

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

1. Introduction

The Government welcomes the Final Report of the Scrutiny of Acts and Regulations Committee ("SARC") on its Inquiry into the *Vagrancy Act 1966*. The Inquiry was referred to SARC by the Legislative Assembly on 14 March 2000. After a Discussion Paper published in April 2002, SARC tabled its Final Report in Parliament on 4 September 2002.

The Report makes some 41 recommendations regarding the *Vagrancy Act*, covering each of its sections. In brief, the Report recommends the repeal of the *Vagrancy Act*, with certain of its provisions to be re-enacted, some with amendments, in the *Summary Offences Act 1966*.

The Government supports in principle the majority of the Report's recommendations, and wishes to give further consideration to the small number of remaining recommendations. In section 2 below, the Government identifies those SARC recommendations which it supports in principle. In section 3, further details are given in relation to the recommendations which the Government believes require further consideration.

In section 4 below the Government notes the relationship between the reviews of the *Vagrancy Act* and the *Summary Offences Act*. It is desirable that any large-scale reform of the *Vagrancy Act* be done in tandem with a similar reform of the *Summary Offences Act*.

2. Recommendations that are supported in principle

The majority of the Report's recommendations are supported in principle. These are identified in the table below. In some cases, the Government also adds further comments regarding SARC's recommendations.

| <i>Vagrancy Act</i> section | SARC recommendation & reasons | Government's further comments |
|--|---|-------------------------------|
| 2 Repeal of Part 3 of the <i>Police Offences Act 1958</i> and section 45 of the <i>Childrens Court Act 1958</i> | Repeal Provision not needed if <i>Vagrancy Act</i> repealed. | |

| <i>Vagrancy Act</i> section | SARC recommendation & reasons | Government's further comments |
|---|---|---|
| 4 Definitions | Repeal Provision not needed if <i>Vagrancy Act</i> repealed. | |
| 6(1)(d) Beg alms | Repeal & re-enact in amended form in <i>Summary Offences Act</i> Child begging already covered by <i>Community Services Act 1970</i> . Adult offence should be retained pending further research. | |
| 6(2) Police only to prosecute for s.6(1)(c) offence | Repeal Not necessary if s.6(1)(c) repealed. | |
| 7(1)(a) Solicits alms under false pretence | Repeal Suitable provisions already exist under other Acts (<i>Fundraising Appeals Act 1998, Crimes Act 1958</i>). | |
| 7(1)(b) Impose by false or fraudulent representation with a view to obtaining money or benefit | Repeal Suitable provisions already exist under other Acts (<i>Fundraising Appeals Act, Crimes Act</i>). | |
| 7(1)(c) Wilful and obscene exposure in public | Repeal & re-enact in <i>Summary Offences Act</i> Offence should be retained. | The Government also wishes to give further consideration to how the offence should be drafted. For example, consideration could be given to including a defence that the offender believed on reasonable grounds that he or she could not be seen or that the behaviour would not be considered offensive. This approach was proposed by the Law Reform Commission of Victoria in its Discussion Paper No. 26 (1992) on the <i>Summary Offences Act</i> and the <i>Vagrancy Act</i> . In giving further consideration to this issue, the Government will ensure that any re-drafted offence does not trivialise or normalise sexual violence. |

| <i>Vagrancy Act</i> section | SARC recommendation & reasons | Government's further comments |
|--|--|-------------------------------|
| 7(1)(d) Playing or betting in relation to a game | Repeal Suitable provisions already exist under other Acts (<i>Lotteries, Gaming and Betting Act 1966</i> and <i>Gaming and Betting Act 1994</i>). | |
| 7(1)(e) Reputed cheat loitering in or near a public place | Repeal Suitable provision already exists under the <i>Crimes Act</i> , s.91. Possession of instrument of gaming not related to commission of offence should not be a criminal offence. Offence is under utilised. | |
| 7(1)(i) Unlawfully on premises/vessel | Repeal Suitable trespass provision already exists in <i>Summary Offences Act</i> , s.9(1)(d) & (e). | |
| 7(1)(j) Fraudulent sale or manufacture of substances | Repeal Provision partly archaic, partly covered by other laws and regulations (e.g. <i>Crimes Act</i>). | |
| 7(2) Proof of intent under 7(1)(f) | Repeal Not necessary if amended form of 7(1)(f) requiring an overt act is adopted. | |
| 8(b) Escape, etc. from lawful custody | Repeal and re-enact in <i>Summary Offences Act</i> Offence is not covered by <i>Crimes Act</i> , s.479C. | |
| 13 Fortune telling & pretending to exercise witchcraft | Repeal Offence is anachronistic. Predatory behaviour in the context of fortune telling covered by other legislation (<i>Crimes Act</i> , ss.81 & 82, <i>Fair Trading Act 1999</i>). | |

