

PARLIAMENT OF NEW SOUTH WALES



# **Legislation Review Committee**

## LEGISLATION REVIEW DIGEST

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No 2 of 2006

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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. Air Transport Amendment Bill 2006

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|----|--|
| 5. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|----|--|

#### 2. Careel Bay Protection Bill 2006\*

##### Retrospectivity: Proposed s 4(1)

- |     |  |
|-----|--|
| 11. | The Committee will always be concerned to identify the retrospective effects of legislation which may impact adversely on any person.  |
| 12. | The Committee notes that legislatively revoking a declaration duly made under the law trespasses upon a person's right to order his or her affairs in accordance with the current law. |
| 13. | The Committee refers to Parliament the question of whether the Bill trespasses on this right   |

#### 3. Child Protection (International Measures) Bill 2006

- |    |  |
|----|--|
| 4. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|----|--|

#### 4. Environmental Planning and Assessment Amendment Bill 2006

##### No merits review: proposed s 94EAA

- |     |   |
|-----|---|
| 17. | The Committee considers that, in general, all decisions of an administrative nature should be subject to review. However, in some instances, policy considerations may dictate that an appeal is not necessary or practical.  |
| 18. | The Committee notes that the Bill removes the right to appeal to the Land and Environment Court in respect of the reasonableness of a condition of contributions plan made or amended by the Minister under proposed s 94EAA. |
| 19. | The Committee notes that this denial of merits review is to help secure the certainty of funds so that important infrastructure programs can be implemented.  |
| 20. | The Committee refers to Parliament whether the operation of proposed s 94EAA unduly subjects rights, liberties or obligations to a non-reviewable decision.   |

**No merits review: proposed Part 4, Division 6, Subdivision 4**

28. The Committee notes that the Bill does not provide for any appeal rights in relation to the unreasonableness of a decision as to the amount of a special infrastructure contribution.
29. The Committee refers to Parliament whether proposed s 94EF unduly subjects rights, liberties or obligations to a non-reviewable decision.

**5. Fines Amendment (Payment of Victims Compensation Levies) Bill 2006****Retrospectivity: Schedule 3**

9. The Committee will always be concerned to identify the retrospective effects of legislation which may impact adversely on any person.
10. However, given that the Bill only effects the means of enforcement of levies owed and not the imposition of such levies, and that the legality of such enforcement is only in doubt due to a legislative oversight, the Committee does not consider that the retrospective validation of the enforcement of compensation levies unduly trespasses upon personal rights and liberties.

**6. Firearms Amendment (Good Behaviour Bonds) Bill 2006\***

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

**7. Fisheries Management Amendment Bill 2006****Strict liability: Clauses 11, 14, 21, 25, (proposed sections 121, 122 & 122A) and 27 (proposed sections 127E & 127EA)**

10. The Committee notes that the licensing regime, including requirements for licensees to furnish certain periodic reports, are key elements in the regulation of the commercial fishing industry in NSW, which is aimed at protecting fish stocks, the natural environment and the viability of the commercial fishing industry.
11. The Committee is of the view these are important matters of public policy and may justify the imposition of strict liability offences. The Committee is also of the view that it is appropriate to impose monetary penalties that are of sufficient severity to act as a deterrent and preserve the regulatory scheme, so long as this is balanced against the protection of fundamental personal rights and liberties.
12. The Committee refers to Parliament the question as to whether the penalties imposed for the strict liability offences under this Bill do properly strike that balance, or whether they unduly trespass on personal rights.

## **8. Land Tax Management Amendment (Tax Threshold) Bill 2006**

- |    |   |
|----|---|
| 6. | The Committee has not identified any issues under s 8A (1)(b) of the <i>Legislation Review Act 1987</i> . |
|----|---|

## **9. National Parks and Wildlife (Adjustment of Areas) Bill 2006**

- |    |  |
|----|--|
| 4. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|----|--|

## **SECTION B: Ministerial Correspondence — Bills Previously Considered**

## **10. Smoke-free Environment Amendment Bill 2004**

- |    |  |
|----|--|
| 6. | The Committee thanks the Acting Deputy Director General for his reply. |
|----|--|

## Part One – Bills

### SECTION A: COMMENT ON BILLS

## 1. AIR TRANSPORT AMENDMENT BILL 2006

Date Introduced:	28 February 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon John Watkins MP
Portfolio:	Transport

### Purpose and Description

1. This Bill amends the *Air Transport Act 1964* (the Act) so as to provide for the deregulation of certain air transport service routes, abolish the Air Transport Council and establish the State Aviation Working Group.

### Background

2. Under the *Air Transport Act 1964*, all air operators flying passengers between one location and another within New South Wales, are required to hold a licence granted by the Minister for Transport.
3. In the second reading speech the Minister stated that:

The Bill will abolish the mandated licensing and associated fees for both air charter companies and intrastate airlines flying the open routes.<sup>1</sup>

### The Bill

4. The Bill amends the Act to:
  - abolish certain fees with respect to licences;
  - allow the Administrative Decisions Tribunal to review certain decisions with respect to licensing;
  - clarify the circumstances in which a person is taken to be operating or providing a regular air transport service; and
  - make the Director-General of the Ministry of Transport the licensing authority under the Act.

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<sup>1</sup> The Hon John Watkins MP, Legislative Assembly *Hansard*, 28 February 2006.

## Issues Considered by the Committee

- |   |
|---|
| <p>5. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p> |
|---|

*The Committee makes no further comment on this Bill.*

## 2. CAREEL BAY PROTECTION BILL 2006\*

Date Introduced: 2 March 2006  
House Introduced: Legislative Assembly  
Member Responsible: Mr Chris Hartcher MP

### Purpose and Description

1. The Bill's object is to protect Careel Bay in Pittwater and to prohibit redevelopment of the marina at that Bay that is inconsistent with its character.

