

OUR REFERENCE

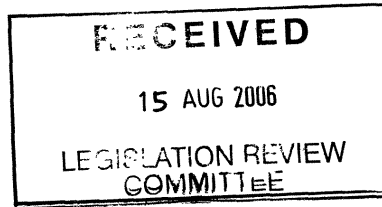
DIRECTOR'S CHAMBERS



YOUR REFERENCE

DATE

10 August 2006



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

Dear Mr Shearan

Invitation to comment on Discussion Paper on *Strict and Absolute Liability Offences*

Thank you for your invitation (dated 19 June 2006) to comment on this discussion paper. I support the Committee's views on the need to limit the creation of offences of strict or absolute liability and the setting of guidelines to assist in assessing the impact of these types of offences on personal rights.

I agree with and support the implementation of principles in respect of strict liability as set out in points 56 (a) (i), (ii), (iii), (iv), (vi), (vii), (viii), (ix) and (x).

As to point 56 (a) (v): while I agree that offences imposing strict or absolute liability should as a general rule be limited to offences that are of a regulatory nature and do not carry a penalty of imprisonment, I note that there are areas of criminal law that on occasion warrant the creation of strict liability offences that carry sentences of imprisonment. An example of this is section 52A of the *Crimes Act 1900* ("dangerous driving") where the rationale for creating an offence of strict liability is clear. It is the type of offence where it is difficult, if not impossible in many circumstances, to establish an intention to commit the offence beyond reasonable doubt; but the need to create an offence of this nature is justified by the need to promote public safety.

In relation to offences of absolute liability I agree with the principles in 56 (b) (iv), (v) and (vi).

On the question of whether there should be a cap on monetary penalties for strict or absolute liability offences, I would support this as a general principle; however, as this Office prosecutes very few matters in the first instance that involve only monetary penalties, it is not within this Office's expertise to comment as to what this cap should be.

Yours faithfully

A handwritten signature in black ink, appearing to read 'N R Cowdery'.

N R Cowdery AM QC
Director of Public Prosecutions