



NEW SOUTH WALES

Minister for Police
Leader of the House

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

RECEIVED

14 SEP 2006

LEGISLATION REVIEW
COMMITTEE

- 8 SEP 2006

Dear Mr Shearer

Discussion Paper No. 2 – Strict and Absolute Liability

I write in response to your request for comment on the above paper.

I note that the Paper sets out a number of principles which the Committee proposes to adopt in its consideration of provisions in Bills and regulations that create strict or absolute liability offences.

The adoption of these principles is supported, with the exception of the principle outlined in (a)(x) on page vi of the Paper, which proposes that the intention to impose strict or absolute liability should be explicit. While I generally agree with this principle, it raises concerns with respect to the prosecution of existing offences. If new offences were to expressly state an offence is one of strict or absolute liability, it may create doubt in the interpretation of some existing offences which are not explicitly stated as such. For example, an attempt could be made to argue that failure to stop at red traffic lights is an offence of *mens rea* requiring proof of intent. It is appropriate that these matters remain the subject of statutory interpretation.

The Committee has specifically requested comment on whether there should be a cap on monetary penalties for strict and absolute liability offences. In my view, a monetary cap is unnecessary and would be inappropriate. The principles proposed in (b)(i)-(iii) on page vi of the Paper provide sufficient safeguard with respect to monetary penalties while allowing for flexibility for offences to be considered on a case by case basis.

Thank you for the opportunity to comment on the Committee's proposals.

Yours sincerely

CARL SCULLY MP
Minister for Police