### Background

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

Careel Bay is a significant wetland estuary on Pittwater in the metropolitan Sydney region. It is one of the most valued coastal areas in New South Wales, with special ecological significance. Careel Bay provides a habitat of high conservation significance for a variety of water birds. These include migratory waders from the Northern Hemisphere such as the Eastern Curlew, Whimbrel and Bar-tailed Godwit. Australia has two specific bilateral international agreements, which have been entered into between the Governments of Australia, Japan and China to deal with migratory wading birds and their environments.

The international obligation to protect these species and their habitat is enshrined in international agreements including the Japan-Australia and China-Australia Migratory Birds agreements and the Bonn Convention on the Conservation of Migratory Species of Wild Animals...

The bill introduces the provisions necessary to protect Careel Bay on Pittwater and prohibit any redevelopment of the marina at that bay that is inconsistent with the existing character of Careel Bay. Passing this bill will ensure that any future upgrades for Careel Bay based on improvements and expansion of any current facilities will meet occupational health and safety standards for usage patterns and will not alienate public space. Passing the bill will ensure a reduction in risks of pollution, implementation of appropriate planning and use standards to guarantee the maintenance and enhancement of the ecological integrity of Careel Bay. It will provide protection of significant heritage sites and amenities, and the preservation of biological diversity and ecological integrity. Under the bill the community will be part of any future use proposals for Careel Bay.<sup>2</sup>

### The Bill

3. The Bill revokes any declaration that was made under s 75B of the *Environmental Planning and Assessment Act 1979* (EPA Act) before the Bill's commencement, and which provided that development of marinas is a project to which Part 3A of that Act applies.
4. Part 3A of the EPA Act governs planning processes for major infrastructure and other projects. Section 75B defines the projects to which Part 3A applies, namely

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<sup>2</sup> Mr C P Hartcher MP, Legislative Assembly *Hansard*, 2 March 2006.

Careel Bay Protection Bill 2006\*

development that is declared under the section to be a project to which the Part applies:

- (a) by a State environmental planning policy; or
- (b) by order of the Minister published in the Gazette.

5. It also sets out the kinds of projects that may be so declared, including:

- major infrastructure or other development that, in the opinion of the Minister, is of State or regional environmental planning significance and major infrastructure;
- other development that is an activity for which the proponent is also the determining authority and that, in the opinion of the proponent, would (but for Part 3A) require an environmental impact statement to be obtained under that Part.

6. The Bill prohibits making any such declarations after its commencement, or any declarations that have the *effect* of making Careel Bay marina development a project to which Part 3A of the EPA Act applies.

7. Amongst other things, the Bill:

- provides that Careel Bay marina development cannot be carried out except with the development consent under Part 5 of the EPA Act<sup>3</sup> and that Pittwater Council is the consent authority in relation to any Careel Bay marina development;
- requires that Careel Bay marina development be carried out only within the boundaries of the existing marina; and
- requires the Pittwater Council:
  - not to consent to Careel Bay marina development unless the development is consistent with the character of Careel Bay and unless the Council has had regard to advice provided by the community forum established under the Bill; and
  - to establish, within 2 weeks of receiving a development application in relation to the Careel Bay marina, a community forum comprising equal numbers of local residents and Pittwater Council councillors to advise the Council on the development application.

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<sup>3</sup> Part 5 of the *Environment Planning & Assessment Act 1979* governs environmental assessment for development proposals.

## Issues Considered by the Committee

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

#### Retrospectivity: Proposed s 4(1)

8. As noted above, proposed s 4(1) provides that any declaration under s 75B of the EPA Act prior to the Bill's commencement which would apply Part 3A of that Act to Careel Bay marina development is revoked to that extent.
9. The effect of this would be to revoke any existing declarations relating to development of the area which had been given in accordance with the existing planning approval process.<sup>4</sup>
10. The Committee notes that such revocation could have serious financial impact on individuals who had arranged their business in accordance with such properly-authorised declarations.

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|--|
| <ol style="list-style-type: none"><li>11. <b>The Committee will always be concerned to identify the retrospective effects of legislation which may impact adversely on any person.</b></li><li>12. <b>The Committee notes that legislatively revoking a declaration duly made under the law trespasses upon a person's right to order his or her affairs in accordance with the current law.</b></li><li>13. <b>The Committee refers to Parliament the question of whether the Bill trespasses on this right</b></li></ol> |
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***The Committee makes no further comment on this Bill.***

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<sup>4</sup> It was noted in the second reading speech that on 25 February 2006 the Minister for Planning announced refusal of the development application of Austral Monsoon Industries which involved two stages, redevelopment of the existing boat maintenance facility leased by AMI from the Department of Lands and development of a 37-berth floating marina beyond the current leased area.

