



SCRUTINY OF ACTS AND
REGULATIONS COMMITTEE

Report on Redundant Corporations Laws

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**Parliament of Victoria, Australia
Scrutiny of Acts and Regulations
Committee**

Corporations Laws

Redundant Legislation

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Reference to the Committee

Extracted from the Votes and Proceedings of the Legislative Assembly

No 8 — Thursday 1 March 2007

7. **PARLIAMENTARY COMMITTEE REFERENCES** — Motion made and question — That under s. 33 of the *Parliamentary Committees Act 2003* the following matters be referred to the joint investigatory committees specified:

...

- (17) To the Scrutiny of Acts and Regulations Committee — for inquiry, consideration and report by the last sitting day in 2008:

- (a) in conjunction with Chief Parliamentary Counsel, make recommendations on —
- (i) Acts of Parliament and provisions of Acts of Parliament which are unnecessary or redundant; and
 - (ii) legislative instruments made under an Act of Parliament and provisions of legislative instruments made under an Act of Parliament, which are unnecessary or redundant; and
 - (iii) Acts of Parliament and provisions of Acts of Parliament which are unclear, ambiguous or should be re-drafted; and
 - (iv) 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;
- (b) the implications of the national corporations regulatory framework and whether as a consequence of the referral of corporations powers to the Parliament of the Commonwealth any Victorian Acts should be repealed and if so whether any existing provisions should be saved by inclusion into other appropriate legislation; this consideration should include:
- (i) *Companies Act 1961*;
 - (ii) *Companies Act 1975*;
 - (iii) *Companies (Application of Laws) Act 1981*;
 - (iv) *Securities Industry Act 1975*;
 - (v) *Securities Industry (Application of Laws) Act 1981*;
 - (vi) *Marketable Securities Act 1970*;
 - (vii) *Collusive Practices Act 1965*;

and, in the conduct of this inquiry, 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.

(*Mr Batchelor*) — put, after debate, and agreed to.

Chairpersons' Foreword

The Scrutiny of Acts and Regulations Committee is pleased to present its report concerning its inquiry into the repeal of certain redundant corporations laws.

The inquiry was given to the Committee pursuant to a Motion in the Legislative Assembly on 1 March 2007 and required the Committee to report to the Parliament by the last sitting day in 2008.

The laws identified for consideration in the reference and by the Committee were the –

- *Companies Act 1961*
- *Collusive Practices Act 1965*
- *Marketable Securities Act 1970*
- *Companies Act 1975*
- *Securities Industry Act 1975*
- *Companies (Acquisitions of Shares) (Application of Laws) Act 1981*
- *Companies (Administration Act) 1981*
- *Companies (Application of Laws) Act 1981*
- *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*
- *Securities Industry (Application of Laws) Act 1981*
- *Futures Industry (Application of Laws) Act 1986*
- *Corporations (Victoria) Act 1990*

In undertaking this review the age, size and importance of these enactments presented the Committee with important conflicting priorities. On the one hand the reference called on the Committee to keep in mind the desirability of modernising and rationalising the Victorian statute books by removing spent and redundant Acts and thereby reduce the regulatory burden on corporations and on the other hand, the desirability of not prematurely recommending the repeal of Acts that may still have some residual life.

In reaching its recommendations the Committee was greatly assisted by the Office of Chief Parliamentary Counsel. The Committee in particular wishes to thank Annette O'Callaghan and Adam Bushby for their analysis and helpful suggestions. The Committee also thanks Professor Ian Ramsay of the University of Melbourne for his valuable advice.

For those organisations and persons involved with or interested in corporations law it is to be hoped that this report will serve to forewarn that repeal of some or all of these Acts may be anticipated in the near future.

