

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

THE 53RD PARLIAMENT

REVIEW OF REDUNDANT AND UNCLEAR
LEGISLATION

REPORT

CONCERNING

**REVIEW OF THE
*UNLAWFUL ASSEMBLIES AND
PROCESSIONS ACT 1958***

Ordered to be Printed

By Authority. Government Printer for the State of Victoria
May 1999

N° 59 Session 1999

CONCLUSIONS AND RECOMMENDATIONS

Repeal of Unlawful Assemblies and Processions Act 1958

The Committee has concluded that the *Unlawful Assemblies and Processions Act 1958* (“the Act”) is redundant and should be repealed. The Committee takes this view for the following reasons.

1. The right of peaceful assembly is an important right in a modern, democratic society. The Act represents an unreasonable restriction on this right.
2. The Act reflects conditions that no longer exist in, and policy decisions that are no longer relevant to, contemporary Victorian society.
3. The Act is not part of the current practice of regulating assemblies and processions in Victoria.
4. The submissions received by the Committee, including that from Victoria Police, almost unanimously agree that the Act is redundant and should be repealed.

Recommendation 1

The Committee recommends that the Unlawful Assemblies and Processions Act 1958 be repealed.

Dispersal of Riotous Assemblies

The Committee takes the view that a power to disperse a riotous crowd by reading a notice to disperse, as currently provided for in section 6 of the Act, is useful for the control of potential riots. The Committee further recognises that there may still be a need for such a provision, as evidenced by the Frankston riots, less than 20 years ago. However, the Committee considers that section 6 must be updated and improved.

First, the provision should define “riotous assembly”. Secondly, the Committee recognises that in some situations a magistrate may not be available to read the dispersal provision (as is currently required by section 6). While the Committee considers it undesirable to confer this power on members of the police generally, an appropriate compromise would be for the provision to empower a magistrate or the Commissioner of Police to read the notice. Further, the Commissioner should be able to delegate this power to a high ranking member of the police force. The Committee is also of the view that members of the police force should be entitled to use reasonable force to disperse a riotous assembly.

The Committee considers that section 8 of the Commonwealth *Public Order (Protection of Persons and Property) Act 1971* may provide an useful example for Victoria, as it addresses all of the above issues. However, the Commonwealth model would have to be adapted to allow a

Review of Unlawful Assemblies and Processions Act 1958

magistrate or the Commissioner of Police to read the dispersal notice, as outlined above. Also, the Committee considers that the penalty for the breach of such a provision should be a fine and/or imprisonment, rather than imprisonment only.

The new provision should be inserted in the *Crimes Act 1958* (Vic).

Recommendation 2

The Committee recommends that a new section be drafted, and inserted in the Crimes Act 1958 (Vic), which:

- ***Defines riotous assembly;***
- ***Provides that either a magistrate or the Commissioner of Police be empowered to attend the scene of a riotous assembly and read a notice to disperse. Further, the Commissioner of Police should be able to delegate this authority to a high ranking member of the police force;***
- ***Sets out the words of the notice to disperse, in modern and simple language;***
- ***Makes it an offence for persons to remain assembled after the expiration of 15 minutes from the reading of the notice to disperse, such offence to be punishable by a fine and/or imprisonment; and***
- ***Gives the police power to use reasonable force to disperse the riotous assembly.***

Different Legislative Models for the Regulation of Assemblies

Victoria and the Australian Capital Territory are the only Australian jurisdictions to prohibit assemblies and demonstrations around Parliament House. The Committee has concluded that the prohibition model represents an outdated method of dealing with public assemblies and processions. Legislation following this model is inappropriate in a modern democracy where considerable importance is attached to civil rights, such as the right to assemble.

The Committee considers that the notification and permit models are more appropriate than the prohibition model for the regulation of an important civil right such as the right to peaceful assembly. Indeed, there are good reasons for requiring advance notification of processions and assemblies. With advance notice, the relevant authorities can take steps to ensure that the processions or assembly takes place uneventfully, with minimum interruption of transport, businesses and so on.

However, these models set up fairly complicated procedures and involve considerable administration, by both organisers of assemblies and various government authorities. The Committee also recognises that such a model may discourage, or be irrelevant to, assemblies that take place with very short notice. Further, the cooperative system currently practised in Victoria appears to achieve the same result, but with less bureaucratic red-tape.

The Committee is therefore of the view that Victoria should not follow either the permit or notification models. Rather, the Committee prefers to build on the existing process of

cooperation and coordination between the authorities affected by and responsible for assemblies and demonstrations.

Recommendation 3

The Committee recommends that neither a permit model nor a notification model be introduced by legislation in Victoria. Rather, the Committee recommends that the various authorities involved in the regulation of assemblies and demonstrations build on the existing cooperative process.

Enshrining a right of peaceful assembly

The Committee is in favour of enshrining the right of peaceful assembly in legislation modelled on section 5 of the Queensland *Peaceful Assembly Act 1992*. While enacting such legislation may make little difference to the exercise of the right of peaceful assembly, it would be of symbolic importance. Further, it would bring the State into line with the position at international law.

However, the Committee recognises that there must be a balance between the right of peaceful assembly and competing considerations, such as the freedom of people to go about their activities. Therefore the right should be subject to the same sorts of considerations as expressed in the Queensland Act, such as measures necessary for the maintenance of public order. The Committee further considers that the wording of paragraph 5(3)(b) of the Queensland Act is unnecessarily restrictive in referring to “business”, and therefore recommends that the provision be extended to cover “activities”.

Recommendation 4

The Committee recommends that a Peaceful Assembly Act be introduced in Victoria, enshrining the right to assemble in a section modelled on Article 21 of the International Covenant on Civil and Political Rights, as adapted by section 5 of the Queensland Peaceful Assembly Act 1992.

The provision which enshrines the right should read as follows:

- (1) A person has the right to assemble peacefully with others in a public place.**
- (2) The right is subject only to such restrictions as are necessary and reasonable in a democratic society in the interests of:**
 - (a) public safety; or**
 - (b) public order; or**
 - (c) the protection of the rights and freedoms of other persons.**
- (3) In subsection (2)(c), a reference to the rights of persons includes a reference to-**
 - (a) the rights of members of the public to enjoy the natural environment; and**
 - (b) the rights of persons to carry on their activities and business.**

Protests around Parliament House

It became evident during the inquiry that there are particular problems associated with ensuring the security of Parliament House while assemblies and processions are taking place around the building. The Committee is of the view that the parliamentary precincts and the powers of parliamentary officers should be clarified in a *Parliamentary Precincts Act* modelled on the New South Wales Act of the same name.

Recommendation 5

The Committee recommends that a Parliamentary Precincts Act, modelled on the Parliamentary Precincts Act 1997 (NSW) be enacted in Victoria. The new Act should:

- ***define in detail the Parliamentary precincts, and extend the definition to include property other than Parliament House which is owned or occupied by the Parliament;***
- ***confer responsibility for the control and management of the Parliamentary precincts on the Presiding Officers;***
- ***give the Presiding Officers power to enter into an agreement with Victoria Police, empowering the police to take measures to ensure the security of the Parliamentary precincts;***
- ***allow the Presiding Officers to delegate their powers to appropriate parliamentary officers (such as the Serjeant-at-Arms and the Usher of the Black Rod); and***
- ***create offences to apply where people enter or remain within the Parliamentary precincts without authority, or after authority has been revoked. Offenders should be liable to a fine.***