### 3. CHILD PROTECTION (INTERNATIONAL MEASURES) BILL 2006

Date Introduced: 28 February 2006  
House Introduced: Legislative Assembly  
Minister Responsible: Hon Reba Meagher MP  
Portfolio: Children and Young People

#### Purpose and Description

1. The Bill's object is to implement in New South Wales the *Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children* (the Convention). The objects of the Convention are to:
  - determine the State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the child, which is dealt with in Parts 2 (Jurisdiction for the person of a child) and 3 (Jurisdiction for decisions about a guardian of a child's property) of the Act;
  - determine which law is to be applied by such authorities in exercising their jurisdiction (see Part 4 of the Act);
  - determine the law applicable to parental responsibilities (which is not dealt with in the Act because it is dealt with by s 111CS of the *Family Law Act 1975* of the Commonwealth);
  - provide for the recognition and enforcement of such measures of protection in all Contracting States (see Part 5 of the proposed Act)<sup>5</sup>; and
  - establish such co-operation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of the Convention (see Part 6 of the Act).<sup>6</sup>

#### Background

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

The Child Protection Convention is one of a number of Hague conventions, including conventions on adoption and child abduction, which aim to ensure the safety and wellbeing of children in the twenty-first century world in which national borders are more open than they have ever been before. The measures proposed in the bill will be of significant benefit to Australian families, and in particular to children who are the

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<sup>5</sup> The Bill provides that the proposed Act does not apply to those matters to which the Child Protection Convention does not apply under Article 4 of the Convention. Those matters are the establishment or contesting of a parent-child relationship, adoption, the name of a child, emancipation, maintenance obligations, trusts or succession, social security, public measures of a general nature in matters of education or health, measures taken as a result of criminal offences committed by children and decisions on asylum or immigration: proposed s 4.

<sup>6</sup> The objects, as set out in proposed s 3, reflect the Preamble to the Child Protection Convention.

subject of international child protection litigation. Australia ratified the Child Protection Convention on 1 August 2003 with the support of all States and Territories. Since 2003 the convention's international child protection measures have been administered in Australia through the Commonwealth Family Law Act 1975. It has always been the intention that each State and Territory would also put in place its own legislation to implement these measures in its jurisdiction. The bill will put in place jurisdictional laws in relation to children who cross international borders where parenting orders or child protection concerns exist for the children. It will also establish a framework for co-operation between child protection convention countries to ensure the protection of children.<sup>7</sup>

## The Bill

3. The Bill is based on model legislation approved by all Australian Parliamentary Counsels, the Standing Committee of Attorneys General and the Community Services Ministers Committee. It defines the role of the New South Wales *Central Authority*<sup>8</sup> under the Convention, which will generally be to:
- find solutions for the protection of particular children;
  - assist in implementing measures whether made here or elsewhere which are directed at protecting children;
  - give consideration to initiating action in New South Wales, at the request of a competent authority of another country if a response is required in New South Wales;
  - exchange information, subject to confidentiality and privacy laws;
  - provide information on laws and services;
  - help locate children;
  - provide reports on the situation of particular children; and
  - apply to the Children's Court or Family Court as appropriate for orders in response to requests from competent authorities of Convention countries to transfer or receive jurisdiction, or take measures directed at protecting the person of a child.

## Issues Considered by the Committee

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| 4. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|---|

***The Committee makes no further comment on this Bill.***

<sup>7</sup> Ms A P Megarrity MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 28 February 2006. The full text of the Child Protection Convention is set out in Schedule 1 to the Bill.

<sup>8</sup> The Director-General of the NSW Department of Community Services is the central authority for New South Wales.

## 4. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT BILL 2006

Date Introduced: 28 February 2006  
House Introduced: Legislative Assembly  
Minister Responsible: The Hon Frank Sartor MP  
Portfolio: Planning

### Purpose and Description

1. The Bill's objects are to:
  - (a) amend the *Environmental Planning and Assessment Act 1979* (EPAA), to:
    - (i) provide for contributions for the provision of infrastructure in relation to development within special contributions areas;
    - (ii) enable the Minister for Planning (the Minister) to give directions to a council in respect of contributions plans, development control plans and other matters; and
    - (iii) provide for the establishment of planning assessment panels and the exercise of council's planning functions by those panels and by planning administrators;
  - (b) amend the Growth Centres (Development Corporations) Act 1974, to permit the Minister to appoint a chief executive of a development corporation and to require a corporation to submit an annual statement of business intent; and
  - (c) amend the Redfern–Waterloo Authority Act 2004, to permit Crown land to be transferred to the Redfern–Waterloo Authority and to permit the Minister to delegate certain functions.

### Background

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

The bill will amend three Acts to achieve important planning objectives, which include reducing delays and costs in the assessment of development applications, helping to co-ordinate local and State planning controls, and ensuring the timely and efficient supply of infrastructure and services to support growth and development in land release areas and other important sites.<sup>9</sup>

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<sup>9</sup> Hon F E Sartor MP, Minister for Planning, Legislative Assembly *Hansard*, 28 February 2006.

## Issues Considered by the Committee

### Non-reviewable decisions [s 8A(1)(b)(iii) *LRA*]

#### No merits review: proposed s 94EAA

3. Currently, s 94 of the EPAA provides for development contributions<sup>10</sup> to be levied as a condition of development consent where:
  - a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area [s 94(1)].
4. The contribution required must be *reasonable*, and in accordance with the terms of a contributions plan [s 94B(1)].<sup>11</sup> The objective of a contributions plan is to:
  - provide a comprehensive strategy for the assessment, collection and expenditure of developer contributions by making councils publicly and financially accountable for the administration of the contributions plan.<sup>12</sup>
5. Currently, contribution plans are made and revised by councils after being placed on public exhibition for public comment [s 94EA(1); *Environmental Planning and Assessment Regulation 2000* cl 26 - cl 33A]; and the procedure by which a council makes a contribution plan can be challenged within three months of the plan coming into effect [s 94EB(3)].
6. The Bill provides for the Minister to *direct* a council to approve, amend or repeal a contributions plan in the time and manner specified in the direction [proposed s 94EAA(1)].
7. It also provides that the Minister may approve, amend or repeal a contributions plan if the council fails to follow the direction, or if the council consents to the Minister making, amending or repealing the plan [proposed s 94EEA(2)].
8. In each of these cases, the making, amending or repealing of the plan by or at the direction of the Minister cannot be appealed to the Land and Environment Court [proposed s 94EAA(4)].
9. Under proposed s 94EAA(4)(a), the validity of the procedure by which such a contributions plan is made, amended or revoked by or at the direction of the Minister would not be open to judicial review in the Land and Environment Court [the Court]. However, the validity of the contributions plan will be open to judicial review in the Supreme Court.<sup>13</sup>
10. More significantly, the Bill alters the current position whereby, on appeal to the Land and Environment Court by an applicant for development consent, that Court may

<sup>10</sup> Contributions may be in the form of land or money or a material public benefit: s 94(1).

