

# GOVERNMENT RESPONSE TO THE SCRUTINY OF ACTS AND REGULATIONS COMMITTEE INQUIRY INTO THE REPEAL OF CERTAIN REDUNDANT CORPORATIONS LAWS

## Introduction

The Government welcomes the Report of the Scrutiny of Acts and Regulations Committee (SARC) following its inquiry into the repeal of certain corporations laws (the Inquiry). The Government is committed to simplifying the statute book by repealing legislation that is no longer required. In this context, SARC was given an inquiry into the repeal of certain redundant corporations laws, pursuant to a Motion in the Legislative Assembly on 1 March 2007.

The legislation identified by the reference and by SARC for review included:

- *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*

On 9 March 2007, SARC formed the Redundant Legislation Subcommittee to consider the implications arising from the national corporations regulatory framework and also to review the Acts referred to SARC. 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.

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.

The Parliamentary Reference also required that consideration be given to, in the event an Act is repealed, whether any of the existing provisions should be saved and/or included in other appropriate legislation.

By an advertisement published in *The Age* on 12 May 2007, the Subcommittee invited stakeholders to make written submissions pertaining to the merits of repealing the relevant Acts. The Government notes that no substantive comments were provided to SARC, in the course of its Inquiry.

In undertaking its review and in preparing its report, SARC gave consideration to the age, size and importance of the legislation. SARC also considered the desirability of modernising and rationalising the Victorian statute book by removing any redundant Acts.

SARC tabled its Report on 2 December 2008.

### **SARC's Recommendations**

SARC made the following recommendations:

#### **Recommendation 1**

The repeal of the following Acts:

- *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 1986*

with the repealing Act including a power to make regulations with respect to transitional or savings arrangements consequent on repeal.

#### **Recommendation 2**

The *Corporations (Victoria) Act 1990* and the *Companies (Administration) Act 1981* should not be repealed.

#### **Recommendation 3**

The *Collusive Practices Act 1965* should not be repealed at the present time but recommends that further consultation and consideration be undertaken.

#### **Recommendation 4**

That the recommendations made by this report and any repeal Bill prepared as a result of the Inquiry, should be the subject of further consideration with interested persons and organisations, given the complexity of the issues considered and the limited time and resources available.

### **Response**

The repeal of any redundant legislation should not be done without detailed and principled policy analysis. SARC's findings are a useful guide, however further work is required before the Government can decide which of the Acts that were recommended for repeal should be the subject of a repeal Bill.

#### **Recommendation 1**

In considering the possible Government response to SARC's first recommendation for repeal of 9 Acts, further consultation was undertaken with relevant Commonwealth agencies including the Commonwealth Treasury and the Australian Securities and Investment Commission, and with the Victorian Bar and the Law Institute of Victoria.

In light of concerns raised by some of these entities, it is not possible to support the recommendation without further analysis being undertaken.

The review undertaken by Professor Ramsay did not involve a detailed examination of each of the Acts being reviewed, but rather provided a high level analysis. During the review process, there was little opportunity to analyse aspects of each Act and/or fully consider and advise on the question set out in the Parliamentary Reference, that if an Act is repealed, whether any of the existing provisions should be saved and/or included in other appropriate legislation.

SARC has relied on Queensland's and Western Australia's position in relation to the repeal of equivalent Acts in those jurisdictions, as a reason for recommending that Victoria repeal certain Acts. Western Australia proposed the repeal of equivalent Victorian Corporations Law statutes by way of the *Statutes (Repeal and Minor Amendments) Bill 2006* (WA). It should be noted that Western Australia recently passed the *Statutes (Repeals and Miscellaneous Amendments) Bill 2008*, which incorporates the Western Australia repeal of similar redundant corporations legislation. While the approach adopted by both Queensland and Western Australia is a useful comparator, specific analysis of the Victorian legislation will be necessary before a final decision on its repeal can be made.

#### Recommendations 2 and 3

The Government has considered the *Collusive Practices Act 1965* as part of the Consumer Affairs Legislation Modernisation project. Part IV of the *Trade Practices Act 1974*, which deals with collusive practices, is directed at corporations. It has been applied to individuals in Victoria as the Competition Code through the *Competition Policy Reform (Victoria) Act 1995*. The Australian Competition and Consumer Commission provided advice to the Government to this effect and therefore, the *Collusive Practices Act 1965* may be redundant.

The *Companies (Administration) Act 1981*, establishes the Corporate Affairs Commissioner as a body corporate. It is noted that in the Subcommittee's view the *Companies (Administration) Act 1981* should be retained on the basis that it provides for the creation of the office of the Commissioner of Corporate Affairs, which is involved in the administration of the *Trustee Companies Act 1984*. However, more recently the Commonwealth agreed to take over the responsibility for the administration of trustee companies, which would significantly reduce the need for a separate Commissioner for Corporate Affairs. The Government notes SARC's views and is investigating the technical issues necessary for consideration of the question of repeal of the three Acts that were the subject of Recommendations 2 and 3.

#### Recommendations 4

The Government notes this recommendation and that some additional work has already been undertaken in respect of SARC's recommendations. The Government will undertake further review in line with its legislative program and resources.