



SCRUTINY OF ACTS AND
REGULATIONS COMMITTEE

Report on the Statute Law Repeals Bill 2012

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Scrutiny of Acts and Regulations Committee

Report on the Statute Law Repeals Bill 2012

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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 60 — Wednesday, 29 February 2012

- 18** **STATUTE LAW REPEALS BILL 2012** — Motion made, by leave, and question — That the proposals contained in the Statute Law Repeals Bill 2012 be referred to the Scrutiny of Acts and Regulations Committee for inquiry, consideration and report (*Mr McIntosh*) — 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

Recommendations

1. The Committee considers that the repeal of the five (5) spent principal Acts listed in the Schedule is appropriate.
2. The Committee considers that the repeal of the twelve (12) amending Acts in the Schedule with transitional or substantive provisions is appropriate.
3. The Committee considers that the repeal of the two (2) amending Acts in the Schedule with no savings or transitional provisions is appropriate.

Statute Law Repeals Bill 2012

Introduced	28 February 2012
Second Reading Speech	29 February 2012
House	Legislative Assembly
Minister introducing Bill	Hon. Andrew McIntosh MP
Portfolio responsibility	Premier

Reference to the Committee

On 29 February 2012 on the motion of the Hon. Andrew McIntosh MP, the Legislative Assembly resolved to refer this Bill to the Scrutiny of Acts and Regulation Committee (the 'Committee') for inquiry, consideration and report.

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

The role of the Committee is to ensure that the Acts sought to be repealed are spent or no longer necessary to remain on the Victorian Statute books and that transitional or savings provisions are preserved where still necessary. Typically, statute law repeals Bills include both principal Acts and amending Acts that have been identified by government departments and agencies as spent or redundant.

Rights and liabilities

In respect to the repeal of Acts that may have included provisions creating rights or imposing obligations the Committee notes the operation of section 14(2)(e) of the *Interpretation of Legislation Act 1984*. The section relevantly provides that –

Where an Act or a provision of an Act is repealed or amended or expires, lapses or otherwise ceases to have effect the repeal, expiry, lapsing or ceasing to have effect of that Act or provision shall not unless the contrary intention expressly appears affect any right, privilege, obligation or liability acquired, accrued or incurred under that Act or provision.

Purpose of the Bill

The Committee notes the following extracts from the Minister's Second Reading Speech –

The Bill repeals wholly redundant Acts identified by Office of the Chief Parliamentary Counsel and departments. The Acts to be repealed are listed in a schedule to the Bill.

The Bill repeals both principal Acts which have no ongoing operation and amending Acts which are spent in effect and have no further purpose. Most of the amending Acts contain transitional and amending provisions.

The transitional provisions are no longer required because of the passage of time or subsequent legislative enactments. The amending provisions are no longer required because they have amended or repealed the provisions of the principal acts which they were enacted to amend or repeal.

Any residual effect of the transitional and savings provisions will be saved by section 14 of the *Interpretation of Legislation Act 1984*.

Statement of Compatibility

The Committee notes the Statement of Compatibility declares that the Minister is of the opinion that the Bill does not raise any human rights issues, and is compatible with the *Charter of Human Rights and Responsibilities*.

Office of the Chief Parliamentary Counsel

The Committee received evidence from the Chief Parliamentary Counsel, Ms Gemma Varley and Parliamentary Counsel, Ms Elizabeth Moore on 9 March 2012.

The Chief Parliamentary Counsel also provided the Committee with a certificate dated 2 March 2012 declaring that the Bill contains only repeals appropriate for a redundant legislation 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**.

The Committee considered the evidence and noted the certificate.

Content

[Clauses]

[1]. Provides that the purpose of the Bill is to repeal spent Acts.

[2]. Provides that the repeal of the Acts come into force on the day after Royal Assent.

[3]. Provides for the Acts listed in the Schedule to be repealed.

[4]. Provides for the automatic repeal of this repeals Act on the first anniversary of the day on which it receives Royal Assent.

[Schedule – Repeal of Acts]

Schedule – Repeal of Acts

The Acts to be repealed in the Schedule fall into 3 categories.

1. Spent Principal Acts

The Bill repeals 5 principal Acts (items 1.1 to 1.5) which have been identified by government departments and agencies as no longer being required. The Acts are redundant because they have already taken effect and are therefore spent or they have no future further function to perform. Section 14 of the *Interpretation of Legislation Act 1984* provides that the repeal of these Acts will not affect the operation of, or anything done under those Acts.