Mr Edward O'Donohue MLC
Chairperson
Redundant Legislation Subcommittee

Mr Carlo Carli MLA
Chairperson
Scrutiny of Acts and Regulations Committee

Terms of Reference

Parliamentary Committees Act 2003, section 17

The functions of the Scrutiny of Acts and Regulations Committee are –

- (a) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament as to whether the Bill directly or indirectly –
 - (i) trespasses unduly upon rights or freedoms;
 - (ii) makes rights, freedoms or obligations dependent upon insufficiently defined administrative powers;
 - (iii) makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions;
 - (iv) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the *Information Privacy Act 2000*;
 - (v) unduly requires or authorises acts or practices that may have an adverse effect on privacy of health information within the meaning of the *Health Records Act 2001*;
 - (vi) inappropriately delegates legislative power;
 - (vii) insufficiently subjects the exercise of legislative power to parliamentary scrutiny;
 - (viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities;
- (b) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament –
 - (i) as to whether the Bill directly or indirectly repeals, alters or varies section 85 of the *Constitution Act 1975*, or raises an issue as to the jurisdiction of the Supreme Court;
 - (ii) if a Bill repeals, alters or varies section 85 of the *Constitution Act 1975*, whether this is in all the circumstances appropriate and desirable;
 - (iii) if a Bill does not repeal, alter or vary section 85 of the *Constitution Act 1975*, but an issue is raised as to the jurisdiction of the Supreme Court, as to the full implications of that issue;
- (c) to consider any Act that was not considered under paragraph (a) or (b) when it was a Bill –
 - (i) within 30 days immediately after the first appointment of members of the Committee after the commencement of a Parliament; or
 - (ii) within 10 sitting days after the Act receives Royal Assent —whichever is the later, and to report to the Parliament with respect to that Act on any matter referred to in those paragraphs;
- (d) the functions conferred on the Committee by the *Subordinate Legislation Act 1994*;
- (e) the functions conferred on the Committee by the *Environment Protection Act 1970*;
- (f) the functions conferred on the Committee by the *Co-operative Schemes (Administrative Actions) Act 2001*;
- (fa) the functions conferred on the Committee by the Charter of Human Rights and Responsibilities;
- (g) to review any Act in accordance with terms of reference which the Act is referred to the Committee.

Recommendations

Recommendation 1

1.1 The Committee recommends that the following Acts be repealed—

- *Companies Act 1961*;
- *Marketable Securities Act 1970*;
- *Companies Act 1975*;
- *Securities Industry Act 1975*;
- *Companies (Acquisitions of Shares) (Application of Laws) Act 1981*;
- *Companies (Application of Laws) Act 1981*;
- *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*;
- *Securities Industry (Application of Laws) Act 1981*;
- *Futures Industry (Application of Laws) Act 1981*;

1.2 The Committee further recommends that the legislation repealing the above Acts should include power to make regulations with respect to transitional or savings arrangements consequent on the repeal. This will ensure there is sufficient power to address any technical issues that may arise in the future in relation to the transition between the various schemes that existed before the referral of the corporations power to the Commonwealth Parliament.

Recommendation 2

The Committee recommends that the following Acts should not be repealed—

- *Corporations (Victoria) Act 1990*;
- *Companies (Administration) Act 1981*.

Recommendation 3

The Committee recommends that the Collusive Practices Act 1965 should not be repealed at this time but should be the subject of further consultation and consideration.

Recommendation 4

Given the complexity of the issues considered in the Inquiry, and the limited time and resources available, the Committee recommends that the recommendations made by this report and any repeal Bill prepared as a result should be the subject of further consultation with interested persons and organisations.

Report on Redundant Corporations Laws

Role of Scrutiny of Acts and Regulations Committee

The primary roles of the Scrutiny of Acts and Regulations Committee (**SARC**) are —

- the scrutiny of bills introduced into Parliament; and
- the scrutiny of regulations; and
- the review of redundant, unclear or ambiguous legislation.

SARC also receives references from Parliament or by Governor-in-Council order. These references typically require SARC to review an Act or an issue concerning an Act and to report to Parliament. It was by a Governor-in-Council order that SARC was given the additional responsibility in 1994 of reviewing redundant, unclear or ambiguous legislation. At the prorogation of each Parliament these terms of reference expire and must be renewed at the commencement of each new Parliament for the SARC to perform this function.

While all members of SARC are involved in the Scrutiny of Bills, other SARC functions are carried out by Subcommittees consisting of members of the Committee.

Inquiry

On 1 March 2007 the Legislative Assembly referred to SARC the following Terms of Reference —

7. *PARLIAMENTARY COMMITTEE REFERENCES — Motion made and question — That under s 33 of the Parliamentary Committees Act 2003 the following matters be referred to the joint investigatory committees specified:*

...