<sup>11</sup> See L Taylor and S Simington, "Development" in D Farrier and P Stein, eds., *The Environmental Law Handbook: Planning and Land Use in New South Wales* (2006) at 178-186.

<sup>12</sup> N Barnes and B Dollery, "Financing urban infrastructure in New South Wales: An evaluation of the Section 94 Contributions Plan" (1996) 21 *Urban Futures Journal* 19.

<sup>13</sup> Hon F E Sartor MP, Minister for Planning, Legislative Assembly *Hansard*, 28 February 2006.

disallow or amend a development contribution condition on the ground of unreasonableness, even if it were determined in accordance with the relevant contributions plan [s 94B(3)]. The Bill removes this right to have the reasonableness of the condition reviewed where it is based on a contributions plan made or amended by the Minister [proposed s 94EAA(4)(b)].

11. The justification advanced for the removal of existing appeal rights is that this change:  
will help secure the certainty of funds so that important infrastructure programs can be implemented.<sup>14</sup>
12. The interference with property rights constituted by the extraction of a sum of money or area of land from private landholders may be justifiable in terms of economic efficiency - on the basis that it internalises the public costs of development by making private beneficiaries pay for the costs of infrastructure. Nonetheless, it is arguable that the removal of a right of appeal on the question of the reasonableness of the contribution required constitutes an interference with personal rights associated with private property.
13. In the absence of any right of appeal, the reasonableness of the contribution in situations where the Minister has been involved in the making of a contributions plan will be entirely in the hands of the consent authority applying the provisions of the plan.
14. Moreover, the removal of the right of appeal is selective. It will remain available where there has been no ministerial involvement in the making or amendment of the particular contributions plan under which the contribution is exacted. Where there *has* been ministerial involvement, it appears that the right of appeal is removed even in relation to aspects of the plan in relation to which there has been no ministerial involvement.
15. Similarly, under proposed s 94EE(4) & s 94EF, a Ministerial determination of the level and nature of the development contribution that a person is to make as a condition of the grant of development consent cannot be appealed to the Court
16. The Committee notes that review of the decision by the Supreme Court is not precluded, allowing a determination to be challenged, for example, on the ground that the Minister acted beyond his or her power or failed to accord procedural fairness. On this point, the Minister noted that:  
[N]othing in the Bill affects the jurisdiction of the Supreme Court to hear appeals. This means that a person may still have an action to initiate in the Supreme Court, for example, based on a matter of administrative law.<sup>15</sup>

<p><b>17. The Committee considers that, in general, all decisions of an administrative nature should be subject to review. However, in some instances, policy considerations may dictate that an appeal is not necessary or practical.</b></p>
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<sup>14</sup> Hon F E Sartor MP, Minister for Planning, Legislative Assembly *Hansard*, 28 February 2006.

<sup>15</sup> Hon F E Sartor MP, Minister for Planning, Legislative Assembly *Hansard*, 28 February 2006.

- 18. The Committee notes that the Bill removes the right to appeal to the Land and Environment Court in respect of the reasonableness of a condition of contributions plan made or amended by the Minister under proposed s 94EAA.**
- 19. The Committee notes that this denial of merits review is to help secure the certainty of funds so that important infrastructure programs can be implemented.**
- 20. The Committee refers to Parliament whether the operation of proposed s 94EAA unduly subjects rights, liberties or obligations to a non-reviewable decision.**

#### **No merits review: proposed Part 4, Division 6, Subdivision 4**

21. The Bill allows the Minister to direct a council to impose, in addition to any development contribution condition imposed under s 94 (which, under the amendments is to become known as a *local infrastructure contribution*), a condition requiring a *special infrastructure contribution* [proposed s 94EF(1)].
22. On this point the Minister noted:
 

[special infrastructure contributions] will be collected only when it is reasonable to impose an additional levy because of the extent and urgency of the area's infrastructure requirements...[where] immediate and significant infrastructure expenditure will be required. Special infrastructure contributions will provide the Government with a secure source of funds to provide infrastructure at the right time and in the right sequence.<sup>16</sup>
23. Such a condition could only be imposed in new land release areas and other areas where there will be coordinated growth and development, ie, areas listed in proposed Sch 5A to the EPAA as special contribution areas, initially confined to areas identified as growth centres.
24. The potential interference with personal rights arises from the fact that the Minister's decision on the amount payable is not appellable on the grounds of the unreasonableness of the contribution exacted [proposed s 94EE(4) & s 94EF(6)], whereas, as seen above, under s 94, the applicant can appeal to the Court against the reasonableness of the contribution.
25. The Committee notes that the argument that this represents an unjustifiable interference with property rights is not as compelling as the argument in relation to proposed s 94EAA (above), insofar as it does not constitute the removal of an existing right, and it does not operate selectively: it affects *all* who are subject to a special infrastructure contribution condition.
26. In his second reading speech, the Minister justified the absence of appeal rights in relation to special infrastructure contributions by arguing that it:
 

will help secure the certainty of funds so that important infrastructure programs can be implemented. Challenges can delay the flow of contributions and, if successful, affect the State's capacity to provide infrastructure. It is important to note, however,

<sup>16</sup> Hon F E Sartor MP, Minister for Planning, Legislative Assembly *Hansard*, 28 February 2006.

that the bill requires the level of special infrastructure contributions to be reasonable, having regard to the cost of infrastructure required as a result of development.<sup>17</sup>

27. While the provision of infrastructure on a planned and coherent basis is clearly crucial, this suggestion that even successful appeals (finding that the contribution required under the Minister's plan is unreasonable) should not be allowed to slow down the provision of infrastructure is at least contentious from a personal rights' perspective.

