

PARLIAMENT OF NEW SOUTH WALES



Legislation Review Committee

LEGISLATION REVIEW DIGEST

No 14 of 2006

13 October 2006

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Chair: Mr Allan Shearan MP

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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. Crimes (Forensic Procedures) Amendment Bill 2006

Right to personal physical integrity: Part 7A

- | | |
|-----|---|
| 14. | The Committee notes that the Bill trespasses on a former offender's right to physical integrity by providing for forensic procedures to be conducted on the person without the person's consent. |
| 15. | The Committee notes that non-intimate forensic procedures can only be conducted without consent on the order of a police officer if the former offender is charged with a further prescribed offence and intimate procedures can only be conducted without consent by order of a court. |
| 16. | Having regard to the limitations on the circumstances in which forensic procedures can be conducted on former offenders and the safeguards in the Bill, the Committee does not consider that the Bill trespasses unduly on personal rights and liberties. |

2. Freedom of Information Amendment (Improving Public Access to Information) Bill 2006*

- | | |
|----|--|
| 3. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|----|--|

3. Mount Panorama Motor Racing Amendment Bill 2006

- | | |
|----|--|
| 3. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|----|--|

4. National Parks and Wildlife Amendment (National Parks Volunteer Service) Bill 2006*

- | | |
|----|--|
| 3. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|----|--|

5. Sydney Water Catchment Management Amendment (Warragamba) Bill 2006

- | | |
|----|--|
| 3. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|----|--|

Part One – Bills

SECTION A: COMMENT ON BILLS

1. CRIMES (FORENSIC PROCEDURES) AMENDMENT BILL 2006

Date Introduced: 28 September 2006
House Introduced: Legislative Assembly
Minister Responsible: The Hon Bob Debus MP
Portfolio: Attorney General

Purpose and Description

1. The Bill amends the *Crimes (Forensic Procedures) Act 2000* [the Act] so as to:
 - authorise the conduct of forensic procedures on persons who have previously been convicted of serious indictable offences in circumstances in which they are subsequently charged with the commission of an indictable offence; and
 - make provision with respect to numerous other matters set out provisions below.
2. The Bill also amends the *Law Enforcement (Powers and Responsibilities) Act 2002* [LEPAR Act] so as to ensure that time spent in carrying out forensic procedures does not form part of any investigation period during which a person may be detained under that Act [proposed new s 117(1)(n) of the LEPAR Act].

Background

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

[The amendments] do three things: first, clear the way for New South Wales to participate in the national DNA database; second, enable DNA backcapture, meaning that police can take a sample from a person who has previously served a gaol sentence for a serious offence but is not yet on the DNA database, if the person is subsequently charged with another indictable offence; and third, implement a wide range of reforms to the Crimes (Forensic Procedures) Act arising from reviews of that Act.¹
4. The Parliamentary Secretary also noted:

This reform represents the fulfilment of a promise by the Government to allow DNA samples to be taken from offenders who were released from prison in respect of a serious offence before testing began in January 2001, if they are charged with another indictable offence. This process is known as DNA backcapture. Community protection dictates that prior serious offenders should provide a DNA sample that will allow any subsequent offending to be detected and prosecuted more easily. Persons who have served terms of imprisonment have been proven to have significantly higher rates of

¹ Mr P E McLeay MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 28 September 2006.

subsequent offending than the general community. However, at the moment, the Act only allows for persons currently serving a sentence to be ordered to provide a sample.

This limitation creates a gap, which DNA backcapture will fill. The reform works in a reasonable and proportionate way, so that those who have finished their sentences, have been fully rehabilitated, and pose no further risk to society will not be affected. DNA backcapture laws will only require a former serious offender to provide a sample when that person is charged with a fresh indictable offence. Police cannot simply walk up and demand a DNA sample from a former offender who is not suspected of any further wrongdoing. In this way, the DNA backcapture scheme strikes an appropriate balance between protecting the community and promoting the rehabilitation of former offenders.²

The Bill

5. The Bill authorises the conduct of forensic procedures on persons who have previously been convicted of serious indictable offences where they are subsequently charged with the commission of an indictable offence [proposed Part 7A]. The new provisions parallel those of Part 7, which deals with forensic procedures carried out on persons still serving a sentence of imprisonment for a serious indictable offence. They provide for:

