Parliament of Victoria, Australia

Scrutiny of Acts and Regulations Committee


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Scrutiny of Acts and Regulations Committee

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Referral to Committee

Extracted from the Votes and Proceedings of the
Legislative Assembly

No 12 — Thursday, 15 March 2007

16 STATUTE LAW REPEALS BILL 2006 — Motion made, by leave, and question — That the proposals contained in the Statute Law Repeals Bill 2006 be referred to the Scrutiny of Acts and Regulations Committee for inquiry, consideration and report (Mr Batchelor) — put and agreed to.
Terms of Reference

Parliamentary Committees Act 2003, section 17

The functions of the Scrutiny of Acts and Regulations Committee are –

(a) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament as to whether the Bill directly or indirectly –
   (i) trespasses unduly upon rights or freedoms;
   (ii) makes rights, freedoms or obligations dependent upon insufficiently defined administrative powers;
   (iii) makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions;
   (iv) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the Information Privacy Act 2000;
   (v) unduly requires or authorises acts or practices that may have an adverse effect on privacy of health information within the meaning of the Health Records Act 2001;
   (vi) inappropriately delegates legislative power;
   (vii) insufficiently subjects the exercise of legislative power to parliamentary scrutiny;
   (viii) is incompatible with the human rights set out in the Charter of human Rights and Responsibilities;

(b) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament –
   (i) as to whether the Bill directly or indirectly repeals, alters or varies section 85 of the Constitution Act 1975, or raises an issue as to the jurisdiction of the Supreme Court;
   (ii) if a Bill repeals, alters or varies section 85 of the Constitution Act 1975, whether this is in all the circumstances appropriate and desirable;
   (iii) if a Bill does not repeal, alter or vary section 85 of the Constitution Act 1975, but an issue is raised as to the jurisdiction of the Supreme Court, as to the full implications of that issue;

(c) to consider any Act that was not considered under paragraph (a) or (b) when it was a Bill –
   (i) within 30 days immediately after the first appointment of members of the Committee after the commencement of a Parliament; or
   (ii) within 10 sitting days after the Act receives Royal Assent — whichever is the later, and to report to the Parliament with respect to that Act on any matter referred to in those paragraphs;

(d) the functions conferred on the Committee by the Subordinate Legislation Act 1994;

(e) the functions conferred on the Committee by the Environment Protection Act 1970;

(f) the functions conferred on the Committee by the Co-operative Schemes (Administrative Actions) Act 2001;

(fa) the functions conferred on the Committee by the Charter of Human Rights and Responsibilities;

(g) to review any Act in accordance with terms of reference which the Act is referred to the Committee.
Recommendations

Schedule

The Committee considers that the repeal of the two hundred and eighty two (282) spent or redundant Acts listed in the Schedule is appropriate.

Automatic repeal of amending Acts

The Committee notes the policy of including automatic repeal provisions in relevant amending Acts. The Committee considers that this is a useful legislative mechanism in keeping the Victorian statute books up to date.

Unproclaimed Acts

The Committee notes the three unproclaimed Acts listed in Appendix 2 and will seek further advice from the Minister for Planning concerning the continued need to retain these unproclaimed Acts.
Statute Law Repeals Bill 2006

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Reference to the Committee

On the motion of the Hon. Peter Batchelor MP, the Legislative Assembly resolved to refer this Bill to the Scrutiny of Acts and Regulation Committee (the ‘Committee’) for inquiry, consideration and report.¹

Other than this specific reference the Committee notes that it has, in conjunction with the Chief Parliamentary Counsel, a general reference from the Parliament to inquire into and consider Acts of the Parliament which are unclear, ambiguous, unnecessary or redundant.²

The role of the Committee in considering a statute law revision Bill

The role of the Committee in considering a statute law revision Bill is to ensure that any amendments made to Acts are not of a substantive nature and are strictly confined to the correction of references, spelling, drafting and grammatical errors which are intended to clarify the original intent of the legislation. This Bill is confined to the repeal of redundant or spent legislation and makes no statute law revision amendments to Acts.