- (17) *To the Scrutiny of Acts and Regulations Committee — for inquiry, consideration and report by the last sitting day in 2008:*

- (a) *in conjunction with Chief Parliamentary Counsel, make recommendations on —*
- (i) *Acts of Parliament and provisions of Acts of Parliament which are unnecessary or redundant; and*
 - (ii) *legislative instruments made under an Act of Parliament and provisions of legislative instruments made under an Act of Parliament, which are unnecessary or redundant; and*
 - (iii) *Acts of Parliament and provisions of Acts of Parliament which are unclear, ambiguous or should be re-drafted; and*
 - (iv) *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;*
- (b) *the implications of the national corporations regulatory framework and whether as a consequence of the referral of corporations powers to the*

Parliament of the Commonwealth any Victorian Acts should be repealed and if so whether any existing provisions should be saved by inclusion into other appropriate legislation; this consideration should include:

- (i) Companies Act 1961;*
- (ii) Companies Act 1975;*
- (iii) Companies (Application of Laws) Act 1981;*
- (iv) Securities Industry Act 1975;*
- (v) Securities Industry (Application of Laws) Act 1981;*
- (vi) Marketable Securities Act 1970;*
- (vii) Collusive Practices Act 1965;*

and, in the conduct of this inquiry, 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.

SARC met on 9 March 2007 and formed the Redundant Legislation Subcommittee to consider the implications of the national corporations regulatory framework and to review the Acts referred to the Committee.

Inquiry Process

In addition to the Acts specifically referred to in the Terms of Reference, the Subcommittee identified a number of related Acts for consideration in conducting the Inquiry. Consequently, the following 12 Victorian Acts were considered by the Subcommittee during the course of the Inquiry—

- *Companies Act 1961;*
- *Collusive Practices Act 1965,*
- *Marketable Securities Act 1970,*
- *Companies Act 1975;*
- *Securities Industry Act 1975;*
- *Companies (Acquisitions of Shares) (Application of Laws) Act 1981;*
- *Companies (Administration Act) 1981;*
- *Companies (Application of Laws) Act 1981;*
- *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981;*
- *Securities Industry (Application of Laws) Act 1981;*
- *Futures Industry (Application of Laws) Act 1981;*
- *Corporations (Victoria) Act 1990.*

By an advertisement published in *The Age* on 12 May 2007 the Subcommittee invited interested persons or organisations to make written submissions about whether the relevant Acts may be repealed. The advertisement was also subsequently published in the Journal of the Law Institute of Victoria. No written responses were received as a result of the advertisements.

The Subcommittee also specifically wrote to the following persons and organisations inviting submissions—

- Australian Institute of Company Directors;

- Bar Council of Victoria;
- Centre for Corporate Law and Securities Regulation, Melbourne Law School, University of Melbourne
- Law Institute of Victoria;
- Secretary of the Victorian Department of Justice.

Responses were received from the Australian Institute of Company Directors (by letter dated 3 August 2007), the Acting Secretary of the Department of Justice (by letter dated 8 October 2007) and the Bar Council of Victoria.

Some respondents indicated an interest in contributing to the Inquiry but expressed an inability to do so given the complexity and range of the legislation the subject of the Inquiry.

Letters dated 23 May 2007 were also forwarded to the Parliamentary Counsel of each State. Advice was sought from each Parliamentary Counsel as to whether the equivalent Acts of that State had been repealed and, if so, what transitional arrangements had been made consequent on the repeal. The Queensland Parliamentary Counsel responded by letter dated 7 June 2007 and the West Australian Parliamentary Counsel responded by letters dated 11 and 12 June 2007. In both Queensland and West Australia some, but not all, of the relevant Acts had been repealed or were proposed to be repealed.

The Subcommittee engaged Professor Ian Ramsay of the Centre for Corporate Law and Securities Regulation, Melbourne Law School, the University of Melbourne to provide expert advice for the purpose of assisting the Subcommittee to form a view as to whether the relevant Acts are redundant and therefore may be repealed. Given the broad scope of the Inquiry and the limited resources available, Professor Ramsay was not requested to undertake a detailed examination of each of the relevant Acts but rather a limited review and to provide a qualified opinion.

Relevant Acts

1. Companies Act 1961

Background

This Act succeeded the *Companies Act 1958*. Among other things, it deals with the constitution of companies (Part III), shares, debentures and charges (Part IV), management and administration (Part V), accounts and audit (Part VI), special investigations (Part VIA), take-overs (Part VIB), arrangements and reconstructions (Part VII), receivers and managers (Part VIII) and the winding up of a company (Part X).

Conclusion

The equivalent Act of the Queensland Parliament has been repealed and it is proposed to repeal the equivalent Act of the Western Australian Parliament. Professor Ramsay's review has suggested this Act could be repealed in Victoria.

In the Subcommittee's view it would appear the *Companies Act 1961* is redundant and should be repealed.