- the procedures and offenders to which Part 7A applies [proposed s 75A];
- non-intimate forensic procedures to be carried out on an untested former offender with the offender's consent, or on the order of a senior police officer or a court [proposed s 75B];
- intimate forensic procedures to be carried out on an untested former offender with the offender's consent or on the order of a court [proposed s 75C];³
- a police officer to ascertain whether an untested former offender on whom a forensic procedure is proposed to be carried out identifies as an Aboriginal person or Torres Strait Islander [proposed s 75D];⁴
- a forensic procedure carried out under the Part to be carried out in accordance with the requirements of Part 6 [proposed s 75E];
- the requirements for informed consent for the purposes of Part 7A [proposed s 75F];

² Mr P E McLeay MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 28 September 2006

³ Pursuant to proposed amended s 3(1), "intimate forensic procedure" means any of the following:

- (a) an external examination of a person's private parts;
- (b) the carrying out on a person of an other-administered buccal swab;
- (c) the taking from a person of a sample of the person's blood;
- (d) the taking from a person of a sample of the person's pubic hair;
- (e) the taking from a person of a sample of any matter, by swab or washing, from the person's private parts;
- (f) the taking from a person of a sample of any matter, by vacuum suction, scraping or lifting by tape, from the person's private parts;
- (g) the taking from a person of a dental impression;
- (h) the taking of a photograph of the person's private parts; or
- (i) the taking from a person of an impression or cast of a wound from the person's private parts.

⁴ A person has merely to identify as, and does not have to demonstrate that he or she actually is, an Aboriginal person or Torres Strait Islander in order to gain the protections available to Aboriginal persons and Torres Strait Islanders.

- a police officer to request an untested former offender to consent to the carrying out of a forensic procedure [proposed s 75G];
 - the information to be given to an untested former offender before a forensic procedure is carried out [proposed s 75H];
 - the circumstances in which a senior police officer may order that a forensic procedure be carried out on an untested former offender [proposed s 75I];
 - the form in which a consent must be given for the purposes of Part 7A [proposed s 75J];,
 - the records to be kept by a senior police officer by whom a forensic procedure is ordered to be carried out [proposed s 75K];
 - a police officer may apply to a court for an order requiring a forensic procedure to be carried out on an untested former offender [proposed s 75L];
 - the matters to be done by a court which makes an order for the carrying out of a forensic procedure [proposed s 75M];
 - the carrying out of a forensic procedure pursuant to a court order under the Part, and makes it an offence (punishable by a fine of 50 penalty units or 12 months imprisonment, or both) for an untested former offender to refuse or fail to permit the procedure to be carried out [proposed s 75N and s 75O].⁵
6. A police officer may not ask a suspect to undergo an intimate forensic procedure, or a non-intimate forensic procedure involving the taking of a sample of the suspect's hair or the carrying out of a self-administered buccal swab unless:
- (a) the act or omission in respect of which the suspect is a suspect is a *prescribed offence*; and
 - (b) there must be reasonable grounds to believe that the procedure might produce evidence tending to confirm or disprove:
 - (i) that the suspect has committed the prescribed offence referred to in paragraph (a); or
 - (ii) that the suspect has committed some other prescribed offence [proposed new s 11].⁶
7. A prescribed offence is:
- an indictable offence; or
 - any other offence under a law of the State prescribed by the regulations for the purposes of this paragraph [s 3(1)].

⁵ Similarly, a serious indictable offender in respect of whom a forensic procedure is ordered to be carried out under proposed amended s 74 [ie, subsequent to conviction and serving a sentence of imprisonment for a serious indictable offence in a correctional centre or other place of detention] must not, without reasonable excuse, refuse or fail to permit the forensic procedure to be carried out. Maximum penalty: 50 penalty units or 12 months imprisonment: proposed new s 75.

⁶ In any proceedings under the Act, the burden lies on the prosecution to prove on the balance of probabilities that a police officer had a belief on reasonable grounds, or suspected on reasonable grounds, as to a matter referred to in the Act: s 103.

8. Similar provisions apply in respect of non-intimate forensic procedures, except that they must relate only to an *offence* [proposed new s 11(3)].
9. A court may order the carrying out of a forensic procedure if satisfied that it is justified in all the circumstances [proposed new s 75L(2)]. In making such an order a court must specify the forensic procedure authorised to be carried out, and give reasons for making the order [proposed s 75M(1)].
10. If the conviction which renders a person liable to the provisions of Part 7 or new Part 7A is quashed, as soon as practicable after the expiry of the time limited for appealing against such quashing, the police officer in charge of the investigation of the offence must ensure that any forensic material obtained as a result of the carrying out of the procedure is destroyed [proposed new s 87].