In respect to item 1.3 concerning the *Aboriginal Land (Manatunga Land) Act 1992* the Committee observes that section 7 of that Act contained a 'no-compensation' provision and section 8 of that Act included a section 85 *Constitution Act 1975*¹ declaratory provision in respect to section 7.

1.1 The Australian Alliance Assurance Company's Act 1867 (No. 305)

This Act enabled the shareholders of a joint stock insurance company established in the colony of Victoria—the Australian Alliance Assurance Company (AAA), which was an unincorporated company, to sue and be sued in the name of the chairman for the time being of the directors of AAA (the *chairman*). Section 1 enabled AAA to sue in the name of the chairman and for actions to be taken against AAA in the name of the chairman. The other provisions in the 1867 Act provided for related matters including evidentiary matters, enforcement of judgments and the vesting of the real and personal property held in trust for AAA in the chairman. Securities for money, warrants of attorney, covenants and agreements relating to AAA also vested in the chairman. Section 13 allowed a "Life Reserve Fund" to be set aside out of the money received for life assurance and provided that it could be invested as the directors of AAA thought fit. These provisions are no longer required as AAA no longer exists as a separate entity. AAA's business is now part of Suncorp Group Ltd, which has been consulted and has no objection to the repeal of the 1867 Act.

The Committee considers that the 1867 Act is spent and can now be repealed.

1.2 Aboriginal Affairs (Transfer of Functions) Act 1974 (No. 8606)

This Act made provision with respect to the transfer of functions in relation to aboriginal affairs. It repealed the *Aboriginal Affairs Act 1967* and amended the *Aboriginal Lands Act 1970* and the *Archaeological and Aboriginal Relics Preservation Act 1972* (now repealed). These provisions have taken effect and are spent. Section 3 vested in the Housing Commission certain land and other real and personal property of the Minister administering the *Aboriginal Affairs Act 1967* before its repeal (the *Minister*). Section 3 has taken effect and is spent. Section 4 required the Registrar of Titles and Registrar-General to make the necessary entries on land records regarding the vesting and transfer of property to the Housing Commission. This has been done and section 4 is redundant. Section 5 and 6 are transitional provisions. Section 5 makes instruments that are binding on the Minister before commencement of that section binding on the Minister of Housing. Under section 6, gifts or property devised under a will or given on trust to the Minister are taken to have been devised, bequeathed or given to the Minister of Housing as if he or she were named in the instrument. Any continuing operation of sections 5 and 6 will be preserved by section 14 of the *Interpretation of Legislation Act 1984*. Under section 7(a), the Minister had power to transfer the lands described in Schedule 3 to the Commonwealth. All the lands have been transferred and section 7 is no longer required. Section 8 required the Aboriginal Affairs Fund money to be refunded to the Commonwealth if originally contributed by the Commonwealth and the rest of the money paid to the Consolidated Fund. Section 8 would have been complied with when the 1974 Act commenced. Section 8 is no longer required.

The Committee considers that the 1974 Act is spent and can now be repealed.

¹

Section 85 of the *Constitution Act 1975* provides that the Supreme Court is created the superior court of Victoria with unlimited jurisdiction and further provides that where a provision of an Act seeks to repeal, alter or vary the courts unlimited jurisdiction, the provision(s) will not be effective unless certain procedures are followed. Briefly, these procedures require the relevant provisions that intend to limit the court's jurisdiction to be specifically identified by the Bill (the declaratory provision) and also requires the member of Parliament introducing the Bill to make a statement of the reasons for seeking to limit the court's jurisdiction. Section 18(2A) of the *Constitution Act 1975* further provides that a limitation amendment fails if it does not receive an absolute majority of the members in both Houses.

1.3 Aboriginal Land (Manatunga Land) Act 1992 (No. 29/1992)

This Act provided for land at Robinvale to be granted to the Murray Valley Aboriginal Co-operative Limited. The land has been granted under section 3 so this section is redundant. Section 4, which provided for the extinguishment of a Crown lease and other rights in the land to be granted under section 3, has taken effect and is spent. Under section 6, the Registrar of Titles was required to make necessary amendments to the Register as a result of the 1992 Act. These have been made and the section is redundant. Section 7 provides that the Crown does not have to pay any compensation in respect of anything arising under the 1992 Act. The effect of this section will be preserved by section 14 of the *Interpretation of Legislation Act 1984*. Section 8, which alters or varies section 85 of the *Constitution Act 1975* and which was inserted because of section 7, is no longer required.