However, the Subcommittee further recommends that in drafting the legislation that repeals this Act a regulation-making power should be included that allows for the making of regulations with respect to transitional or savings arrangements consequent on the repeal. This will ensure there is sufficient power to address any technical issues that may arise in the future in relation to the

transition between the various schemes that existed before the referral of the corporations power to the Commonwealth Parliament.

2. Collusive Practices Act 1965

Background

This Act was made in response to the then recent development in Australia of restrictive agreements operating in the field of public tenders and contracts. For example, where there is agreement between the tenderers to submit identical bids. This Act does not aim at collusive agreements, but bids and tenders resulting from them. This Act was purported to be consistent with a Commonwealth Bill concerning the same issue. However, it does not appear to be a part of a general co-operative scheme.

Conclusion

To some extent the matters covered by this Act are now covered by the *Trade Practices Act 1974* of the Commonwealth which provides for, amongst other matters, restrictive trade practices such as the collusive practices referred to in the Victorian Act. However, the *Trade Practices Act 1974* is directed at corporations, rather than individuals, and does not purport to cover the field. For example, section 51AAA of that Act provides that it is the Commonwealth Parliament's intention that a law of a State should be able to operate concurrently with Part IV of that Act (which provides for restrictive trade practices such as collusion) unless the State law is directly inconsistent with the Commonwealth Act. It should be noted that the other States do not appear to have an Act equivalent to the *Collusive Practices Act 1965*.

In the Subcommittee's view it is not clear whether the *Collusive Practices Act 1965* is redundant and therefore the Act should not be repealed at this time. The Subcommittee recommends that the Act should be the subject of further consultation and consideration. In particular, consultation with the Australian Competition and Consumer Commission.

3. Marketable Securities Act 1970

Background

This Act is based on a system of the transfer of securities from 1966. The earlier scheme is extended beyond brokers' transactions, and requirements regarding signatures are removed. The Act was enacted in its form to achieve substantial uniformity nationwide.

Conclusion

The equivalent Act of the Queensland Parliament has been repealed and it is proposed to repeal the equivalent Act of the Western Australian Parliament. Professor Ramsay's review has suggested this Act could be repealed in Victoria.

In the Subcommittee's view it would appear the *Marketable Securities Act 1970* is redundant and should be repealed.

However, the Subcommittee further recommends that in drafting the legislation that repeals this Act a regulation-making power should be included that allows for the making of regulations with respect to transitional or savings arrangements consequent on the repeal. This will ensure there is sufficient power to address any technical issues that may arise in the future in relation to the transition between the various schemes that existed before the referral of the corporations power to the Commonwealth Parliament.

4. Companies Act 1975

Background

This Act amended the *Companies Act 1961* to give effect to a 1974 intergovernmental agreement (the Interstate Corporate Affairs Agreement for the reconciliation of differences in the Companies Acts of New South Wales, Victoria, Queensland and Western Australia). The agreement provided for the establishment of an Interstate Corporate Affairs Commission, and for the elimination of differences in the respective states' legislation. Other minor amendments were also made. The *Statute Law Revision (Repeals) Act 1982* repealed the whole of this Act except sections 1 and 30.

Conclusion

It is proposed to repeal the equivalent Act of the Western Australian Parliament. Professor Ramsay's review has suggested this Act could be repealed in Victoria.

In the Subcommittee's view it would appear the *Companies Act 1975* is redundant and should be repealed.

However, the Subcommittee further recommends that in drafting the legislation that repeals this Act a regulation-making power should be included that allows for the making of regulations with respect to transitional or savings arrangements consequent on the repeal. This will ensure there is sufficient power to address any technical issues that may arise in the future in relation to the transition between the various schemes that existed before the referral of the corporations power to the Commonwealth Parliament.

5. Securities Industry Act 1975

Background

This Act was made to consolidate and amend the law dealing with securities. It was made under the Interstate Corporate Affairs Agreement (with identical bills in New South Wales, Victoria, Queensland and Western Australia). It is complementary to the *Companies Act 1975*.

This Act goes further than the *Securities Industry Act 1970* by having, for example: extended licensing requirements; interstate recognition of licences; requirements for the creation of new stock markets; expanded provisions regarding auditors and the keeping of accounts; and more stringent requirements concerning pecuniary interests.

Conclusion

The equivalent Act of the Queensland Parliament has been repealed and it is proposed to repeal the equivalent Act of the Western Australian Parliament. Professor Ramsay's review has suggested this Act could be repealed in Victoria.

