

**Government Response to  
the Victorian Parliament's Scrutiny of Acts and Regulations Committee's  
Inquiry into the *Summary Offences Act 1966*: Final Report**

## **1. Introduction**

The Government welcomes the Final Report of the Scrutiny of Acts and Regulations Committee ("SARC") pursuant to its Inquiry into the *Summary Offences Act 1966* ("SOA"). The Inquiry was referred to SARC by the Legislative Assembly on 14 March 2000. After a Discussion Paper published in May 2001, SARC published its Report in November 2001.

The Report makes some 131 recommendations regarding the SOA, covering each of its sections. The Government supports in principle the majority of the Report's recommendations.

In section 2 below, some general issues are discussed in relation to recommendations which the Government supports in principle. In section 3, further details are given in relation to the recommendations which require further consideration. In section 4, further details are given in relation to the recommendations which are not supported.

Following those sections, sections 5 to 7 also discuss, respectively, the following issues:

- maintaining summary and indictable versions of certain offences;
- reviewing penalties and inspection powers; and
- the relation between this Government Response and the review of the *Vagrancy Act 1966* presently being conducted by SARC.

## **2. Recommendations that are supported in principle**

The majority of the Report's recommendations (some 108 out of 131 recommendations) are supported in principle. (These are the recommendations that are *not* referred to in the tables in sections 3 and 4 below.)

### ***New generic provisions***

A number of the older sections of the SOA are notable for being very specific in what they make an offence. (See, e.g., s.7(f): rolling a barrel in public place, or s. 17(1)(a): singing an obscene ballad in public).

In relation to many such provisions, the Report recommends that these specific offences be replaced with provisions of a more general scope. An important instance is the Report's recommendation to provide for a new set of generic offences relating to offensive language and conduct.

The Government agrees that such offences can readily become anachronistic and under-utilised, and can thereby discourage public confidence in the criminal law. Where this is so, repeal or replacement with a generic provision helps to maintain a set of criminal laws that are relevant and have the confidence of the community. At the same time, the more generic provisions should avoid including behaviour that should not be criminalized.

### ***Removal of provisions to subject-specific legislation***

The Report makes a number of recommendations to move provisions from the SOA to subject-specific legislation (e.g. the *Lotteries, Gaming and Betting Act 1966* and the *Road Safety Act 1986*).

The Government supports the approach that the *Crimes Act 1958* and the SOA should contain the more general criminal offences, while more specific offences are usually better placed in subject-specific legislation. These sorts of Acts often contain schemes intended to regulate certain kinds of thing or spheres of activity. People who want to know the law concerning some specific subject matter may then refer to the relevant Act with confidence that the relevant criminal provisions are contained in that Act.

Sometimes, however, there can be reasons why a particular offence should not be moved to a more subject-specific Act. There may, for example, be issues relating to the resources of the agency responsible for administering a subject-specific Act.

### ***Duplication of offences in other legislation***

In a large number of cases, the Report recommends repeal of a provision on the basis that the offence in question is covered by a provision in other legislation, either some subject-specific Act or the *Crimes Act*. For example, the offence of destroying homing pigeons (s.46) is covered by provisions in the *Prevention of Cruelty to Animals Act 1986* and the *Crimes Act 1958*.

The Government agrees that in cases where it is clear that a provision in the SOA and a provision in another Act do in fact cover the same ground, the provision in the other Act is often likely to be the better place for the relevant law.

### ***Leaving subject matters to local government***

The Report notes in a large number of cases that a provision in the SOA could be repealed and left to local governments to regulate. In most cases, the Report notes this in addition to observing that the provision is similar to or duplicates provisions in other Acts.

The Government agrees that local governments have an important role to play in the maintenance of good order within their respective areas, and so in a number of cases certain subject matters can and should be left to local government.