Purpose of this Bill

The explanatory memorandum of the Bill declares that the purpose of the Bill is to revise the statute law of Victoria by repealing a number of Acts that are redundant or spent in their operation.

The Committee notes the following extracts from the Premier’s Second Reading Speech –

The Bill repeals redundant Acts, which Chief Parliamentary Counsel has identified as being redundant.

... 

The Bill is part of the Victorian Parliament’s regular housekeeping arrangements. It will repeal redundant Acts which have no further function and should be removed from the

¹ Parliamentary Committees Act 2003, section 33(1)(a).
² Referral to the Committee by motion in the Legislative Assembly, 1 March 2007.
Victorian statute book. The Bill will ensure that Victorian statutes are updated and maintained in a regular and orderly manner to ensure they remain relevant to the Victorian community.

In previous statute law revision Bills the Committee noted the following passage from a leading text on statutory interpretation concerning the common law approach taken by courts in characterising statute law revision Acts.

This case* is illustrative of the approach that has usually been followed by the courts assuming that statute law revision Acts are not intended to change the substance of the law. They are used to tidy up the statute book, often before consolidation or reprinting occurs.


*Laird v Portland Municipality [1958] Tas SR 90

Office of the Chief Parliamentary Counsel

The Committee received evidence from the Chief Parliamentary Counsel, Mr Eamonn Moran QC and from the Second Deputy Chief Parliamentary Counsel, Ms Gemma Varley.

The Committee considered their evidence and concluded that the Acts to be repealed were appropriate to be contained in a statute law revision Bill.

The Chief Parliamentary Counsel also provided the Committee with a certificate declaring that the Bill contains only repeals appropriate for a statute law repeals Bill and that any transitional, saving or validation provisions in the Acts to be repealed will be saved by the operation of section 14 of the Interpretation of Legislation Act 1984.

The certificate of the Chief Parliamentary Counsel is shown at Appendix 1.

Content and Committee comment

Statement of Compatibility

The Committee notes the Statement of Compatibility attached to the Premier’s Second Reading Speech,3 and declares that the Premier considers the Bill does not raise any human rights issues and is compatible with the Charter of Human Rights and Responsibilities.

The Bill in brief

[Clauses]

[2]. The Act comes into force on the day after Royal Assent.

[3]. Declares that the Acts listed in the Schedule are repealed. The Acts to be repealed are in three categories (refer to the notes under ‘Schedule’ below).


In respect to this historic Act the Committee notes this extract from the explanatory memorandum –

The Law Reform Commission of Victoria in Report No. 16: Obsolete Legislation (Second Report), February 1989 recommended the repeal of this Act. As noted in the Commission’s report, the purpose of this New South Wales Act was to provide that a notarised copy of an exemplification of the Royal Charter of the Bank of Australasia should be received as evidence of the contents of the charter in the courts of New South Wales. The Act continued in force in Victoria after separation of the colony from New South Wales on 1 July 1851. The ANZ Group confirmed to the Law Reform Commission that the Act is no longer needed. The repeal of this Act was also recommended by the Scrutiny of Acts and Regulations Committee in its second report on Redundant and Unclear Legislation (November 1995). This Act is obsolete and can be repealed.

[5]. Provides that once enacted this Act will itself be repealed on the first anniversary of the day on which it receives Royal Assent.

Schedule

The schedule consists of two hundred and eighty two (282) Acts dating from 1859 to 2005 that are to be repealed.

The Acts to be repealed fall into three groups.

1. Spent principal Acts which are mentioned in items 1.1 to 1.17 of the explanatory memorandum.

Acts listed in items 1.1 to 1.5 were recommended for repeal by the Law Reform Commission of Victoria in its Report No. 16 and by the Committee in its Second Report on Redundant and Unclear Legislation (November 1995). Item 1.6 was also recommended by the Committee for repeal in the report of November 1995. Of the remaining Acts in items 1.7 to 1.17 a number of these have validation, savings or transitional provisions. Item 1.17 lists 10 repeal Acts which are now to be repealed. The Committee notes that notwithstanding repeal the Acts that contain savings and transitional provisions will effectively have these provisions continue in force because of the operation of section 14 of the Interpretation of Legislation Act 1984.