In the Subcommittee's view the *Securities Industry Act 1975* would appear to be redundant and should be repealed.

However, the Subcommittee further recommends that in drafting the legislation that repeals this Act a regulation-making power should be included that allows for the making of regulations with respect to transitional or savings arrangements. This will ensure there is sufficient power to address any technical issues that may arise in the future in relation to the transition between the various schemes that existed before the referral of the corporations power to the Commonwealth Parliament.

6. Companies (Acquisition of Shares) (Application of Laws) Act 1981

Background

Along with other Acts including the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981* and the *Securities Industry (Application of Laws) Act 1981*, this Act gives effect to a 1978 intergovernmental agreement between the Commonwealth and the States. The purpose of this agreement was to secure uniformity in company law. This Act applies substantive Commonwealth legislation in Victoria.

Conclusion

The equivalent Act of the Queensland Parliament has not been repealed. However, it is proposed to repeal the equivalent Act of the Western Australian Parliament. Professor Ramsay has advised that it appears this Act could either be retained or repealed.

Given the Terms of Reference under which the Subcommittee's Inquiry was held specifically request the Committee "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", the Subcommittee recommends the *Companies (Acquisition of Shares) (Application of Laws) Act 1981* be repealed.

However, the Subcommittee further recommends that in drafting the legislation that repeals this Act a regulation-making power should be included that allows for the making of regulations with respect to transitional or savings arrangements consequent on the repeal. This will ensure there is sufficient power to address any technical issues that may arise in the future in relation to the transition between the various schemes that existed before the referral of the corporations power to the Commonwealth Parliament.

7. Companies (Administration) Act 1981

Background

This Act establishes the Corporate Affairs Commissioner as a body corporate, and the establishment of the Companies Auditors and Liquidators Disciplinary Board.

Conclusion

In the Subcommittee's view the *Companies (Administration) Act 1981* should be retained. The Act provides for the creation of the office of the Commissioner of Corporate Affairs. The Victorian Minister for Justice, in a letter dated 7 May 2007, stated that—

One of the current roles of the Commissioner is the administration of the Trustee Companies Act 1984 which is allocated to Consumer Affairs and Treasury portfolios jointly until its replacement by a uniform model Bill being developed by the Standing Committee of Attorneys General.

The Parliamentary Counsel for Western Australian also notes, in his letter dated 11 June 2007, that the equivalent Act of the Western Australian Parliament is being retained—

as it provides for there to be a Commissioner for Corporate Affairs with some residual powers for use in the event of the Commonwealth having insufficient power to deal with a matter. Those powers have been used on at least one occasion when the Commissioner for Corporate Affairs was called upon to discharge an old liquidator's bond given under the Companies (WA) Code when it was discovered that ASIC did not have power to do so.

For these reasons it appears to the Subcommittee that the *Companies (Administration) Act 1981* is not redundant and should not be repealed.

8. Companies (Application of Laws) Act 1981

Background

This Act is similar in form to the *Securities Industry (Application of Laws) Act 1981* and the *Futures Industry (Application of Laws) Act 1981*. This Act applies substantive Commonwealth legislation dealing with companies in Victoria. The Minister may authorise publication of provisions of the Commonwealth legislation in operation in Victoria, which may be cited as the *Companies (Victoria) Code* (section 10).

Conclusion

The equivalent Act of the Queensland Parliament has not been repealed. However, it is proposed to repeal the equivalent Act of the Western Australian Parliament. Professor Ramsay has advised that it appears this Act could either be retained or repealed.

Given the Terms of Reference under which the Subcommittee's Inquiry was held specifically request the Committee "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", the Subcommittee recommends the *Companies (Application of Laws) Act 1981* be repealed.

However, the Subcommittee further recommends that in drafting the legislation that repeals this Act a regulation-making power should be included that allows for the making of regulations with respect to transitional or savings arrangements consequent on the repeal. This will ensure there is sufficient power to address any technical issues that may arise in the future in relation to the transition between the various schemes that existed before the referral of the corporations power to the Commonwealth Parliament.

9. Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981

Background

Along with other Acts including the *Companies (Acquisition of Shares) (Application of Laws) Act 1981* and the *Securities Industry (Application of Laws) Act 1981*, this Act gives effect to a 1978 intergovernmental agreement between the Commonwealth and the States. The purpose of this agreement was to secure uniformity in company law. This Acts applies substantive Commonwealth legislation in Victoria.

Conclusion

The equivalent Act of the Queensland Parliament has not been repealed. However, it is proposed to repeal the equivalent Act of the Western Australian Parliament. Professor Ramsay has advised that it appears this Act could either be retained or repealed.