There are numerous differences between State laws and local laws. The Government will consider these differences in relation to each particular recommendation. Some of the important differences are:

- Local laws apply only within the relevant council area, while State laws can — and usually do — apply to the whole State. Unless all local governments passed identical criminal laws, a patchwork of laws could emerge.
- Local laws should not impose penalties greater than 20 penalty units (\$2,000).
- Local laws sunset after 10 years and can have their validity challenged in the Supreme Court.
- Local governments appoint their own enforcement officers. Police are not authorised by virtue of their office to enforce local laws but must be specifically appointed by the relevant local government.
- Penalties recovered by local governments are payable to council funds rather than the State's consolidated revenue.

A further issue to be considered is that leaving some subject matters to regulation by local government may have financial and resource implications.

### 3. Recommendations where further consideration required

The table below identifies the particular SARC recommendations where the Government considers that further research and consultation is required before the appropriateness of the proposal can be determined.

SOA section	SARC recommendation	Reasons for requiring further consideration of recommendation
4(d) Fly kite, play game to annoyance of person	Repeal	A modernised and more generic version of this offence may need to be retained to deal with occasions where games are played in a manner or at a time and place which causes genuine nuisance rather than mere annoyance (e.g. a rowdy game of football in a residential street at night) where no other law deals with the problem.
4(g) Carrying out a blasting operation in or near a public place without permission etc	Repeal and re-enact.  A similar provision exists in another Act.  Amend section 37 of the <i>Dangerous Goods Act 1985</i>	SARC notes that s. 37 of the <i>Dangerous Goods Act 1985</i> only applies where there is danger to life or property, and may need to be amended to apply to cases of blasting causing nuisance or disturbance. (Disturbance to wildlife, for example, is a concern in State Parks, Forests and on other Crown Lands). It is not clear whether the existing objects of the <i>Dangerous Goods Act</i> (which is administered by Workcover) would permit that amendment.
4(j) Setting off fireworks in a public place without permission	Repeal.  A similar provision already exists in another Act.  Local government may regulate this.	It is not clear that the relevant provisions of the <i>Dangerous Goods (Explosives) Regulations 2000</i> are sufficiently broad to cover this offence.

SOA section	SARC recommendation	Reasons for requiring further consideration of recommendation
<p>7 (b), (c)</p> <p>Leaving a hole, excavation or dangerous formation in a public place unguarded</p> <p>Failing to keep in good repair any protective cover, rail, gate or fence in a public place</p>	<p>Repeal.</p> <p>Local government may regulate.</p>	<p>It is not clear that these subject matters are appropriate to leave to local government. It may be undesirable for a patchwork of different local laws to emerge. It is also appropriate to consider further whether other Acts might apply in these areas.</p>
<p>8(f)</p> <p>Obstructing or preventing the driving of cattle</p>	<p>Repeal.</p> <p>Local government may regulate.</p>	<p>It is not clear that these subject matters are appropriate to leave to local government. It may be undesirable for a patchwork of different local laws to emerge. It is also appropriate to consider further whether other Acts might apply in these areas</p>
<p>8 (g)</p> <p>Slaughtering or skinning a beast in a public place</p>	<p>Repeal.</p> <p>Similar provision exists in another Act.</p> <p><i>Health Act 1958;</i></p> <p><i>Meat Inspection Act 1983 (Cth)</i></p>	<p>Section 305 of the <i>Health Act 1958</i> has been repealed. However, this matter may be adequately covered by section 42 of the <i>Health Act 1958</i>. Sections 17 and 18 of the <i>Meat Inspection Act 1983 (Cth)</i> only apply to meat at meat processing facilities, not in public areas.</p>
<p>9(2)</p> <p>For the purposes of section 86 of the <i>Sentencing Act</i> (compensation orders), the cost of repair shall be deemed to be loss or damage</p>	<p>Retain</p>	<p>It may be appropriate for this provision to apply more generally (e.g. by amending the <i>Sentencing Act</i>).</p>
<p>20</p> <p>Improperly conducting refreshment house</p>	<p>Repeal</p>	<p>An amended and modernised version of this offence may need to be retained because existing liquor and gaming laws do not completely cover all situations, and gaming in such premises should be subject to the law.</p>
<p>32</p> <p>Offering property from wrecks for sale</p>	<p>Retain</p>	<p>It is not clear whether in fact SARC intended to recommend repeal (in view of similar provisions in other Acts).</p>

