



The Hon. Kerry Hickey MP
Minister for Local Government

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11 AUG 2006

LEGISLATION REVIEW
COMMITTEE

Ref:
MIN: 06/3726
Doc ID: A58989

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

- 8 AUG 2006

Dear ^{Akan}Mr Shearan

I am writing in reply to your letters of 8 and 19 June 2006 to the Department of Local Government and myself inviting comment on the Legislation Review Committee's Discussion Paper on *Strict and Absolute Liability Offences*.

In particular, you seek comment on the principles the Committee propose to adopt in regard to the consideration of strict and absolute liability offences, presented in question form.

While in-principle support is given to the principles proposed, some matters of concern remain. Specifically, items (a)(iv) and (a)(v) are not supported, and items (a)(vii) and (a)(viii) are given only limited support in their current form.

In regard to item (a)(iv), the listing of available defences to strict or absolute liability offences in the relevant legislative provisions would seem, at face value, to defeat their deterrent effect and potentially encourage litigation. Similarly, a blanket limitation of strict and absolute offences to non-imprisonment penalties (as discussed in item (a)(v)) may be inappropriate in circumstances where the offence or consequences of the offence are of such a serious nature that a fine would have insufficient deterrent impact. Conversely, imprisonment may be appropriate in circumstances where the proposed benefit or gain to an individual would 'offset' any financial penalty applied.

In regard to items (a)(vii) and (a)(viii), the absence of a clear definition of "serious criminal offence" and "genuine administrative detail" makes informed comment on these provisions difficult. Without further clarification, only limited support can be given.

It is important to note that the use of strict and absolute liability offences is a fundamental component of our legislative framework for safeguarding the community from unacceptable conduct. Strict and absolute liability offences also provide clear guidance on community and government expectations as to the seriousness with which such offences are to be regarded.

I recognise the importance of these issues. Given this, the Committee may wish to consult with the New South Wales Law Reform Commission on the scope and implications of the principles proposed.

From a local government perspective, consultation with the Local Government and Shires Associations of NSW would also be recommended.

Thank you for the opportunity to comment on the Discussion Paper. I welcome further and more detailed analysis of the issues raised.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kerry Hickey', written over a light blue horizontal line.

Kerry Hickey MP
Minister