for the preparation time of counsel in anticipation of a hearing. Disbursements such as medical report fees and witness expenses are strictly regulated and many necessary disbursements such as photocopying charges cannot be recovered.

There are no additional allowances in terms of recoverable costs for where a matter proceeds through both arbitration and rehearing in the District Court or where the matter is not reached on a day when it is listed for hearing in the District Court. There is no additional costs allowance for cases that run for several days or for cases that may be the subject of an interlocutory proceeding. There is no additional allowance of costs for any appeal which an insurer may bring if dissatisfied with a court assessment of contributory negligence (on the assessor's rehearing) or a court's assessment of damages (on a claimant's rehearing). A judge does have the capacity to vary the cost regulations under s153 of the Act 'in an exceptional case and to the avoidance of substantial injustice'. The Bar Association is not aware of any case where such a judicial discretion has been exercised.

HOW ARE THE COSTS PROVISIONS PUNITIVE?

The following circumstances serve as illustrations of the punitive effects of the cost regulations:

1. The insurer forces a rehearing

When an insurer has alleged contributory negligence, the claimant can be forced into a rehearing even though they wish to accept the CARS assessor's award. The claimant is forced to run a court case and face a significant gap between solicitor/client and recoverable party/party costs. Even where the insurer fails to obtain a larger finding of contributory negligence, the claimant is still restricted to the scale costs unless the court considers the circumstances to be 'exceptional'.

This approach is inconsistent with all concepts of fairness and reasonableness. If a claimant is dissatisfied with the award of damages, seeks to rehear a case, and subsequently fails to improve on their position, there are significant cost penalties imposed under s151 of the Act. However, the same cost penalties do not apply against an insurer who forces a rehearing on contributory negligence and does not improve on its position.

2. The 20% improvement rule

A claimant recovers no costs of court proceedings where there is less than 20% improvement on the damages awarded unless the original award is for $1m or more (s151 (a) (ii)). A claimant can be awarded, $500,000 and on rehearing improve on that award by $90,000 and still not recover any costs of the rehearing. The claimant is expected to either accept a CARS assessor's award that is $90,000 less than the true value of their claim or risk having a significant proportion of the increased damages lost in unrecovered costs.

For many injured claimants $90,000 is a significant and valuable sum. It represents well over one-year's earnings (at average weekly earnings) and more than two years net earnings for many low-income earners.

3. The actual costs of litigation

The 2% loading allowed by stage 6 of the cost regulations does not adequately cover the costs of litigation.

A recent District Court decision in the matter of Teresa Ridolfi is illustrative. The claimant was awarded around $260,000 by a CARS assessor. Following a four day hearing in the District Court (during which doctors were called to give evidence), Judge Rolfe awarded just over $340,000. The claimant improved her position on rehearing by approximately $80,000, or 23.5%. The claimant will be entitled to recover stage 6 legal costs of $6,820 plus counsel's fees in accordance with the regulations.

The claimant retained both senior and junior counsel for the rehearing. The value of senior counsel in the case can be seen in the significant improvement over the CARS assessor's award.

It is likely that Mrs Ridolfi will lose much of the $80,000 she gained by proceeding to rehearing in unrecoverable legal costs.

To have a solicitor attend court for four days to instruct counsel would have consumed most of the recoverable costs (6 hours at $250 x 4 days = $6,000). Additional costs which the solicitor would have incurred and which Mrs Ridolfi will ultimately pay include:

- Drafting a Statement of Claim and Part 15.5 Statement of Particulars.
- Attending status conferences in the District Court.
- Answering requests for particulars from the insurer.
- Reviewing and copying documents produced under subpoena.
- Issuing and serving subpoena for witnesses to attend and give evidence at hearing.
- Preparing briefs for counsel and conferring with counsel.
- Liaising with witnesses regarding their attendance at court.
- Photocopying and faxes.
- Conferring with the client and advising on the rehearing process.

4. Offers of compromise

Both the District Court and Supreme Court have longstanding rules in relation to Offers of Compromise designed to promote and encourage settlement. If a party fails to do better than an opponent's Offer of Compromise, there is an exposure to additional costs.

There is no good reason for the Offer of Compromise system to be suspended in relation to Motor Accident claims.

Take a hypothetical illustration from the facts of Mrs Ridolfi's case. Imagine Mrs Ridolfi had made an Offer of Compromise in the court proceedings to settle for $310,000. In any other type of case Mrs Ridolfi would have been entitled to indemnity costs from the date of her offer on the basis that the insurer failed to accept the offer and the judgment clearly exceeded the offer. The Defendant/insurer is penalised for failing to accept a reasonable compromise offer.