**28. The Committee notes that the Bill does not provide for any appeal rights in relation to the unreasonableness of a decision as to the amount of a special infrastructure contribution.**

**29. The Committee refers to Parliament whether proposed s 94EF unduly subjects rights, liberties or obligations to a non-reviewable decision.**

***The Committee makes no further comment on this Bill.***

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<sup>17</sup> Hon F E Sartor MP, Minister for Planning, Legislative Assembly *Hansard*, 28 February 2006.

## 5. FINES AMENDMENT (PAYMENT OF VICTIMS COMPENSATION LEVIES) BILL 2006

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

### Purpose and Description

1. Victims compensation levies are imposed by the *Victims Support and Rehabilitation Act 1996* (VSR Act - formerly the *Victims Compensation Act 1996*) in respect of certain offences that are punishable by imprisonment. The levies are fines within the meaning of the *Fines Act 1996* (the Act) [see s 4(1)(d)]. The levy is additional to the restitution that an offender is required to pay when the offender's victim receives compensation under the VSR Act.
2. The Bill provides for the enforcement of victims compensation levies under the Act as if the levies were fines imposed by a court. In particular, it provides for the enforcement of levies owed by prisoners by deducting them from the person's prison earnings.<sup>18</sup>

### Background

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

Regulation 7 of the Victims Compensation Regulation 1997 previously authorised the deduction of compensation levies from the prison earnings of inmates...The effect of the repeal of section 80 of the Victims Compensation Act 1996 appears to have been that Regulation 7 of the Victims Compensation Regulation 1997 was impliedly repealed, but this was not recognised at the time.

The entire Victims Compensation Regulation 1997 later lapsed under the Subordinate Legislation Act 1989. Compensation levies, however, continued to be deducted from inmates' prison earnings in accordance with established procedures. This bill inserts section 18 into the Fines Act 1996. This is similar to Regulation 7 of the Victims Compensation Regulation 1997 and will ensure that compensation levies can continue to be deducted from inmates' prison earnings.<sup>19</sup>

### The Bill

4. The Bill ensures that, for the purposes of the Fines Act, a compensation levy is taken to be a fine imposed by the convicting court. This is to put beyond doubt the State

<sup>18</sup> Compensation levies are imposed regardless of whether the person convicted is actually sentenced to a term of imprisonment for the relevant offence. Only levies imposed in respect of a conviction that gave rise to a term of imprisonment by way of full-time detention may be enforced by means of the attachment of prison earnings. The levy is \$70 when the person is convicted on indictment and \$30 otherwise.

<sup>19</sup> Mr A P Stewart MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 28 February 2006.

Fines Amendment (Payment of Victims Compensation Levies) Bill 2006

Debt Recovery Office's power to enforce the levies [proposed new s 4(2A) of the Fines Act].

5. The Bill provides that any compensation levy that has not been paid may be deducted from the offender's prison earnings while in full time detention [proposed new s 18].<sup>20</sup> Also, any unpaid portion that remains unpaid when the offender is discharged from prison is taken to have been satisfied.
6. The Bill also validates any enforcement of any compensation levies payable before the commencement of the Bill if such enforcement would have been valid if done under the Bill.

## Issues Considered by the Committee

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

#### Retrospectivity: Schedule 3

7. As noted in the second reading speech, despite the lapse of the *Victims Compensation Regulation 1997*, compensation levies continued to be deducted from inmates' prison earnings in accordance with established procedures.
8. The Bill retrospectively validates this collection of compensation levies, provided that they could have been collected had the provisions of the Bill been in force.

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| <ol style="list-style-type: none"><li>9. <b>The Committee will always be concerned to identify the retrospective effects of legislation which may impact adversely on any person.</b></li><li>10. <b>However, given that the Bill only effects the means of enforcement of levies owed and not the imposition of such levies, and that the legality of such enforcement is only in doubt due to a legislative oversight, the Committee does not consider that the retrospective validation of the enforcement of compensation levies unduly trespasses upon personal rights and liberties.</b></li></ol> |
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***The Committee makes no further comment on this Bill.***

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<sup>20</sup> However, s 18 does not apply if the relevant sentence has been suspended: proposed s 18(2).

## 6. FIREARMS AMENDMENT (GOOD BEHAVIOUR BONDS) BILL 2006\*

Date Introduced: 2 March 2006  
House Introduced: Legislative Council  
Member Responsible: The Hon John Tingle MLC

### Purpose and Description

1. The Bill's object is to limit the disqualification of persons subject to good behaviour bonds from holding firearms licences or permits or from dealing in firearms.
2. At present, a person who is subject to a good behaviour bond entered into as a result of being found guilty of an offence is disqualified from holding a firearms licence or permit and prohibited from being involved in a licensed firearms dealing business.
3. The Bill has the effect that a person will only be disqualified if the person has been convicted of an offence involving the possession or use of firearms or other weapons, an offence involving a serious assault or a drug trafficking offence.

### Background

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

The bill amends the Firearms Act 1996 to reduce the conditions under which the issuing of a good behaviour bond automatically means that a licensed firearm owner is deprived of his licence and his legally-owned firearms, even though the offence which led to the bond may have absolutely no relationship, connection or relevance to his ownership of firearms.<sup>21</sup>

### 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.*

<sup>21</sup> Hon J S Tingle MLC, Legislative Council *Hansard*, 2 March 2006.