SOA section	SARC recommendation	Reasons for requiring further consideration of recommendation
37 Obtaining goods etc by valueless cheque	Repeal & re-enact	By virtue of s. 37(2), s.37(1) effectively creates a summary criminal offence with a mental element of dishonesty. It may be more desirable that a new provision be created to enable certain dishonesty offences which are presently in the <i>Crimes Act</i> (e.g. theft, handling, deception) to be dealt with summarily when the amount of money or the value of property is below a certain amount. Such a new summary provision would allow s.37-type offences to be covered by the offence of obtaining financial advantage by deception (s.82, <i>Crimes Act</i> ). SARC also noted that this option should be further considered (see section 5 below).
38 Taking or using vehicle without consent of owner	Retain	While there are some similarities between s.38 and sections 73 and 74 of the <i>Crimes Act</i> , there are some differences concerning the elements of dishonesty and the intention to permanently deprive. A summary offence could be created for the theft of any property (not limited to vehicles). It may be appropriate to create two kinds of summary offence: taking without consent but without an intention to permanently deprive the owner of the property, and taking without consent and with such intention. SARC also noted that this option should be further considered (see section 5 below).
42 Tattooing of juveniles	Retain	SARC states that the offence of tattooing juveniles appears ineffective and is not appropriate to be in the SOA, but recommends retaining the offence pending a wider review of tattooing and body piercing. The Government believes that tattooing juveniles should remain an offence and will also give further consideration to issues raised by tattooing and body-piercing.
56 Filing charges	Retain	The Government agrees that this section should be retained. It may also be appropriate to amend this section to allow other authorised officers to file charges, e.g. officer appointed under s.87 of the <i>Conservation, Forests and Lands Act 1987</i> .

#### 4. Recommendations that are not supported

The table below identifies the particular SARC recommendations which the Government does not support and provides reasons why the Government is of this view.

SOA section	SARC proposal	Reasons for not supporting recommendation
4(a) Burning rubbish shavings or other materials in a public place	Repeal. A similar provision already exists in another Act, <i>Environment Protection Act 1970</i> , s41. Local government may regulate this.	The offence in the <i>Environment Protection Act 1970</i> relates only to causing air pollution. Section 4(a) is needed to cover burning of rubbish in forests and other areas where issues other than air pollution arise, such as disturbance, damage and fire risk.  It is desirable to have a single provision applying to public areas in both State-administered and locally administered public areas.
4(e) Obstructing a footpath or road	Repeal. Include in Schedule of the <i>Road Safety (General) Regulations 1999</i>	This provision is used for prosecutions in relation to State forests. The offence needs to be in an Act of Parliament so that officers may effect arrest and removal where resistance is shown. Removal to subject-specific legislation may lead to the need for duplication and increased complexity in the law.
7(g) Throwing or discharging missiles	Repeal	This offence should be retained, as it provides for a useful and lesser charge. (It is unclear, though, from its comments, whether SARC in fact supports repeal.)
9(1)(g), 9(1E) Entering any place in manner likely to cause breach of peace.	Repeal. Similar provisions in other clauses of s.9	This offence should be retained as it addresses more aggravated kinds of trespass not fully covered by other clauses.
11 Lighting fires in the open air	Repeal. Include in the <i>Country Fire Authority Act 1958</i> and the <i>Metropolitan Fire Brigade Act 1958</i> .	Given the very high risks associated with open air fires, it is desirable to retain a single set of offences in one Act covering lighting/leaving fires in all areas across the State in all seasons. Administrative responsibility for management of open air fires is assumed principally by the Country Fire Authority, the Metropolitan Fire Brigade and Department of Natural Resources and Environment, and there are three principle Acts governing their relevant powers and functions. There is little public benefit in inserting sets of mirrored offences in at least three Acts when only one set of offences is needed.
12 Wilfully giving false alarm of fire	Repeal. Include in more appropriate Acts (as above)	As in relation to s.11 above, the offence of giving false alarms are necessary and should be retained. The offence should be retained in a single Act rather than duplicated, so as to maintain simplicity for the public and prosecutors.
26 Unexplained possession of suspected stolen property	Retain	The Government agrees that this offence should be retained. It may also be appropriate to amend it to address a number of court decisions which have restricted its application.