Given the Terms of Reference under which the Subcommittee's Inquiry was held specifically request the Committee "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", the Subcommittee recommends the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981* be repealed.

However, the Subcommittee further recommends that in drafting the legislation that repeals this Act a regulation-making power should be included that allows for the making of regulations with respect to transitional or savings arrangements. This will ensure there is sufficient power to address any technical issues that may arise in the future in relation to the transition between the various schemes that existed before the referral of the corporations power to the Commonwealth Parliament.

10. Securities Industry (Application of Laws) Act 1981

Background

Along with other Acts including the *Companies (Acquisition of Shares) (Application of Laws) Act 1981* and the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*, this Act gives effect to a 1978 intergovernmental agreement between the Commonwealth and the States. The purpose of this agreement was to secure uniformity in company law. This Act applies substantive Commonwealth legislation in Victoria.

Conclusion

The equivalent Act of the Queensland Parliament has not been repealed. However, it is proposed to repeal the equivalent Act of the Western Australian Parliament. Professor Ramsay has advised that it appears this Act could either be retained or repealed.

Given the Terms of Reference under which the Subcommittee's Inquiry was held specifically request the Committee "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", the Subcommittee recommends the *Securities Industry (Application of Laws) Act 1981* be repealed.

However, the Subcommittee further recommends that in drafting the legislation that repeals this Act a regulation-making power should be included that allows for the making of regulations with respect to transitional or savings arrangements. This will ensure there is sufficient power to address any technical issues that may arise in the future in relation to the transition between the various schemes that existed before the referral of the corporations power to the Commonwealth Parliament.

11. Futures Industry (Application of Laws) Act 1981

Background

This Act is very similar in form to the *Companies (Application of Laws) Act 1981* and the *Securities Industry (Application of Laws) Act 1981*. This Act applies substantive Commonwealth legislation dealing with the futures industry in Victoria. The Minister may authorise publication of provisions of the Commonwealth legislation in operation in Victoria, which may be cited as the *Futures Industry (Victoria) Code* (section 9).

Conclusion

The equivalent Act of the Queensland Parliament has not been repealed. However, it is proposed to repeal the equivalent Act of the Western Australian Parliament. Professor Ramsay has advised that it appears this Act could either be retained or repealed.

Given the Terms of Reference under which the Subcommittee's Inquiry was held specifically request the Committee "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”, the Subcommittee recommends the *Futures Industry (Application of Laws) Act 1981* be repealed.

However, the Subcommittee further recommends that in drafting the legislation that repeals this Act a regulation-making power should be included that allows for the making of regulations with respect to transitional or savings arrangements consequent on the repeal. This will ensure that there is sufficient power to address any technical issues that may arise in the future in relation to the transition between the various schemes that existed before the referral of the corporations power to the Commonwealth Parliament.

12. Corporations (Victoria) Act 1990

Background

The purposes of this Act are to apply certain provisions of the *Corporations Act 1989* of the Commonwealth and the *Australian Securities and Investments Commission Act 1989* of the Commonwealth and to apply other laws of the Commonwealth as laws of Victoria for the purpose of the administration and enforcement of the law relating to corporations, the securities industry, the futures industry and some other minor matters.

Conclusion

Neither Queensland nor Western Australia has repealed or proposes to repeal the equivalent Act of those States’ Parliaments.

Professor Ramsay suggests that the Victorian Act should not be repealed. As he notes—

The Corporations (Victoria) Act 1990 applies certain provisions of the Corporations Act 1989 of the Commonwealth and the Australian Securities and Investments Commission Act 1989 of the Commonwealth and of regulations under those Acts as laws of Victoria and applies certain other laws of the Commonwealth as laws of Victoria for the purpose of the administration and enforcement of the law relating to corporations, the securities industry, the futures industry and some other matters. The Act contains detailed transitional provisions – particularly in relation to ensuring that the national scheme laws prevail over the earlier co-operative scheme laws. The Act was amended as recently as 2005.

In the Subcommittee’s view the *Corporations (Victoria) Act 1990* may not be redundant and therefore should not be repealed.

The Committee considered and adopted the report and recommendations made by the Redundant Legislation Subcommittee.

Appendix List of Submissions

Claire Noone, Acting Secretary, Department of Justice

Greg Calcutt AM, SC, Parliamentary Counsel (Western Australia)

Peter Drew, Queensland Parliamentary Counsel