## 7. FISHERIES MANAGEMENT AMENDMENT BILL 2006

Date Introduced:	28 February 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Ian Macdonald MLC
Portfolio:	Primary Industries

### Purpose and Description

1. An Act to amend the *Fisheries Management Act 1994* to make further provision with respect to the management of fishery resources.

### Background

2. The second reading speech stated:

The *Fisheries Management Amendment Bill* makes a number of minor changes to the *Fisheries Management Act 1994*. Its primary focus is on improving administration of fisheries management, particularly in the areas of licensing, the issuing of endorsements, the levying of annual charges and contributions, and the reporting of fishing activity. The amendments build on those made in 2004 and represent subtle adjustments, where necessary, rather than broadscale changes. A key theme of the Bill is to ensure consistency in administrative arrangements across the share management, restricted fishery and charter boat fishery frameworks, where possible.

...Where new regulations, including share management plans and supporting plans, are required to give effect to the provisions of the bill, there will be a statutory consultation, and I anticipate this will occur in coming months. The majority of provisions relating to share management, restricted fisheries and recreational charter boat fishery will not be commenced until the regulations to which they refer have been drafted, consulted on and revised where necessary.

... I can inform the House that the relevant management advisory committees were consulted on aspects of the Bill and any issues raised have been carefully considered during drafting. The Seafood Industry Advisory Council was also consulted on the amendments in this bill, and members were given a briefing and update at their meeting in September last year. The Chairperson and Deputy Chairperson of the advisory council were also given an opportunity to review the detail of the Bill. While there has been consultation on the Bill, more significant consultation will follow this year as we work through the detail of the regulations.<sup>22</sup>

### The Bill

3. The object of this Bill is to amend the *Fisheries Management Act 1994* as follows:
  - (a) to make further provision with respect to endorsements on commercial fishing licences that authorise the taking of fish in particular fisheries, including:
    - (i) by making further provision for endorsement conditions;
    - (ii) by making it an offence to contravene a condition of an endorsement;

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<sup>22</sup> Mr Tony Stewart MP, Parliamentary Secretary, Second Reading Speech, Legislative Assembly Hansard, 28 February 2006.

- (iii) by allowing the management plan for a share management fishery to permit or restrict the issue of multiple endorsements to one person;
- (iv) by allowing an endorsement that authorises a person to take fish in a fishery to be given in the form of a separate document from the commercial fishing licence of the person authorised to take the fish;
- (b) to make further provisions with respect to the management charges payable by shareholders in share management fisheries and the annual contributions payable by participants in restricted fisheries and in the recreational charter fishing industry;
- (c) to modify record keeping requirements under the principal Act;
- (d) to allow the disclosure of information collected under the principal Act to certain persons;
- (e) to allow the Minister to issue permits for fish auctions that are conducted for charitable purposes;
- (f) to require money raised on the sale of forfeited shares in a share management fishery to be paid into the Commercial Fishing Trust Fund in certain circumstances;
- (g) to allow the Total Allowable Catch Committee (the *TAC Committee*) to review and revise a total allowable catch determination in certain circumstances without further public consultation;
- (h) to redefine the ocean trawl share management fishery;
- (i) to make further provision with respect to appeals in relation to the issue of shares in a share management fishery;
- (j) to make other amendments of a statute law revision nature.

## Issues Considered by the Committee

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

#### **Strict liability: Clauses 11, 14, 21, 25, (proposed sections 121, 122 & 122A) and 27 (proposed sections 127E & 127EA)**

4. These clauses appear to create offences of strict liability, with monetary penalties of between 100 and 200 penalty units.
5. Strict liability offences do not require a prosecutor to prove that the person concerned intended to commit the offence. It is sufficient for the prosecutor to prove that the person did the act that constituted the offence regardless of the person's intention. Such offences are commonly imposed for regulatory offences where there is a need to ensure persons take all reasonable steps to avoid the offence, eg, speeding or pollution offences.
6. The Committee has commented that because strict liability offences displace the common law presumption that the prosecutor must prove *mens rea* or a guilty mind,

they may trespass on the fundamental rights of an accused person, especially the right to be presumed innocent until proved guilty.

7. The Committee has also commented that there are circumstances in which it may be appropriate to impose strict liability, particularly in areas of public safety or to ensure the integrity of the regulatory scheme in question.
8. However, the Committee is of the view that strict liability offences should be:
  - imposed only after careful consideration of all available options;
  - subject to defences wherever possible where contravention appears reasonable; and
  - have only limited monetary penalties (up to 60 penalty units) and no terms of imprisonment.
9. In this case, the Committee notes that the strict liability offences in clauses 11, 14 and 12 relate to failure of a person to comply with conditions of a licence and are punishable by 100 penalty units. The offences in clauses 25 and 27 apply to a failure of a fisher to make certain records as required under the legislation and are punishable by 200 penalty units.