SOA section	SARC proposal	Reasons for not supporting recommendation
27 Search warrants for skins of cattle and goods from wrecks	Repeal. Similar provisions already exist in other Acts  <i>Crimes Act 1958</i> , ss92 & 465. <i>Summary Offences Act 1966</i> , s.26	The <i>Crimes Act 1958</i> provisions only cover warrants regarding goods obtained via indictable offences. Section 27 is needed for warrants regarding goods obtained in a way that may constitute a summary offence. This may be needed for matters relating to, e.g., public health and quarantine risks. Section 26 of the Act is not sufficiently similar to be used as a substitute. Section 26 uses the term "property" and does not lend itself to covering commercial concepts of possession of goods in a situation where the possessor does not claim ownership, e.g. where a person claims to possess as a consignee.
30(4) Destroying or defacing cattle brands	Repeal	This offence should be retained. It should be an offence to interfere with brands on cattle.

## 5. Summary and indictable versions of offences

The distinction between summary and indictable offences is an important feature of the criminal law. Indictable offences, which are generally more serious, are tried before a jury. Summary offences are heard and determined by a magistrate sitting alone. Further, a number of indictable offences can be heard summarily if the defendant consents and the court considers it appropriate to do so.

The *Crimes Act* contains predominantly indictable offences, while the SOA contains only summary offences. A feature of the relation between the SOA and the *Crimes Act* is that certain general kinds of conduct are penalised in both, such that there exist summary and indictable versions of the same general kind of offence. Assaults and like offences against the person, and theft and like offences are examples. (People who have assaulted another person are frequently charged with both the summary and indictable versions of assault.)

The Report (in contrast with aspects of SARC's Discussion Paper) notes at a number of points the desirability of maintaining distinct summary and indictable versions of the same general kind of offence.

The Government agrees that in many cases it may be highly desirable that there be summary and indictable versions of the same general kind of offence. The seriousness of different instances of the same general kind of offence (such as assault) can vary widely and it may be both just and an efficient use of resources for cases to proceed either summarily or on indictment depending on the seriousness of the particular case.

Further research and consultation is needed in order to identify those kinds of offence where the alternative versions should be available, and in precisely what terms the alternative versions should be drafted.

## **6. Penalties and inspection powers**

In a number of instances the penalties under the SOA were set many years ago and have not been revised for some time, if at all. The Government notes that it may be necessary to review the penalties for offences under the SOA so that they reflect modern standards, are consistent with other areas of the criminal law, and accord with the penalty scale in the *Sentencing Act 1991*.

The SOA contains a number of provisions dealing with associated investigation and enforcement powers (for example, powers of entry and search). The Government notes that it will be important to ensure that these powers, where they are necessary for enforcement of the law, are not lost in repeals. It may also be necessary to review existing powers to ensure that they are appropriate or sufficient. The Victorian Parliament's Law Reform Committee is currently considering such issues.

## **7. Vagrancy Act review**

Inquiries into both the SOA and the *Vagrancy Act 1966* were referred to SARC in March 2000 because the Acts are very similar and raise similar concerns regarding their continued role. SARC has recently published its Discussion Paper on the *Vagrancy Act*. The Government looks forward to the Final Report of the Inquiry into the *Vagrancy Act*, which is due to be tabled during the Autumn 2002 sitting of Parliament.

The Government considers that it is generally desirable that a legislative review of the SOA be conducted in tandem with a like review of the *Vagrancy Act 1966*. It is possible, for example, that the two Acts could be amended together and consolidated into a new, single *Summary Offences Act*.

## **8. Conclusion**

The Government is grateful for the hard and careful work SARC has put into the Inquiry. Its Report has done a great deal to advance the task of reviewing the SOA. The Government will continue with that task, conducting further research and consulting with the relevant stakeholders.