However, because of the provisions of the Motor Accidents Compensation Act the hypothetical Offer of Compromise by Mrs Ridolfi is pointless. Absent 'exceptional circumstances', a judge cannot do other than award Mrs Ridolfi costs in accordance with the regulations.

5. Delays and appeals

The cost regulations make no allowances for delays in a District Court hearing or for appeals. Imagine that the insurer lodges an appeal in Mrs Ridolfi's case. Is the lodging of an appeal sufficient for the Court of Appeal to find 'exceptional circumstances' and award Mrs Ridolfi the costs of the appeal? If not, Mrs Ridolfi will recover no costs of the appeal, even if the insurer is wholly unsuccessful on appeal.

FIXING THE PROBLEMS

To address the injustices set out above it is recommended that the Motor Accidents Compensation Act and the Costs Regulations be amended to provide as follows:

1. Where an insurer seeks a rehearing on the issue of contributory negligence under s95 and the claimant otherwise wishes to accept the award of damages, the claimant should be entitled to recover the normal party/party costs of the rehearing. This proviso should be subject to the usual rules in relation to Offers of Compromise.

2. Amend s151 (2) (a) (i) so that a claimant who improves on a CARS assessor's award by at least $5,000 (an increase from $2,000) or 10% (down from 20%) [whichever is the greater] will be entitled to recover their restricted costs.

3. Reduce the amount in s151 (2) (a) (ii) from $200,000 to $100,000. If a claimant can improve their position by $100,000, they should be able to recover the restricted costs under the regulations.

4. Redraft s153 (1) so that a court may depart from the costs regulations without the need for 'an exceptional case'. The court should have the discretion and power to depart from the costs regulations for 'the avoidance of substantial injustice' without being an 'exceptional case'.

5. Allow the ordinary rules of court in relation to Offers of Compromise to apply. If on rehearing a claimant makes a sensible Offer of Compromise and the insurer rejects that offer, the insurer should not be entitled to the continuing protection of the costs regulations.

A theme of all the matters raised in this submission is the inadequacy of the costs recovery permitted by this legislation to successful and meritorious claimants. The people affected by the matters raised in this submission are all seriously injured and have been demonstrated to have suffered a wrong that deserves to be compensated. It is only fair that they be fully compensated and not indirectly penalised by having their compensation reduced by manifestly inadequate costs recovery provisions. This legislation is very complex and no one without legal training could possibly exercise all his or her legal rights under it without legal assistance. To the extent the legislation denies proper funding for claimants' appeal rights, it also denies them the full and proper exercise of their rights. The legislation should not be allowed to become a source of injustice

If further clarification of the punitive effect of the costs regulations is required, the Association would be pleased to provide further submissions. It should be noted that Association's original submission canvassed further wide-ranging complaints regarding the costs regulations. It is hoped that those submissions will ultimately be considered by the Motor Accidents Authority.

5 March 2006

Minister for Commerce
Minister for Finance
Minister for Industrial Relations
Minister for Ageing
Minister for Disability Services
Leader of the Government in the Legislative Council

Ref: 04/1420

RECEIVED
26 JUL 2006
LEGISLATION REVIEW COMMITTEE

24 JUL 2006

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

Dear Mr Shearan

I refer to your correspondence regarding the *Motor Accidents Compensation Regulation 2005* and attaching a copy of the NSW Bar Association's supplementary submission on the Regulation and Regulatory Impact Statement (RIS). I refer also to my previous correspondence of 3 November 2005 to the former Committee Chairperson, Hon Peter Primrose MLC.

It is important that I clarify that, as is stated in the RIS, the *Motor Accidents Compensation Regulation 2005* seeks to remake with minor changes the *Motor Accidents Compensation Regulation (No 2) 1999* to ensure that transaction costs relating to motor accident claims do not unreasonably contribute to the price of Green Slips payable by motorists in New South Wales. The RIS also makes clear that the Regulation gives effect to the fee regulating provisions of the *Motor Accidents Compensation Act 1999* which are concerned with limiting legal, medico-legal and medical treatment costs in motor accident matters.

The *Motor Accidents Compensation Regulation (No 2) 1999* and its event bases were developed in consultation with key service providers and stakeholders including the NSW Bar Association. As is noted in the RIS, the NSW Bar Association participated in a number of working parties convened by the Motor Accidents Authority (MAA) to determine the fees, costs and procedures that came to apply under the 1999 Regulation.