Issues Considered by the Committee

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

Right to personal physical integrity: Part 7A

11. Proposed Part 7A provides for the conduct of forensic procedures on persons who have previously been convicted of serious indictable offences where they are subsequently charged with the commission of an indictable offence.
 12. A non-intimate forensic procedure may be conducted without the former offender's consent on the order of a senior police officer [proposed s 75B]; while an intimate forensic procedure may be conducted without the former offender's consent on the order of a court [proposed s 75C].
 13. Moreover, it is simply the *charging* with a further indictable offence – rather than a conviction – which triggers the operation of proposed Part 7A.
- | |
|---|
| <ol style="list-style-type: none">14. The Committee notes that the Bill trespasses on a former offender's right to physical integrity by providing for forensic procedures to be conducted on the person without the person's consent.15. The Committee notes that non-intimate forensic procedures can only be conducted without consent on the order of a police officer if the former offender is charged with a further prescribed offence and intimate procedures can only be conducted without consent by order of a court.16. Having regard to the limitations on the circumstances in which forensic procedures can be conducted on former offenders and the safeguards in the Bill, the Committee does not consider that the Bill trespasses unduly on personal rights and liberties. |
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The Committee makes no further comment on this Bill.

2. FREEDOM OF INFORMATION AMENDMENT (IMPROVING PUBLIC ACCESS TO INFORMATION) BILL 2006*

Date Introduced: 28 September 2006
House Introduced: Legislative Council
Private Member: Ms Lee Rhiannon MLC

Purpose and Description

1. This Bill amends the *Freedom of Information Act 1989* to require an independent review of that Act to be conducted to improve public access to information and for other purposes.

Background

2. The second reading speech stated that:

This bill is about ensuring that citizens of New South Wales have the power to access and independently scrutinise government-held information.⁷

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.

⁷ Ms Lee Rhiannon MLC, Second Reading Speech, Legislative Council *Hansard*, 28 September 2006.

3. MOUNT PANORAMA MOTOR RACING AMENDMENT BILL 2006

Date Introduced: 26 September 2006
House Introduced: Legislative Assembly
Minister Responsible: The Hon Sandra Nori MP
Portfolio: Tourism and Sport and Recreation

Purpose and Description

1. The object of this Bill is to amend the *Mount Panorama Motor Racing Act 1989*:
 - (a) to increase the number of motor racing events that may be held annually under a permit from 2 to 5, and
 - (b) to require motor racing events to be held in accordance with a public safety report issued by the Commissioner of Police after a member of NSW Police has conducted a public safety inspection of the race track, and
 - (c) to allow the Minister administering that Act to delegate his or her functions under the Act, and
 - (d) to create offences relating to the invasion of and interference with the race track at the Mount Panorama Circuit, and
 - (e) to update certain out of date references.

Background

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

The purpose of the bill is to increase to five the maximum permissible annual number of events using the whole Mount Panorama motor racing circuit under the Mount Panorama Motor Racing Act 1989. By promoting increased visitation to the area, this measure will assist the Bathurst Regional Council, the owner of the circuit, in developing a significant local tourism resource. The bill increases the penalties for two offences to a maximum of 100 penalty points each. This measure will ensure that the penalties are commensurate with the seriousness of the offences.⁸

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.

⁸ The Hon Sandra Nori, Minister for Tourism and Sport and Recreation, Second Reading Speech, Legislative Assembly *Hansard*, 26 September 2006.

4. NATIONAL PARKS AND WILDLIFE AMENDMENT (NATIONAL PARKS VOLUNTEER SERVICE) BILL 2006*

Date Introduced: 28 September 2006

House Introduced: Legislative Council

Member Responsible: Hon Jon Jenkins, MLC

Purpose and Description

1. The object of this Bill is to amend the *National Parks and Wildlife Act 1974* to provide for the establishment of a National Parks Volunteer Service whose members are able to carry out functions conferred on them by the Director-General of the Department of Environment and Conservation. The functions concerned may include any of the following activities in relation to the management of land reserved, or acquired for reservation, under the Principal Act:
 - (a) the control of pests, including feral animals,
 - (b) the control of weeds,
 - (c) bush fire hazard reduction,
 - (d) the maintenance of tracks and trails,
 - (e) the maintenance of facilities,
 - (f) the removal of rubbish,
 - (g) the carrying out of public relations activities, including guided tours.