10. **The Committee notes that the licensing regime, including requirements for licensees to furnish certain periodic reports, are key elements in the regulation of the commercial fishing industry in NSW, which is aimed at protecting fish stocks, the natural environment and the viability of the commercial fishing industry.**
11. **The Committee is of the view these are important matters of public policy and may justify the imposition of strict liability offences. The Committee is also of the view that it is appropriate to impose monetary penalties that are of sufficient severity to act as a deterrent and preserve the regulatory scheme, so long as this is balanced against the protection of fundamental personal rights and liberties.**
12. **The Committee refers to Parliament the question as to whether the penalties imposed for the strict liability offences under this Bill do properly strike that balance, or whether they unduly trespass on personal rights.**

***The Committee makes no further comment on this Bill.***

## 8. LAND TAX MANAGEMENT AMENDMENT (TAX THRESHOLD) BILL 2006

Date Introduced: 28 February 2006  
House Introduced: Legislative Assembly  
Minister Responsible: The Hon Michael Costa MLC  
Portfolio: Treasury

### Purpose and Description

1. The object of this Bill is to amend the *Land Tax Management Act 1956* to increase the land tax threshold.

### Background

2. The Valuer-General has determined an increase in the value of land, and this Bill adjusts the threshold accordingly.
3. The second reading speech states that:

The 6.7 per cent increase in the tax-free threshold matches the average increase in the value of land subject to land tax, as determined by the independent Valuer General. The \$330,000 threshold initially set for the 2006 land tax year was based on no increase in land values. Because values have been assessed by the Valuer General to have increased, the Government has responded quickly to adjust the threshold.<sup>23</sup>

### The Bill

4. The Bill amends the *Land Tax Management Act 1956* to increase the threshold at which land tax becomes payable from \$330,000 to \$352,000, with effect from the 2006 land tax year.
- 5.

### 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 this Bill.*

<sup>23</sup> The Hon John Watkins MP, Legislative Assembly *Hansard*, 28 February 2006.

## 9. NATIONAL PARKS AND WILDLIFE (ADJUSTMENT OF AREAS) BILL 2006

Date Introduced: 28 February 2006  
House Introduced: Legislative Assembly  
Minister Responsible: The Hon Sandra Nori MP  
Portfolio: Minister for Tourism and Sport and Recreation

### Purpose and Description

1. This Bill revokes the reservation under the *National Parks and Wildlife Act 1974* of certain land in Bargo State Conservation Area and to vest that land in the Minister for Tourism and Sport and Recreation.

### Background

2. In her second reading speech, the Minister stated:

The location of recreational and competitive shooting sites is, reasonably, a matter in which the community has a high interest. Large tracts of land are needed to allow for the varying shooting disciplines, including surrounding safe areas and configured land improvements... It is important that the shooting clubs continue to be provided with access to safe and well-regulated sites.

[Bargo State Conservation area] was identified as having the best potential to be developed as a regional shooting complex.<sup>24</sup>

### The Bill

3. The Bill:
  - revokes the reservation of land in Bargo State Conservation Area for the purposes of establishing a shooting complex;
  - vests that land as part of the corporate lands under the *Sporting Venues Management Act 2002* in the Minister for Tourism and Sport and Recreation;
  - reserves certain Crown land as Bargo State Conservation Area and as part of Yengo National Park; and
  - amends the *Sporting Venues Management Act 2002*.

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<sup>24</sup> The Hon Sandra Nori MP, Legislative Assembly *Hansard*, 28 February 2006.

## Issues Considered by the Committee

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| 4. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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*The Committee makes no further comment on this Bill.*

## **SECTION B: MINISTERIAL CORRESPONDENCE — BILLS PREVIOUSLY CONSIDERED**

### **10. SMOKE-FREE ENVIRONMENT AMENDMENT BILL 2004**

Date Introduced: 27 October 2004  
House Introduced: Legislative Assembly  
Minister Responsible: The Hon John Hatzistergos MP  
Portfolio: Health

#### **Background**

1. The Committee reported on this Bill in *Legislation Review Digest No. 15 of 2004*.
2. The Committee wrote to the then Minister on the 5 November 2004 and noted that the Bill would remove the right of a person to be compensated by or on behalf of the Crown for a loss arising directly or indirectly from the occurrence of a matter specified in s 21A, which includes the enactment of the Bill, the exercise of functions under the Act, or any statement or conduct relating to the regulation of smoking in enclosed public places.
3. The Committee also asked for advice as to the rationale for the wide scope of s 21A and whether the scope of this section may be narrowed, for example by excluding damage caused by an inspector entering premises, without impeding the Crown's capacity to regulate smoking in enclosed public places.

#### **The Reply**

4. In a letter dated 12 January 2006, the Acting Deputy Director-General advised the Committee that the hospitality industry has claimed that the Act would result in a reduction of business and loss of revenue and the Government determined that the State would not be held liable for any loss that may be attributed to the implementation of this public health initiative.
5. The Committee was also advised that, in regards to damage caused by an inspector entering premises,  

Environmental Health Officers are not required to enter secure, dangerous or private areas, halt production or inspect and dismantle plant and equipment of licensed premises.

#### **The Committee's Comments**

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| <b>6. The Committee thanks the Acting Deputy Director General for his reply.</b> |
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PARLIAMENT OF NEW SOUTH WALES  
LEGISLATION REVIEW COMMITTEE

5 November 2004

Our Ref: 1025

The Hon M lemma MP  
Minister for Health  
Level 30 Governor Macquarie Tower  
1 Farrer Place  
Sydney NSW 2000

Dear Minister

**Smoke-free Environment Amendment Bill 2004**

On 5 November, the Committee considered the above Bill pursuant to s 8A of the *Legislation Review Act 1987*. The Committee will report on the Bill in its *Legislation Review Digest No 15 of 2004*.

The Committee resolved to write to you about the Bill's removal of the right of a person to be compensated by the Crown for any loss that person may have suffered arising from the occurrence of any of the matters specified in proposed s 21A.

The matters specified in proposed s 21A relate to the regulation of public smoking in enclosed public places by the Crown and persons acting on the Crown's behalf, including the manner in which inspectors appointed pursuant to s 14 of the *Smoke-free Environment Act 2000* exercise their functions.

