

**Government Response to the Review of Redundant and Unclear
Legislation report concerning the Maintenance Act 1965, Marriage Act
1958 and the Perpetuities and Accumulations Act 1968 by the Victorian
Parliament Scrutiny of Acts and Regulations Committee**

The Government welcomes the Report of the Victorian Parliament Scrutiny of Acts and Regulations Committee (“the Committee”) on its review of redundant and unclear legislation concerning the *Maintenance Act 1965*, *Marriage Act 1958* and the *Perpetuities and Accumulations Act 1968*.

The review was first referred to the Committee pursuant to a Governor in Council reference dated 3 June 2003. The Committee formed a subcommittee, the Redundant Legislation Subcommittee, to review the Acts as part of its inquiry into redundant and unclear legislation.

The Inquiry was timely for a number of reasons. Firstly, the shift in legislative competency from State legislatures to the Commonwealth Parliament in the area of family law has made the operation of the *Maintenance Act 1965* and *Marriage Act 1958* largely redundant. Secondly, a review of the *Perpetuities and Accumulations Act 1968*, which was enacted to modify the rule against perpetuities and to abolish the rule of accumulations, is of great significance given its impact on trusts and the making of wills in Victoria. In addition, the review of the *Perpetuities and Accumulations Act 1968* highlights the extension of its operation to certain property and commercial transactions that do not involve trusts or wills.

The Government has given in principle support to most of the Committee’s recommendations. In response to this report, the Government will also be considering a wider review of the *Perpetuities and Accumulations Act 1968* for law reform purposes. Such a review would consider:

- the introduction of an exclusive statutory rule;
- evaluating the practical impact of the extension of the Act to situations entirely unconnected with family arrangements and whether such an extension accords with underlying policy considerations; and
- to determine whether any amendments to the Act are required to respond to issues raised by new reproductive technologies.

The Government takes the opportunity to thank the members of the Committee for their review of these important and complex areas of the law.

RECOMMENDATIONS AND RESPONSES

Summary of Recommendation	Government Response
MAINTENANCE ACT 1965	
1. Repeal legislation That the legislation is redundant and should be repealed.	In principle support.
2. Saving clause That a saving clause preserving any orders made under the legislation and assuring the enforceability of such orders should be included in the repealing Act.	In principle support.

RECOMMENDATIONS AND RESPONSES

Summary of Recommendation	Government Response
MARRIAGE ACT 1958	
<p>Repeal of legislation</p> <p>The Report recommends repealing and transferring provisions of the Act however the Report is silent on repealing the Act as a whole. This has the effect of leaving the Act on the Statute book without any provisions. Consideration is required on repealing the legislation as a whole once the provisions in Recommendation 3-7 have been repealed or transferred.</p>	
<p>3. Repeal provisions</p> <p>That sections 132(2), 134, 148 and 155(2) in Part VII (which deal with guardianship issues) of the legislation be repealed.</p>	<p>In principle support. In addition, consideration is required as to the inclusion of a saving clause in the repealing Act preserving any orders made pursuant to these provisions if the Act is repealed in its entirety.</p>
<p>4. Transfer provisions</p> <p>That sections 133, 135, 138, 139 and 153 of the legislation be retained and transferred to the <i>Children and Young Persons Act 1989</i>.</p>	<p>The <i>Children and Young Persons Act 1989</i> is currently under review with a view to making the clear focus of that Act the provision of service responses to vulnerable children and families. Therefore, it is not considered appropriate that provisions of the <i>Marriage Act 1958</i> be transferred to the <i>Children and Young Persons Act 1989</i>.</p> <p>While retention of the provisions is supported in principle, further consideration is required as to:</p> <ul style="list-style-type: none"> (i) which Act is most suitable to transfer the provisions relating to the guardianship and custody of minors; and (ii) the location of any transitional clause.
<p>5. Repeal provisions</p> <p>That sections 156, 157, 158 and 159(1) in Part VIII of the legislation regarding the rights of married women be repealed.</p>	<p>Not supported.</p> <p>These provisions should be retained to ensure that outdated common law rules that prevent married women from exercising their rights cannot be revived.</p> <p>Retaining the provisions would, for example, deter mischievous litigants from attempting to rely on old common law to</p>

	<p>unnecessarily prolong litigation to their own advantage.</p> <p>These provisions could be transferred to Part 2 Division 8 of the <i>Property Law Act 1958</i> which also deals with married women's property. This would allow the <i>Marriage Act 1958</i> to be repealed in its entirety.</p> <p>It is considered appropriate that any transitional clauses required as a result of repealing the <i>Marriage Act 1958</i> should be located in the Act to which the provisions are being transferred (ie. the <i>Property Law Act 1958</i>).</p>
<p>6. Sections 160 and 161</p> <p>That sections 160 and 161 of the legislation be repealed.</p>	<p>In principle support. In addition, consideration is required as to the inclusion of a saving clause in the repealing Act preserving any orders made pursuant to these provisions if the Act is repealed in its entirety.</p>
<p>7. Intestacy and Divorce</p> <p>That section 159(3) of the legislation be retained. However this section is inconsistent with section 14 of the <i>Wills Act 1997</i>. Subject to this inconsistency being resolved, section 159(3) of the legislation be transferred to the intestacy provisions of the <i>Administration and Probate Act 1958</i>.</p>	<p>In principle support, subject to policy consideration as to the approach to be followed to resolve this inconsistency. Consideration is required to be given to the location of any transitional saving clause.</p>

RECOMMENDATIONS AND RESPONSES

Summary of Recommendation	Government Response
THE PERPETUITIES AND ACCUMULATIONS ACT 1968	
<p>1. Rule against perpetuities</p> <p>That the rule against perpetuities be retained.</p>	Supported. No further action required.
<p>2. Re-draft legislation</p> <p>That Parliamentary Counsel be requested to re-draft the legislation for the purpose of making the Act clearer and more understood, without altering its substantive legal effect. In this regard, that examples be placed in the Act to clarify the effect of certain provisions.</p>	Further consideration required in light of recommendations 3 and 4 for comprehensive review of the Act. Re-drafting the Act while a comprehensive review is considered would be premature and may lead to duplication. The re-draft should be postponed pending the decision to comprehensively review the Act for law reform purposes.
<p>3. Comprehensive review</p> <p>That consideration be given to the conduct of a comprehensive review of the legislation for law reform purposes.</p>	In principle support.
<p>4. Comprehensive review</p> <p>That if a comprehensive review of the legislation is conducted for law reform purposes, the reviewing body consider the following proposals:</p> <p>(a) The introduction of an exclusive statutory period;</p> <p>(b) What the appropriate length of any exclusive statutory period should be, and specifically, whether the current period of 80 years should be extended to 125 years;</p> <p>(c) Whether the Act should be modified so as to create an inclusionary regime that will confirm the operation of the rule against perpetuities to</p>	In principle support.

family settlements, and to exclude it from operation with respect to commercial transactions;

(d) Whether the ambit of the exclusions in relation to options under section 15 of the Act be expanded to effectively exclude all options;

(e) Whether any amendments to the Act are required to respond to issues raised by new reproductive technologies.