Background

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

The National Parks and Wildlife Amendment (National Parks Volunteer Service) Bill was drafted in response to the need for the Department of Environment and Conservation [DEC], the National Parks and Wildlife Service [NPWS] and the Department of Primary Industries [DPI] to respond with greater efficiency to the current difficulties posed by the problem of managing the vast areas of land under their control.⁹

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.

⁹ The Hon Jon Jenkins MLC, Second Reading Speech, Legislative Council *Hansard*, 28 September 2006.

5. SYDNEY WATER CATCHMENT MANAGEMENT AMENDMENT (WARRAGAMBA) BILL 2006

Date Introduced: 26 September 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 reduce in size an area of land at Warragamba that is a special area under the *Sydney Water Catchment Management Act 1998* as that part of the special area no longer requires special measures to protect the quality of stored water. The area concerned is downstream of the Warragamba Dam, is bounded by the eastern boundary of the Warragamba hydrological catchment, Silverdale Road, Megarritys Creek and fire trail W5F, includes the townships of Warragamba and Silverdale and has an area of approximately 494 hectares.

Background

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

This change is important because it will allow the local Wollondilly Shire Council to access SCA land to provide important recreational opportunities to the local community. It will also streamline the regulatory processes because this land is presently being regulated to protect water quality despite the fact it is downstream of any water storage facilities.

...

When the Warragamba Special Area was first proclaimed in 1942 it included the protection of a catchment area surrounding Warragamba Weir. The weir was part of the Warragamba Emergency Supply Scheme built in the 1940s as an emergency measure during the 1934 to 1942 drought, and it continued to be used during the construction of Warragamba Dam. Warragamba Weir is downstream of Warragamba Dam and has since been decommissioned. In other words, this portion of the Warragamba Special Area is an historical legacy because the weir is no longer used as a water supply source.¹⁰

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.

¹⁰ The Hon Bob Debus, Minister for the Environment, Second Reading Speech, Legislative Assembly *Hansard*, 26 September 2006.

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	
Native Vegetation Amendment (Private Native Forestry) Regulation (No 2) 2006	29/09/06	8467	13/10/06	
Road Transport (General) Regulation 2005	30/09/05	7738	13/10/06	

SECTION B: COPIES OF CORRESPONDENCE ON REGULATIONS

Regulation & Correspondence	Gazette ref
<p>Photo Card Regulation 2005 & Photo Card Amendment (Fee and Penalty Notice Offences) Regulation 2006</p> <ul style="list-style-type: none"> • Letter dated 25/08/06 from the Committee to the Minister for Roads. • Letter dated 06/10/06 from the Minister for Roads to the Committee. 	<p>09/12/05 page 10042</p>
<p>Gaming Machine Amendment (Payment of Prize Money) Regulation 2006</p> <ul style="list-style-type: none"> • Letter dated 25/08/06 from the Committee to the Minister for Gaming and Racing. • Letter dated 10/10/06 from the Minister for Gaming and Racing to the Committee 	<p>19/05/06 page 3088</p>

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



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 lose 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.

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



Minister for Roads

M06/22152

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

- 6 OCT 2006

Dear Mr Shearan

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

As previously advised, the Roads and Traffic Authority (RTA) undertook to administer this scheme on a revenue neutral, full cost recovery basis.

The RTA has advised that the development and transaction costs outlined in the Regulatory Impact Statement (RIS) fairly reflect the cost of providing photo cards. The total cost of providing the Photo Card was based on an approximate take up rate per annum and on a \$40 fee for all card issues, including replacements.

The anticipated time that the RTA will have recovered its costs of establishing the photo card scheme has been affected by the actual number of cards issued, the reduced replacement fee (currently \$19) and the waiver of fees for people surrendering their driver licences.

The RTA also has a number of initiatives to protect the identity of customers and reduce the opportunity for identity fraud. The costs associated with these developments are in addition to the small amount set aside for future developments outlined in the RIS.

The RTA is not achieving full cost recovery and will keep in view the costs of the scheme.

If you require more information, you may wish to contact Irene Siu, A/General Manager, Driver and Vehicle Strategy, RTA on 9218 6558.

