

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

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 - ***Membership of the Redundant Legislation Subcommittee***
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TERMS OF REFERENCE

On 12 May 1994, The Governor-in-Council made an Order-in-Council referring a reference for the review of redundant legislation to the Scrutiny of Acts and Regulations Committee. The matter was referred pursuant to section 4F(1)(a)(ii) of the *Parliamentary Committees Act 1968*. Following the March 1996 election and the commencement of the 53rd Parliament of Victoria, the Governor-in-Council, on 18 June 1996, again referred the terms of reference to the Committee. Following are the terms of reference:

1. The Committee is requested, in conjunction with the Chief Parliamentary Counsel, to inquire into, to consider and make recommendations as to:
 - Acts of Parliament and provisions of Acts of Parliament which are unnecessary or redundant;
 - legislative instruments made under an Act of Parliament and provisions of legislative instruments made under an Act of Parliament which are unnecessary or redundant.
2. The Committee is requested, in conjunction with the Chief Parliamentary Counsel, to inquire into, consider and make recommendations as to:
 - Acts of Parliament and provisions of Acts of Parliament which are unclear, ambiguous or should be re-drafted;
 - Legislative instruments made under an Act of Parliament and provisions of legislative instruments made under an Act of Parliament which are unclear, ambiguous or should be re-drafted;
3. In the conduct of this reference, the Committee is requested to pursue the primary objects of reducing the number and complexity of Victorian Acts and legislative instruments, and ensuring that Acts and instruments are clearly expressed in accordance with modern drafting practices.
4. This reference shall continue unless revoked by the Governor-in-Council.

INTRODUCTION

1.1 The Minister for Fair Trading, the Honourable Jan Wade MP, wrote to the Committee on 20 July 1994:

The *Carriers and Innkeepers Act 1958* is archaic and I would be pleased for you to consider it for repeal and the making of recommendations as to whether any of its provisions should be retained.¹

1.2 The Law Institute of Victoria also identified the *Carriers and Innkeepers Act 1958* (Cwlth) (“the Act”) as one which should either be repealed, or which required modification to remove archaic language.²

BACKGROUND TO LAW RELATING TO CARRIERS AND INNKEEPERS

1.3 Common carriers and innkeepers are both subject to unlimited liability at common law for loss of and damage³ to the property that they are given to carry, or brought by guests to their inns. This strict liability was imposed as a matter of policy:

And this is a politick establishment, contrived by the policy of the law, for the safety of all persons, the necessity of whose affairs oblige them to trust these sorts of persons, that they may be safe in their ways of dealing; for else these carriers [and innkeepers] might have an opportunity of undoing all persons that had any dealings with them, by combining with thieves etc, and yet doing it in such a clandestine manner, as would not be possible to be discovered. And that is the reason that the law is founded upon that point.⁴

1.4 It was recognised, however, that strict liability could place an unfair burden on the innkeeper or carrier, especially in relation to valuable goods, where the value is unknown to the carrier or innkeeper.⁵ Consequently, legislation was first introduced in Victoria in 1859

1 Minister for Fair Trading, letter to Scrutiny of Acts and Regulations Committee (“SARC”), 20.7.94.

2 Law Institute of Victoria, letter to SARC, 7.10.94.

3 There is some doubt whether liability extends to damage as well as loss. This matter is discussed in Chapter 5.

4 *Coggs v Barnard* (1704) 2 Ld Raym 909, per Holt CJ.

5 See, for example, the speech of Mr Wood, Parliament of Victoria, *Parliamentary Debates (Hansard)*, Legislative Assembly, Session III, Vol. 4, 1858-59, 21.10.1858, p. 107.