

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

REVIEW OF REDUNDANT AND UNCLEAR LEGISLATION

REPORT

Review of the Carriers and Innkeepers Act 1958

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RECOMMENDATIONS

The Committee recommends:

CARRIERS

Recommendation 1 (see page 24)

The Committee recommends that sections 3 - 12 of the *Carriers and Innkeepers Act 1958*, pertaining to carriers, be repealed.

INNKEEPERS

Recommendation 2 (see page 40)

The Committee recommends that the liability of innkeepers not be left to the common law for determination.

Recommendation 3 (see page 46)

The Committee recommends that new terms be substituted for “inn” and “innkeeper” which do not import any of the common law uncertainty, and which reflect the modern and diverse nature of the industry today. The Committee considers the expressions “accommodation” and “accommodation provider” to be appropriate. The Committee recommends that the definition of “accommodation” be as broad as possible, and outline which types of accommodation, if specified, are not covered by the legislation (eg caravans).

Recommendation 4 (see page 47)

The Committee recommends that a new definition of “guest” be introduced, which does not import any of the common law uncertainty. The Committee suggests the expression “accommodation user”. The terms “traveller” and “lodger” should not be used.

Recommendation 5 (see page 48)

The Committee recommends that the Victorian legislation governing the liability of accommodation providers expressly exclude the operation of the common law.

Recommendation 6 (see page 49)

The Committee recommends that the Victorian legislation governing the liability of accommodation providers preserve the provision which makes it clear that accommodation providers are liable for damage to, as well as loss of, an accommodation user's property in the appropriate circumstances.

Recommendation 7 (see page 50)

The Committee recommends that the Victorian legislation maintain a cap on the liability of accommodation providers for property not deposited for safekeeping. The Committee recommends that the method of calculating liability set out in Chapter 10 of this Report be adopted.

Recommendation 8 (see page 53)

The Committee recommends that the \$2000 cap on liability for property deposited for safekeeping by an accommodation user be abolished, and replaced by unlimited liability. However, the Committee recommends that the new legislation make it clear that accommodation providers are under no obligation to provide a safekeeping service.

The Committee recommends that the accommodation provider be entitled to inspect the property deposited for safekeeping. The Committee further recommends that the accommodation user be obliged to disclose the nature of the property and/or the approximate value of the goods being deposited for safekeeping. The accommodation provider should note the information on a receipt, a copy of which should be provided to the accommodation user.

The Committee further recommends that the Victorian legislation preserve the provision making an accommodation provider liable where property is refused safekeeping without reasonable excuse, and where an accommodation user is unable to deposit property for safekeeping due to the default of the accommodation provider. This provision would apply only where the accommodation provider offers a safekeeping service to guests.

Recommendation 9 (see page 56)

The Committee recommends that the limit on an accommodation provider's liability for property not deposited for safekeeping remain subject to the conspicuous display of a notice prescribed by the legislation.

Recommendation 10 (see page 56)

The Committee recommends that accommodation providers remain subject to unlimited liability for damage or loss to accommodation users' property caused by the accommodation provider's intentional or negligent acts, or those of their servants.

Recommendation 11 (see page 57)

The Committee recommends that the Victorian legislation preserve the provision that accommodation providers not be liable for damage to or loss of vehicles, or property on or in vehicles.

Recommendation 12 (see page 58)

The Committee recommends that the Victorian legislation preserve the abolition of the common law lien.

Recommendation 13 (see page 64)

The Committee recommends that sections 26 to 31 of the *Carriers and Innkeepers Act 1958* be repealed, and that a new piece of legislation be enacted to govern the liability of accommodation providers in accordance with the recommendations set out in this Report.

Recommendation 14 (see page 72)

The Committee recommends that the new Victorian Act expressly include the common law defences, and that these defences be updated in modern and clear language.

Recommendation 15 (see page 88)

The Committee recommends that the new Victorian legislation make it clear that the accommodation provider is liable for loss and damage to property under his or her control or supervision for a reasonable period before and after the guest is entitled to use the accommodation.

Recommendation 16 (*see page 91*)

The Committee recommends that the limit on an accommodation provider's liability for property not deposited for safekeeping be set at five (5) times the value of the standard daily tariff of the room in the relevant accommodation establishment being occupied by the accommodation user.

Recommendation 17 (*see page 92*)

The Committee recommends that the defence in Article 16 of the Unidroit Draft Convention in relation to the nature of the property be added to the list of common law defences referred to in Recommendation 14.