2. Spent amending Acts with transitional or substantive provisions mentioned in items 2.1 to 2.92 of the explanatory memorandum.

The Committee notes that a number of these Acts have validation, savings or transitional provisions and that these provisions will continue in force notwithstanding the respective repeals by virtue of section 14 of the Interpretation of Legislation Act 1984.

3. Spent amending Acts which are now wholly in operation and have amended their principal Act and contain no transitional, savings or substantive provisions.

Recommendation

The Committee considers that the repeal of the two hundred and eighty two (282) spent or redundant Acts listed in the Schedule is appropriate.
Automatic repeal of amending Acts

The Committee notes that the predecessor of the Scrutiny of Acts and Regulations Committee made recommendations\(^4\) that where an amending Act contains no savings or transitional provisions and the amending Act has come into force and achieved its purpose in amending another Act that an automatic repeal of the amending Act should be considered. The Committee notes that in the course of taking evidence from the Chief Parliamentary Counsel in its consideration of recent statute law revision Bills the Committee had referred to its earlier recommendations supporting the adoption of an automatic repeal mechanism in amending Bills.

The Committee notes that since the commencement of the current Parliament in December 2006 automatic repeal provisions have been included in appropriate amending Acts. The Committee endorses this new legislative mechanism and considers that this practice will reduce the time consuming effort in compiling schedules for future statute law repeals Bills.

The Committee notes the policy of including automatic repeal provisions in relevant amending Acts. The Committee considers that this is a useful legislative mechanism in keeping the Victorian statute books up to date.

Unproclaimed Acts

The Committee considers that without reasonable justification, a commencement by proclamation provision or a lengthy delay in the commencement of an Act constitutes an inappropriate delegation of legislative power.\(^5\)

The unproclaimed Acts currently under review by the Committee are listed in Appendix 2.

In its previous statute law revision Bill report\(^6\) the Committee accepted the advice of the Minister for Planning\(^7\) that for the time being it was appropriate to retain these three Acts unproclaimed. The Committee resolved to write to the new Minister for Planning to request an update concerning the continued need to retain these unproclaimed Acts.

The Committee notes the three unproclaimed Acts listed in Appendix 2 and will seek further advice from the Minister for Planning concerning the continued need to retain these unproclaimed Acts.

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\(^5\) Parliamentary Committees Act 2003, section 17(a)(vi).
\(^7\) The Hon. Rob Hulls MP, Minister for Planning, 29 September 2005.
20 March 2007

Mr Carlo Carli MP
Chair
Scrutiny of Acts and Regulations Committee
Level 8, 35 Spring Street
MELBOURNE VIC 3000

Dear Mr Carli

STATUTE LAW REPEALS BILL 2006

As you are aware, your Committee has been asked to consider and report on this Bill by a motion passed by the Legislative Assembly on 15 March 2007.

In accordance with the agreed practice, I certify that this Bill contains only repeals appropriate for a statute law repeals Bill. The relevant Departments have confirmed that the Acts proposed to be repealed by the Bill are now obsolete or spent in their operation and can be safely repealed. Any transitional, saving or validation provisions in the Acts to be repealed will be saved by section 14 of the Interpretation of Legislation Act 1984.

As requested, Mrs Gemma Varley, Second Deputy Chief Parliamentary Counsel, and I shall attend the meeting of the Committee on this Bill on 26 March 2007. In the meantime, please contact Mrs Varley on 9651 2140 should your Committee have any queries about any provision of the Bill.

Yours sincerely

EAMONN MORAN
Chief Parliamentary Counsel
Appendix 2
Unproclaimed Acts

The Committee provides the following information pursuant to section 17(a)(iv) of the Parliamentary Committees Act 2003 concerning unproclaimed Acts.

List of unproclaimed Acts

1. *Footscray Land (Amendment) Act 1990*
2. *Werribee South Land Act 1991*

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8 Source: Office of the Chief Parliamentary Counsel of Victoria.