



Our Ref: 213

Mr David Driscoll
Senior Committee Clerk
Standing Committee on Legislation
Legislative Council
Parliament House
PERTH WA 6000



Dear Mr Driscoll

Inquiry into the Criminal Investigation Bill 2005, Criminal Investigation (Consequential Provisions) Bill 2005 and Found Property Disposal Bill 2005

Thank you for your letter dated 22 June 2006 in which you seek any submissions I may wish to make in relation to the above Bills. In your letter you draw my attention in particular to Part 9, Division 5, clause 100(4) of the Criminal Investigation Bill 2005 relating to the application of a warrant in respect of an incapable person.

The Public Advocate is an independent statutory authority established under the *Guardianship and Administration Act 1990* (the Act). The functions of the Public Advocate are broadly set out in section 97 of the Act. There is no provision in the Act for the Public Advocate to undertake any functions in relation to the application of a warrant under the Criminal Investigation Bill 2005.

I note that the Criminal Investigation (Identifying People) Act 2002 contains a similar provision. I have previously taken advice from the State Solicitor's Office regarding this legislation which has confirmed that there is no power in the *Guardianship and Administration Act 1990* for the Public Advocate to undertake this function.

A further issue is that the Public Advocate carries out her functions in regard to adults with a decision-making disability. It is arguable that an incapable person under Part 9, Division 5, clause 100(4) of the Criminal Investigation Bill 2005 may be under 18 years of age and the Public Advocate has no statutory responsibility in relation to those individuals.

It is also unclear as to what the Public Advocate is required to do should a magistrate, on his or her own initiative:

- (a) give a copy of the application to the Public Advocate;
- (b) seek information or submissions from the Public Advocate; or
- (c) if the warrant is issued, give a copy of it to the Public Advocate.

Is it intended that the Public Advocate may undertake an investigation in regard to the person to determine whether the person may require the appointment of a guardian or whether, if under guardianship, a review of the guardianship order is required?

The Public Advocate was not consulted in the drafting of the Criminal Investigation Bill 2005. I have therefore not had the opportunity to provide any comment until now. However, I have concerns regarding the Bill for the above stated reasons.

I have mentioned above that there are similar provisions in the Criminal Investigation (Identifying People) Act 2002. I also have concerns about these and other provisions in the 2002 Act. I note that since the proclamation of this Act I have not yet been required by any magistrate to undertake any actions.

I hope that this provides you with sufficient information. Please contact me should you require any clarification or additional information.

Yours sincerely

Michelle Scott
PUBLIC ADVOCATE

27 June 2006