The Committee considers the 1992 Act is spent and can now be repealed.

1.4 Appropriation (2008/2009) Act 2008 (No. 32/2008)

New appropriation Acts are enacted each year.

The Committee considers that the Act is spent and can now be repealed.

1.5 Appropriation (Parliament 2008/2009) Act 2008 (No. 33/2008)

New appropriation Acts are enacted each year.

The Committee considers that the Act is spent and can now be repealed.

2. Spent Amending Acts with transitional or substantive provisions

The Bill repeals 12 amending Acts² that contain transitional, savings, validation provisions or substantive or unproclaimed provisions.

In respect to each of these amending Acts the explanatory memorandum provides that the substantive provisions are no longer required because they have taken effect and are spent or they are redundant. The unproclaimed provisions are no longer required.

The Committee notes that any continuing effect of the transitional and savings provisions and the effect of any validation provisions will be preserved by section 14 of the *Interpretation of Legislation Act 1984*.

The Committee considers that these amending Acts are spent and can be repealed.

3. Spent Amending Acts – wholly in operation

There are 2 spent amending Acts³ in the Schedule that are not specifically explained by the items provided in the explanatory memorandum. The explanatory memorandum provides that the Acts are wholly in operation having amended the Acts they were enacted to amend and neither Act contains any transitional, savings, validation or substantive provisions.

The Committee considers that these amending Acts are spent and can be repealed.

² Items 2.1 to 2.12 in the explanatory memorandum.

³ Items 3.1 and 3.2 in the explanatory memorandum.

Recommendations

1. The Committee considers that the repeal of the five (5) spent principal Acts listed in the Schedule is appropriate.
2. The Committee considers that the repeal of the twelve (12) amending Acts in the Schedule with transitional, saving or validation provisions or substantive or unproclaimed provisions is appropriate.
3. The Committee considers that the repeal of the two (2) amending Acts in the Schedule with no transitional, savings, validation or substantive provisions is appropriate.

Unproclaimed Acts

The Committee considers that a commencement by proclamation provision or a lengthy delay in the commencement of an Act may, without sufficient justification, constitute an inappropriate delegation of legislative power.⁴

The Committee observes that the remaining unproclaimed Act under review by the Committee is the *Footscray Land (Amendment) Act 1990*. See **Appendix 2**.

The Committee notes that it has received correspondence from the Department of Sustainability and Environment concerning this unproclaimed Act. The Committee has been advised that the Department is finalising its formal consultation process concerning the need to retain this Act. On current indications it appears to the Committee that the Act is no longer required and may be repealed.

The Committee will report on this unproclaimed Act in the next statute law repeals Bill.

⁴

Parliamentary Committees Act 2003, section 17(a)(vi).

Appendix 1

Chief Parliamentary Counsel's Certificate



PARLIAMENTARY COUNSEL VICTORIA

Your Reference:
Our Reference: GV:EAM

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2 March 2012

Mr Edward O'Donohue MLC
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
MELBOURNE VIC 3002

Dear Mr O'Donohue

STATUTE LAW REPEALS BILL 2012

As you are aware, this Bill was introduced into the Legislative Assembly on 28 February 2012 and referred to the Scrutiny of Acts and Regulations Committee on 29 February 2012.

In accordance with the usual practice for this kind of Bill, I certify that the Schedule to this Bill contains only repeals appropriate for a redundant legislation repeals Bill. The relevant Departments have confirmed that the Acts proposed to be repealed by the Bill are now redundant or spent and can be safely repealed. Any transitional, savings or validation provisions in an Act to be repealed will be preserved by section 14 of the **Interpretation of Legislation Act 1984**.

I can be contacted on 9651 2109 should your committee have any queries about any provisions of the Bill.

Yours sincerely

GEMMA VARLEY
Chief Parliamentary Counsel



Appendix 2

Unproclaimed Acts

The Committee provides the following information⁵ pursuant to section 17(a)(iv) of the *Parliamentary Committees Act 2003* concerning any unproclaimed Act(s).

Unproclaimed Act

Footscray Land (Amendment) Act 1990

⁵ Source: Office of the Chief Parliamentary Counsel of Victoria.