I have noted the Committee's further queries in relation to rehearings on contributory negligence and the application of the rules of court in relation to Offers of Compromise. As the recommendations of the NSW Bar Association's supplementary submission to the Committee indicate, these issues are outside the scope of the *Motor Accidents Compensation Regulation 2005*.

In relation to the Committee's concern about the cost of legal services, I would bring the Committee's attention to page 4 of the RIS where it is noted that:

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

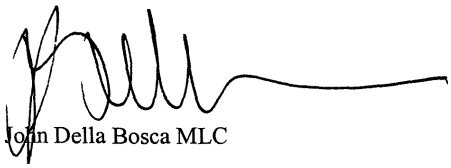
> The approach to legal fee regulation has been retained as there have been no notable variations in motor accidents scheme practice and procedure since the introduction of the scheme reforms in 1999. A further analysis of the value of legal services and the appropriateness of the current regulatory regime will be conducted in the event of any significant change to the practices and procedures within the scheme.

The RIS also indicates that the maximum fees for legal services specified under schedule 1 of the *Motor Accidents Compensation Regulation 2005* were increased to reflect inflation since 1999.

Any further enquires about this matter may be directed to Nadine King, Principal Policy Officer, MAA on (02) 8267 1933 or by e-mail: nking@maa.nsw.gov.au.

I trust that this information clarifies matters for the Committee.

Yours sincerely



John Della Bosca MLC

4. Photo Card Regulation 2005

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

26 April 2006

Our Ref: LRC1677

The Hon Eric Roozendaal MLC
Minister for Roads
Level 30 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

Photo Card Regulation 2005

Pursuant to its obligations under s 9A of the *Legislation Review Act 1987*, the Committee has considered the above Regulation.

The Committee notes that a stated purpose of the *Photo Card Act 2005* is to make it easier for older people and people with disabilities who need to obtain photo identification, but are unable to do so.

Use by persons with a vision impairment

The Committee notes a number of concerns raised in submissions on the draft regulation regarding the useability of the card by persons with a vision impairment. According to the RTA's response to these submissions, the RTA is currently investigating the possibility of including a sticker which will assist the vision impaired to distinguish their Photo Cards by touch.

The Committee would be grateful if you could advise it of the outcome of these investigations.

Costs

The Committee notes community concerns that the $40 fee is too expensive for many expected applicants and that there is no provision for a concessional rate. The Committee also notes that the RTA's response to these issues is that the fee should be at a rate which is revenue neutral.

The Regulatory Impact Statement for the Regulation (RIS) states that the $40 fee is set to recover the RTA's development costs in 12 months under the worst case scenario of only 66,533 people per annum applying for a card. The figures in the RIS indicate that charging $40 for a Photo will provide the RTA with a windfall of between $2.6m and $14.8m over the five years of the Regulation, at the expense of applicants. According to the RIS figures, cost

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recovery under the worst case scenario over the five years of the Regulation would require a fee of around $32.30.[1]

The Committee seeks your advice as to why the fee level has been set to recover development costs within the first year of operation, rather than over the life of the Regulation, and as to whether the fee level will be redetermined after development costs have been recovered so that it will in fact be revenue neutral to the RTA.

Penalty level

Finally, the Committee considers that the penalty of 20 penalty units for failing to notify of a change of address under cl 8(1) is in excess of the gravity of the offence and above that required to prompt people to be diligent in giving such notification.

The Committee therefore seeks your advice as to the reasons for the size of this penalty.

Yours sincerely

Allan Shearan MP
Chairman

[1]Based on development costs of $658,462.50, transaction cost of $26.21, future development costs of $0.75, applicants per annum of 66,533 (from p 4 of the RIS), a discount rate of 7%, and no annual indexation of fees.

NEW SOUTH WALES

Minister for Roads

M06/21659

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

RECEIVED
21 AUG 2006
LEGISLATION REVIEW COMMITTEE

Dear Mr Shearan

Thank you for your letter concerning *Photo Card Regulation 2005.*

The NSW Photo Card was developed following broad representation from the community, seeking a Government-endorsed photo identification card. The Roads and Traffic Authority (RTA) undertook the scheme on a revenue neutral, full cost recovery basis.

The photo card is based on the NSW driver licence and contains similar security features. Given the broad acceptance of the driver licence as a secure and verifiable identification document, it would be inequitable to produce an identity card of any lesser security or integrity.

While no concessions are available, the administration fee may be waived where the holder of a driver licence has failed an advanced age driving test or a medical examination, or has made a decision that they are not competent to continue driving.