Yours sincerely

A large, stylized handwritten signature in black ink, appearing to read "Eric Roozendaal".

HON ERIC ROOZENDAAL MLC
MINISTER FOR ROADS

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

2. Gaming Machine Amendment (Payment of Prize Money) Regulation 2006



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

25 August 2006

Our Ref:LRC1866

The Hon Grant McBride MP
Minister for Gaming and Racing
Level 13, 55 Hunter Street,
SYDNEY NSW 2000

Dear Minister

GAMING MACHINES AMENDMENT (PAYMENT OF PRIZE MONEY) REGULATION 2006

The Committee has considered the above Regulation and seeks your advice in relation to its concern about the increase in the threshold of cash prize money that may be paid to a person and, in particular, whether the increase is consistent with the objectives of the *Gaming Machines Act* under which this Regulation is made.

Your Office has advised the Committee that the threshold is being increased in response to an IPART report commissioned by you. The Committee understands that the Report recommended that the requirements for large payouts not to be paid in cash should continue to operate, but also revealed concern in the industry at the number of cheques, sometimes for very small amounts, that must be issued under the scheme. The Report stated that industry had called for the threshold to be increased to \$3,000.

Your Office advised the Committee that, following a review of the regulations, and with regard to the fact that the threshold had not been increased in line with inflation since its inception, the Government adopted a \$2,000 threshold in line with Victoria.

The Committee notes that the CPI increase for the period December 2003 (when the threshold was introduced) to May 2006 (when this Regulation was made) is 21%. Increasing the threshold to \$2,000 is a 100% increase.

Further, the Committee notes that while drawing numerous cheques for small amounts can impose an appreciable administrative burden on casinos, raising the prize money threshold to \$2,000 could lead to an increase in harm associated with gambling and irresponsible gambling, inconsistent with the clear objectives of the Act.

The Committee notes that IPART reported that it was not aware of any specific research on the effectiveness or appropriateness of the \$1,000 threshold. However,

it reported on the Productivity Commission's extensive National Gambling Survey, which found, among other things, that problem gamblers are more likely to have larger wins (ie, more than \$250) than non-problem gamblers and are more likely to continue to gamble with a large prize. The Survey also found that the payment of larger prizes by cheque would not be an inconvenience to most gamblers, since most do not win large amounts on a frequent basis.

The Committee also notes that IPART concluded "that there is a sufficient basis on which to recommend that the existing requirements to pay large payouts by non-cash means be maintained" and "there is no evidence on which to recommend any amendments to the existing requirement for responsible gambling purposes".

The Committee seeks your advice as to:

- (i) whether you had any evidence in addition to that discussed by IPART on the impact on problem gambling of raising the threshold;
- (ii) what consultation, if any, you undertook with those representing the interests of problem gamblers on increasing the threshold and the outcome of those consultations;
- (iii) whether an estimate was made of the savings to the gambling industry by raising the threshold to \$2,000, and if so the amount of those savings;
- (iv) whether any cost benefit analysis was done on raising the threshold, and if so the outcome of that analysis; and
- (v) how the increase in the threshold is consistent with the objects of the Act, namely gambling harm minimisation and fostering responsible gambling conduct?

The Committee would appreciate your advice on these matters promptly as the Committee wishes to report on the Regulation as soon as possible as a notice of motion to disallow the regulation has been given in the Legislative Council.

Yours sincerely



Allan Shearan MP
Chairman

Grant McBride MP

MINISTER FOR GAMING AND RACING • MINISTER FOR THE CENTRAL COAST

RML: 06/0970
Dept ref. 06/00857

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

10 OCT 2006

Dear Mr Shearan

I refer to your letter regarding the Gaming Machines Amendment (Payment of Prize Money) Regulation 2006 and provide the following advice in relation to the concerns raised in your letter.

The 2003 IPART report "Gambling: Promoting a Culture of Responsibility" recommends that "the Government should note that the existing requirements can result in gamblers receiving \$1,000 in cash and perversely a relatively small amount in cheque".

The Government's response supported 109 recommendations of the report and also indicated that it would review the \$1,000 threshold.

The proposed Regulation will reduce the significant cost burden carried by stakeholders while maintaining an important harm minimisation requirement. This is consistent with the gambling harm minimisation objectives of the Act.