| <i>Vagrancy Act</i> section | SARC recommendation & reasons | Government's further comments |
|--|--|---|
| 15 Information — police, council officers to lay charges | Repeal Provision not needed if <i>Vagrancy Act</i> repealed. | |
| 16 Neglect to prosecute | Repeal Provision not needed if <i>Vagrancy Act</i> repealed. Suitable provision already exists in <i>Magistrates' Court Act 1989</i> , s.38. | Section 57 of the <i>Summary Offences Act</i> would also cover this provision. |
| 17 Accomplice — police deemed not offender or accomplice under <i>Vagrancy Act</i> if acting under instructions | Repeal Provision not needed if <i>Vagrancy Act</i> repealed. Suitable provision already exists in <i>Summary Offences Act</i> , s.58. | |
| 18 Procedure — offences against <i>Vagrancy Act</i> to be heard in Magistrates' Court | Repeal Suitable provision already exists in <i>Magistrates' Court Act 1989</i> , s.25. | Section 59 of the <i>Summary Offences Act</i> would also cover this provision. |
| 19 Offences of serious nature not to be dealt with under <i>Vagrancy Act</i> | Repeal Provision not needed if <i>Vagrancy Act</i> repealed. | Section 60 of the <i>Summary Offences Act</i> would also cover this provision. |
| 20(1) Forfeiture of offensive weapons | Repeal Suitable provisions exist in other Acts (<i>Control of Weapons Act 1990</i> , <i>Gaming No. 2 Act 1997</i> , <i>Firearms Act 1996</i>). | The Government also wishes to give further consideration to whether amendments to those other Acts are necessary to ensure that repeal of this provision does not leave a gap in the law. |
| 20(2) & (3) Forfeited property to be sold or destroyed | Repeal Suitable provision exists in <i>Magistrates' Court Act</i> , s.137. | |

| <i>Vagrancy Act</i> section | SARC recommendation & reasons | Government's further comments |
|--|--|-------------------------------|
| 22 Entry of member of police force authorised | Repeal Suitable provision exists in <i>Summary Offences Act</i> , s.22. Provision not necessary if <i>Vagrancy Act</i> repealed. | |
| 23 Construction of references to "an idle and disorderly person", etc | Repeal Provision not necessary if <i>Vagrancy Act</i> repealed. | |
| 24 Plaintiff cannot recover where sufficient amends already tendered | Repeal Procedural provision not necessary if <i>Vagrancy Act</i> repealed. | |

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.

| <i>Vagrancy Act</i> section | SARC recommendation & reasons | Government reasons for further consideration of recommendation |
|--|--|---|
| 6(1)(a), (b), (c) (a) Occupier of house frequented by reputed thieves; (b) Found in house or place in company with reputed thieves; (c) Habitually consort with reputed thieves | Repeal Provisions no longer appropriate, because: – other provisions (e.g. loitering) available; – provisions under utilised; – confer undesirably wide discretion in absence of substantive offence; – “guilt by association” at odds with justice; – reverse onus applies. | The Government wishes to give further consideration to whether the offence should be retained and, if so, the appropriate elements of the offence. |
| 6(1)(f) Possess article of disguise | Repeal and re-enact in amended form in <i>Summary Offences Act</i> Combine with s.7(1)(h) and modernise as “be disguised with unlawful intent”. | The Government wishes to give further consideration to whether it is desirable to replace sections 6(1)(f), 7(1)(g) and 7(1)(h) and section 91(1) of the <i>Crimes Act</i> (which is a summary offence only) with a more generic offence covering preparatory-type offences such as wearing or being in possession of items in preparation for offending. |