I'm advised the voluntary photo card has been well received and motor registries report customer reaction to the fee, which is significantly less than the fee for the driver licence, has not been adverse.

As a result of submissions responding to the Regulatory Impact Statement, the RTA examined the option of a tactile sticker to enable the visually imparied to distinguish their photo card by touch. It was found that tactile stickers are not sufficiently durable for a five-year card. The RTA is continuing to investigate options to assist the visually impaired.

Maintaining accurate records relating to personal and address details, as required by the *Photo Card Act*, is part of the RTA identity management process and mirrors similar provisions in the NSW driver licensing system.

The maximum Court penalty for failing to notify a change of address is consistent with the same offence in relation to NSW driver licences, as set out in the *Road Transport (Driver Licensing) Act 1998* and the *Road Transport (Driver Licensing) Regulation 1999.* The actual amount of any penalty is a matter for the Court.

If you require more information, you may wish to contact Irene Siu, Manager, Customer Management, RTA on 9218 3583.

Yours sincerely

HON ERIC ROOZENDAAL MLC
MINISTER FOR ROADS

Level 30, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Tel 9228 3535 Fax 9228 4469

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

25 August 2006

Our Ref:LRC382

The Hon Eric Roozendaal MLC
Minister for Roads
Level 30 Governor Macquarie Tower,
1 Farrer Place,
Sydney NSW 2000

Dear Minister

Photo Card Regulation 2005
Photo Card Amendment (Fee and Penalty Notice Offences) Regulation 2006

Thank you for your letter received 21 August 2006 regarding the Photo Card Regulation 2005.

The Committee notes that the RTA is continuing investigations into options to assist the visually impaired asks that it be kept informed of the outcomes of those investigations.

The Committee notes that noting that the fee waiver is of benefit for those surrendering a licence due to being no longer able to drive. However, the Committee is concerned that the waiver is of no benefit to those who were previously not able to drive, many of whom would be among the most disadvantaged users of the photo card and for whom no concessions are available. While the Committee supports alleviating the hardship of those who loose their licence due to physical incapacity, it notes that it is a greater hardship to have always been physically incapable of driving.

The Committee also notes that the RTA has undertaken the scheme on a revenue neutral, full cost recovery basis. The Committee refers to the range of costs set out in the Regulatory Impact Statement for the Regulation, including card security, database changes, transaction costs and future development and again notes that around a quarter of the original $40 fee was to recover establishment costs during the first year of operation.

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The Committee further notes that the *Photo Card Amendment (Fee and Penalty Notice Offences) Regulation 2006* has increased the fee to $41.

The Committee seeks your advice as to:

(a) whether the costings for the photo card on page 4 of the RIS fairly reflect the cost of providing photo cards;

(b) the time at which it is anticipated the RTA will have recovered its costs of establishing the photo card system;

(c) what action will be taken to ensure the scheme remains on a revenue neutral basis once the establishment costs have been recovered.

Yours sincerely

Allan Shearan MP
Chairman

5. Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003

NEW SOUTH WALES

Minister for Roads

M06/1552

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

RECEIVED
08 AUG 2006
LEGISLATION REVIEW COMMITTEE

- 3 AUG 2006

Dear Mr Shearan Allan

Thank you for your letter to the former Minister for Roads regarding Clause 25B of the Road Transport (Driver Licensing) Regulation 1999.

In accordance with the Legislation Review Committee's request, Clause 25B has been narrowed to specify the class of person to whom driver licence information may be provided in order for the Roads and Traffic Authority to fulfil its functions for the Alcohol Interlock Program.

A draft amendment of Clause 25B of the Road Transport (Driver Licensing) Regulation 1999 has been prepared by the Parliamentary Counsel and is attached for your concurrence.

Yours sincerely

HON ERIC ROOZENDAAL MLC
MINISTER FOR ROADS

Level 30, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Tel 9228 3535 Fax 9228 4469

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

25 August 2006

Our Ref:LRC382

The Hon Eric Roozendaal MLC
Minister for Roads
Level 30 Governor Macquarie Tower,
1 Farrer Place,
Sydney NSW 2000

Dear Minister

ROAD TRANSPORT (DRIVER LICENSING) AMENDMENT (INTERLOCK DEVICES) REGULATION 2003

The Committee has considered your letter dated 3 August 2006 in which you sought the Committee's concurrence on a draft amendment to clause 25B of the abovementioned Regulation.

The Committee is please to advise you that the proposed amendment to this clause does meet the concerns the Committee raised previously. The Committee thanks you for your letter and welcomes this amendment.