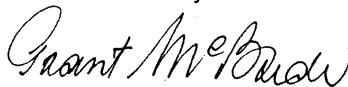
The limit of \$2,000 is consistent with the limit in place in Victoria. There is no evidence to suggest that this higher level has led to problem gambling concerns being raised in that State.

This proposal achieves the appropriate balance and should be considered in the context of initiatives contained in the Government's overall problem gambling strategy including:

- A Statewide freeze on gaming machines;
- A trading scheme to reduce the number of poker machines;
- A ban on 24-hour gaming in pubs and clubs;
- Increased funding to help problem gamblers through counselling, research and other services.

I trust this information is of assistance to you in the consideration of this matter.

Yours sincerely



Grant McBride, MP
Minister for Gaming and Racing

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Appendix 1: Index of Bills Reported on in 2006

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Appropriation Bill 2006	9
Appropriation (Budget Variations) Bill 2006	6
Appropriation (Parliament) Bill 2006	9
Appropriation (Special Offices) Bill 2006	9
Bail Amendment (Lifetime Parole) Bill 2006	12
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Child Protection (International Measures) Bill 2006	2
Children and Young Persons (Care and Protection) Amendment (Parent Responsibility Contracts) Bill 2006	11
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Conveyancers Licensing Amendment Bill 2006	7
Correctional Services Legislation Amendment Bill 2006	8
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Crimes and Courts Legislation Amendment Bill 2005	1
Crimes Amendment (Apprehended Violence) Bill 2006	11
Crimes Amendment (Murder of Police Officers) Bill 2006*	7
Crimes Amendment (Organised Car and Boat theft) Bill 2006	4
Crimes (Appeal and Review) Amendment (DNA Review Panel) Bill 2006	13
Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2006	13
Crimes (Forensic Procedures) Amendment Bill 2006	14
Crimes Legislation Amendment (Gangs) Bill 2006	10
Crimes (Serious Sex Offenders) Bill 2006	5

	Digest Number
Crimes (Sentencing Procedure) Amendment Bill 2006	5
Crimes (Sentencing Procedure) Amendment (Gang Leaders) Bill 2006*	3
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Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Bill 2006	8
Education Amendment (Financial Assistance to Non-Government Schools) Bill 2006	9
Education Legislation Amendment (Staff) Bill 2006	6
Electricity Supply Amendment (Protection of Electricity Works) Bill 2006	6
Environmental Planning and Assessment Amendment Bill 2006	2
Environmental Planning and Assessment Amendment (Reserved Land Acquisition) Bill 2006	4
Fair Trading Amendment Bill 2006	8
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Fines Amendment (Payment of Victims Compensation Levies) Bill 2006	2
Firearms Amendment (Good Behaviour Bonds) Bill 2006*	2
Fisheries Management Amendment Bill 2006	2
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Health Legislation Amendment (Unregistered Health Practitioners) Bill 2006	12
Independent Commission Against Corruption Amendment (Operations Review Committee) Bill 2006	5
Industrial Relations Amendment Bill 2006	3
Interpretation Amendment Bill 2006	8
James Hardie (Civil Liability) Bill 2005	1
James Hardie (Civil Penalty Compensation Release) Bill 2005	1
James Hardie Former Subsidiaries (Winding up and Administration) Bill 2005	1
Judicial Officers Amendment Bill 2006	6
Jury Amendment (Verdicts) Bill 2006	5
Land Tax Management Amendment (Tax Threshold) Bill 2006	2
Law Enforcement (Controlled Operations) Amendment Bill 2006	3
Law Enforcement Legislation Amendment (Public Safety) Bill 2005	1
Legal Profession Amendment Bill 2006	5
Liquor Amendment (2006 FIFA World Cup Hotel Trading) Bill 2006	8
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National Parks and Wildlife (Adjustment of Areas) Bill 2006	2
National Parks and Wildlife Amendment (National Parks Volunteer Service) Bill 2006*	14
Parliamentary Electorates and Elections Amendment Bill 2006	10
Pharmacy Practice Bill 2006	7
Pipelines Amendment Bill 2006	7
Police Amendment (Death and Disability) Bill 2005	1
Police Amendment (Police Promotions) Bill 2006	10
Police Integrity Commission Amendment Bill 2006	10
Professional Standards Amendment (Defence Costs) Bill 2006	12
Protection of the Environment Operations Amendment (Waste Reduction) Bill 2006	3
Public Sector Employment Legislation Amendment Bill 2006	3
Road Transport (General) Amendment (Intelligent Access Program) Bill 2006	11
Road Transport Legislation Amendment (Drug Testing) Bill 2006	12
Royal Rehabilitation Centre Sydney Site Protection Bill 2006*	3
Security Industry Amendment (Patron Protection) Bill 2006*	7
Smoke-free Environment Amendment (Removal of Exemptions) Bill 2006*	4
Snowy Hydro Corporatisation Amendment (Parliamentary Scrutiny of Sale) Bill 2006	9
Snowy Hydro Corporatisation Amendment (Protect Snowy Hydro) Bill 2006	9
State Property Authority Bill 2006	7
State Revenue and Other Legislation Amendment (Budget Measures) Bill 2006	9
State Revenue Legislation Amendment Bill 2006	8
Statute Law (Miscellaneous Provisions) Bill 2006	8
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Superannuation Legislation Amendment Bill 2006	8
Sydney Cricket and Sports Ground Amendment Bill 2006	8
Sydney Water Catchment Management Amendment (Warragamba) Bill 2006	14
Threatened Species Conservation Amendment (Biodiversity Banking) Bill 2006	9