| Vagrancy Act section | SARC recommendation & reasons | Government reasons for further consideration of recommendation |
|--|--|---|
| <p>7(1)(f)</p> <p>Loitering by suspected person or known or reputed thief or cheat, with intent to commit indictable offence</p> | <p>Repeal and re-enact in amended form in <i>Summary Offences Act</i></p> <p>Amended version should:</p> <ul style="list-style-type: none"> - simplify in general terms the locations in which offence may occur; - include persons known or reputed to have committed drug related offences; and - require, in addition to loitering in a public place, "performing an act with intent to commit, and in furtherance of, an indictable offence". | <p>The Government wishes to give further consideration to whether the offence should be retained and, if so, the appropriate elements of the offence.</p> <p>In that regard, the Government is mindful of SARC's comment in recommending the repeal of the consorting offence that the 'loitering with intent' offence (as proposed to be amended) may provide police with 'a more appropriate basis for police to take action against groups which police suspect are likely to engage in criminal conduct' (p.14 of Report).</p> <p>The Government notes that the Law Reform Commission of Victoria, in its Discussion Paper No. 26 (1992), recommended the creation of a new offence of "loitering in a public place and performing an act with intent to commit, and in furtherance of, an indictable offence". In this formulation, unlike SARC's formulation, the criminal history or reputation of the offender would no longer be an element of the offence. Such a formulation would appear to accord with the principle that criminal laws should, generally speaking, target undesirable conduct rather than undesirable people.</p> <p>Further consideration also needs to be given to the relationship between the proposed "act in furtherance of an indictable offence" and the (indictable) offence of attempt to commit an indictable offence.</p> |
| <p>7(1)(g)</p> <p>Possess housebreaking implements</p> | <p>Repeal & re-enact in <i>Summary Offences Act</i></p> <p><i>Crimes Act</i>, s.91, does not adequately cover the offence.</p> | <p>See comments in relation to section 6(1)(f) above.</p> |
| <p>7(1)(h)</p> <p>Disguised or face blackened with unlawful intent</p> | <p>Repeal and re-enact in amended form in <i>Summary Offences Act</i></p> <p>Combine with s.6(1)(f) and modernise as "be disguised with unlawful intent".</p> | <p>See comments in relation to section 6(1)(f) above.</p> |

| Vagrancy Act section | SARC recommendation & reasons | Government reasons for further consideration of recommendation |
|--|--|---|
| <p>8(a)</p> <p>Armed with weapon, etc. with criminal intent</p> | <p>Repeal & re-enact in alternative legislation</p> <p>Firearms and weapons legislation does not adequately cover offences.</p> <p>Should be re-enacted as indictable offence.</p> | <p>The Government wishes to give further consideration to how best to maintain an appropriately comprehensive range of offences in relation to possession and use of weapons, including firearms.</p> |
| <p>9</p> <p>Evidence of bad character:</p> <p>(a) prosecution may give evidence to prove person is known or reputed thief, etc.</p> <p>(b) prosecution may give evidence to rebut any evidence by defence.</p> | <p>Repeal & re-enact in amended form in <i>Summary Offences Act</i></p> <p>Provision needed as procedural support for proposed new loitering offence.</p> | <p>The need for this provision is dependent upon whether and how the offence of loitering will be retained.</p> <p>If a new loitering offence is created in which the criminal history or reputation of the offender is no longer an element, then this provision would be redundant.</p> <p>If the amended offence retains the criminal history or reputation of the offender as an element, then the Government will give further consideration as to whether the offence needs any special evidential provisions in support.</p> |

4. Relation between the *Vagrancy* and the *Summary Offences Acts*

Inquiries into both the *Summary Offences Act* and the *Vagrancy Act* were referred to SARC because the Acts are very similar in content and purpose and raise similar concerns regarding their continued role. (This similarity is no doubt in large part due to the fact that both Acts have their origin in the *Police Offences Act 1958*.)

SARC's report on the *Summary Offences Act* was published in November 2001; the Government Response to that report was tabled in Parliament in May 2002. With the tabling of the present Response, the Government responses to these connected inquiries are now complete.

The Government considers that it is generally desirable that a reform of the *Vagrancy Act* be conducted in tandem with a like review of the *Summary Offences Act*. As a number of the recommendations envisage, it is possible that the two Acts could be amended together and consolidated into a new, single Act.

5. 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 *Vagrancy Act*. The Government will continue with that task, conducting further research and consulting with the relevant stakeholders.