Yours sincerely

Allan Shearan MP
Chairman

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Appendix 1: Index of Bills Reported on in 2006

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Child Protection (International Measures) Bill 2006	2
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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
Correctional Services Legislation Amendment Bill 2006	Minister for Justice	02/06/06			8
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	19/04/06	6	5
Crimes (Serious Sex Offenders) Bill 2006	Minister for Justice	28/04/06			5
Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Bill 2006	Attorney General	02/06/06	02/08/06		8,9
Education Legislation Amendment (Staff) Bill 2006	Minister for Education and Training	09/05/06	23/05/06		6,8
Fair Trading Amendment Bill 2006	Minister for Fair Trading	02/06/06			8
Local Government Amendment (Waste Removal Orders) Bill 2006	Minister for Local Government		09/06/06		8,9
Motor Accidents Compensation Amendment Bill 2006 and Motor Accidents (Lifetime Care and Support) Bill 2006	Minister for Commerce	24/03/06	26/04/06		3,5
Smoke-free Environment Amendment Bill 2004	Minister for Health	05/11/05	12/01/06		2
State Revenue Legislation Amendment Bill 2005	Treasurer	20/06/05	03/01/05	8	1
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2005	Attorney General	25/11/05	16/05/06	15	7
Totalizator Legislation Amendment (Inter-jurisdictional Processing of Bets) Bill 2006	Minister for Gaming and Racing	09/05/06	24/05/06		6,8
Transport Administration Amendment (Public Transport Ticketing Corporation) Bill 2005	Minister for Transport	25/11/05 28/04/06	05/04/06	15	5
Vocational Education and Training Bill 2005	Minister for Education and Training	04/11/05	28/11/05	13	1
Water Management Amendment Bill 2005	Minister for Natural Resources	25/11/05		15	

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
Careel Bay Protection Bill 2006*	R				
Children (Detention Centres) Amendment Bill 2006	R, C				
Correctional Services Legislation Amendment Bill 2006	R, C				
Crimes Amendment (Murder of Police Officers) Bill 2006*	R				
Crimes (Sentencing Procedure) Amendment Bill 2006	R				
Crimes (Serious Sex Offenders) Bill 2006	R, C				
Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Bill 2006	R, C				
Education Legislation Amendment (Staff) Bill 2006	R, C	R, C	R, C	R, C	R, C
Electricity Supply Amendment (Protection of Electricity Works) Bill 2006	R				
Environmental Planning and Assessment Amendment Bill 2006	R				
Fair Trading Amendment Bill	R, C				
Fines Amendment (Payment of Victims Compensation Levies) Bill 2006	N				
Fisheries Management Amendment Bill 2006	R				
Jury Amendment (Verdicts) Bill 2006	R				
Law Enforcement (Controlled Operations) Amendment Bill 2006	R				
Law Enforcement Legislation Amendment (Public Safety) Bill 2005	R				

Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Local Government Amendment (Waste removal Orders) Bill 2006	R		R		
Motor Accidents (Lifetime Care and Support) Bill 2006	R, C		R, C	R	R
Motor Accidents Compensation Amendment Bill 2006	R, C		R, C		
Motor Vehicles Repairs (Anti-steering) Bill 2006	R				
Pipelines Amendment Bill 2006			R		R
Royal Rehabilitation Centre Sydney Site Protection Bill 2006*	R				
Security Industry Amendment (Patron Protection) Bill 2006*	R				
Threatened Species Conservation Amendment (Biodiversity Banking) Bill 2006				R	
Totalizator Legislation Amendment (Inter-jurisdictional Processing of Bets) Bill 2006		R, C			
Transport Administration Amendment (Travel Concession) Bill 2006				R	
University of Technology (Kuring-gai Campus) Bill 2006*	R				

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
Electricity (Consumer Safety) Regulation 2006	Minister for Fair Trading	28/04/06	20/06/06	9
Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Regulation 2005	Minister for Planning	12/09/05	24/12/06	3
Health Records and Information Privacy Regulation 2006	Minister for Health	28/04/06	27/06/06	9
Hunter Water (General) Regulation 2005	Minister for Utilities	04/11/05	09/01/06	1
Motor Accidents Compensation Regulation 2005	Minister for Commerce	28/04/06	24/07/06	9
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
Photo Card Regulation 2005	Minister for Roads	26/04/06 25/08/06	21/08/06	9
Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003	Minister for Roads		03/08/06	9
Workers Compensation Amendment (Advertising) Regulation 2005	Minister for Commerce	12/09/05	28/11/05	1