	Digest Number
Totalizator Legislation Amendment (Inter-jurisdictional Processing of Bets) Bill 2006	6
Transport Administration Amendment (Travel Concession) Bill 2006	9
University of Technology (Kuring-gai Campus) Bill 2006*	8
Valuation of land Amendment Bill 2006	7
Water Management Amendment (Water Property Rights Compensation) Bill 2006	5
Workers Compensation Legislation Amendment Bill 2006	4
Workers Compensation Legislation Amendment (Miscellaneous Provisions) Bill 2005	1
Young Offenders Amendment (Reform of Cautioning and Warning) Bill 2006*	8

Appendix 2: Index of Ministerial Correspondence on Bills

Bill	Minister/Member	Letter sent	Reply received	Digest 2005	Digest 2006
Children (Detention Centres) Bill 2006	Minister for Juvenile Justice	02/06/06	27/06/06		8, 9
Commission for Children and Young People Amendment Bill 2005	Minister for Community Services	25/11/05	25/08/06	15	10
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 (Appeal and Review) Amendment (Double Jeopardy) Bill 2006 & Crimes (Appeal and Review) Amendment (DNA Review Panel) Bill 2006	Premier	26/09/06			13
Crimes Legislation Amendment (Gangs) Bill 2006	Minister for Police	05/09/06			10
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	07/06/06		8,12
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

Bill	Minister/Member	Letter sent	Reply received	Digest 2005	Digest 2006
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	05/09/06	15	11

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				
Channel 7 Former Epping Site Protection Bill 2006*	R				
Children (Detention Centres) Amendment Bill 2006	R, C				
Community Protection (Closure of Illegal Brothels) Bill 2006*	R				
Correctional Services Legislation Amendment Bill 2006	R, C				
Crimes Amendment (Apprehended Violence) Bill 2006	R				
Crimes Amendment (Murder of Police Officers) Bill 2006*	R				
Crimes (Appeal and Review) Amendment (DNA Review Panel) Bill 2006	R, C	R, C			
Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2006	R, C	R, C			
Crimes (Forensic Procedures) Amendment Bill 2006	N				
Crimes Legislation Amendment (Gangs) Bill 2006	R, C				
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				

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Environmental Planning and Assessment Amendment Bill 2006	R				
Fair Trading Amendment Bill	R, C				
Fair Trading Amendment (Motor Vehicle Insurance and Repair Industries) Bill 2006					N
Fines Amendment (Payment of Victims Compensation Levies) Bill 2006	N				
Fisheries Management Amendment Bill 2006	R				
Health Legislation Amendment (Unregistered Health Practitioners) 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				
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				
Parliamentary Electorates and Elections Amendment Bill 2006	R				
Pipelines Amendment Bill 2006			R		R
Police Amendment (Police Promotions) Bill 2006				R	
Royal Rehabilitation Centre Sydney Site Protection Bill 2006*	R				
Security Industry Amendment (Patron Protection) Bill 2006*	R				

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
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
Gaming Machine Amendment (Payment of Prize Money) Regulation 2006	Minister for Gaming and Racing	25/08/06	10/10/06	14
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
Photo Card Regulation 2005 and Photo Card Amendment (Fee and Penalty Notice Offences) Regulation 2006	Minister for Roads	25/08/06	06/10/06	14
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