Other NSW legislation that provide for the inspection of places defines the scope of matters for which Crown compensation is not payable more narrowly. For example, s 56 of the *Occupational Health and Safety Act 2000* requires WorkCover to pay compensation for any loss or damage caused by any inspector in the exercise of any power to enter premises, but not if that loss or damage is caused because the occupier obstructed, hindered or restricted the inspector in the exercise of that power.

Smoke-free Environment Amendment Bill 2004

The Committee seeks your advice as to the rationale for the wide scope of s 21A and whether the scope of the s 21A matters may be narrowed, for example by excluding damage caused by an inspector entering premises, without impeding the Crown's capacity to regulate smoking in enclosed public places.

Yours sincerely

A handwritten signature in black ink, reading "Peter Primrose". The signature is written in a cursive style with a large, stylized 'P' and 'P'.

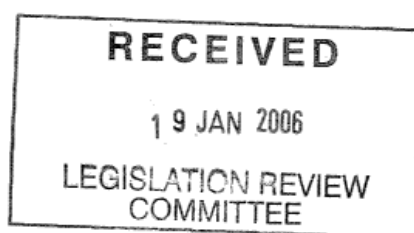
Peter Primrose MLC  
Chairman



M05/8242

12 January 2006

Mr Peter Primrose MLC  
Chairman  
Legislation Review Committee  
Parliament of NSW  
Macquarie St  
SYDNEY NSW 2000



Dear Mr Primrose

I write in response to your letter of 5 November 2004 requesting advice from the previous Minister for Health on the operation and scope of section 21A of the Smoke-free Environment Act 2004.

The section protects the Government from the payment of compensation to any person directly or indirectly affected by the enactment or operation of the Act, and the exercise of functions under the Act. The Committee has noted that similar protection in other legislation, such as the Occupational Health and Safety Act 2000 is narrower and seeks advice as to why a broad discretion is required.

I am advised that the hospitality industry have claimed the Act would reduce their business and cause a substantial loss of revenue. The Government determined that the State of NSW would not be held liable to compensate licensed premises for any alleged loss of revenue that may be attributed to the implementation of this important public health initiative. The passage of the legislation through the Parliament has confirmed that position.

Further, the phasing in of the smoking restrictions will result in patrons and workers being exposed to the dangers of environmental tobacco smoke (ETS) inside licensed premises until July 2007. Subsequent to July 2007, workers may still be exposed to ETS whilst providing service to patrons in designated smoking areas. Operators of licensed premises should continue to bear legal responsibility for any damage to the health or comfort of staff or patrons resulting from ETS exposure in their premises.

As regards the duties of Environmental Health Officers, and their potential to cause damage to property, inspectors are required to enter public spaces of licensed

73 Miller Street North Sydney NSW 2060  
Locked Mail Bag 961 North Sydney NSW 2059  
Telephone (02) 9391 9000 Facsimile (02) 9391 9101  
E-mail [nswhealth@doh.health.nsw.gov.au](mailto:nswhealth@doh.health.nsw.gov.au)

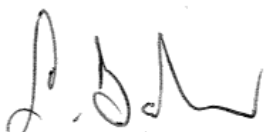
Smoke-free Environment Amendment Bill 2004

premises to observe a breach. This involves measuring the dimensions of premises using electronic hand held devices and observing room configurations, observing smoking behaviour of patrons and staff, monitoring provision of smoking accessories and inspecting signage. Since the commencement of the Act in January 2005, compliance with the Act has been achieved through provision of information, education, negotiation and discussion with industry and licensees.

Unlike WorkCover inspectors, Environmental Health Officers are not required to enter secure, dangerous or private areas, halt production or inspect and dismantle plant and equipment of licensed premises.

I trust this is satisfactory to answer your concerns.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Ken Barker', with a stylized flourish at the end.

**Ken Barker**  
A/Deputy Director-General  
Health System Support

## Part Two – Regulations

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

Regulation	Gazette reference		Information sought	Response Received
	Date	Page		
Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Regulation 2005	29/07/05	4033	12/09/05	

**Appendix 1: Index of Bills Reported on in 2006**

	Digest Number
Air Transport Amendment Bill 2006	2
Careel Bay Protection Bill 2006*	2
Child Protection (International Measures) Bill 2006	2
Crimes and Courts Legislation Amendment Bill 2005	1
Environmental Planning and Assessment Amendment Bill 2006	2
Fines Amendment (Payment of Victims Compensation Levies) Bill 2006	2
Firearms Amendment (Good Behaviour Bonds) Bill 2006*	2
Fisheries Management Amendment Bill 2006	2
Freedom of Information Amendment (Open Government-Disclosure of Contracts) Bill 2005	1
James Hardie (Civil Liability) Bill 2005	1
James Hardie (Civil Penalty Compensation Release) Bill 2005	1
James Hardie Former Subsidiaries (Winding up and Administration) Bill 2005	1
Land Tax Management Amendment (Tax Threshold) Bill 2006	2
Law Enforcement Legislation Amendment (Public Safety) Bill 2005	1
National Parks and Wildlife (Adjustment of Areas) Bill 2006	2
Police Amendment (Death and Disability) Bill 2005	1
Workers Compensation Legislation Amendment (Miscellaneous Provisions) Bill 2005	1

## Appendix 2: Index of Ministerial Correspondence on Bills

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

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

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Careel Bay Protection Bill 2006*	R, N				
Environmental Planning and Assessment Amendment Bill 2006	R				
Fines Amendment (Payment of Victims Compensation Levies) Bill 2006	N				
Fisheries Management Amendment Bill 2006	R				
Law Enforcement Legislation Amendment (Public Safety) Bill 2005	R,N				

### Key

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

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

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