

HOW A LAW IS MADE IN VICTORIA

THE LAW may be defined as a system of rules which enables society to function efficiently and harmoniously.

It protects individuals and groups, and ensures that social and economic interactions are conducted smoothly and peacefully.

LAWS IN AUSTRALIA

In Australia there are two kinds of law:

Common Law is law which developed and continues to evolve in the courts. Such judge - made law was brought to Australia by white settlers. It relies heavily on precedent and is largely uniform throughout the nation. As it is not made in Parliament, it is sometimes referred to as unenacted law.

Statute Law is Parliament - made law expressed in an Act. The Commonwealth Parliament and the various state Parliaments are empowered to pass laws. Accordingly, there are variations from state to state. Some Acts of Parliament may outline broad guidelines or principles but leave the administrative detail to be defined later in regulations. This is known as subordinate or delegated legislation.

This information sheet focuses on statute law.

MAKING A LAW

There are five key steps involved in making a law. These are:

1. *Policy development* – the complex process by which ideals, ideas and practical needs are formalised and expressed in party or independent members' policies.
2. *Draft bill stage* – the conversion of party (usually, though not exclusively, government) policy into a series of statements and clauses that will eventually be placed before Parliament as a bill. For the government this task is undertaken by Cabinet.

Legal drafters from the Office of the Chief Parliamentary Counsel draft bills on the basis of instructions given to them by the relevant member of Parliament. The public service can also recommend administrative changes to the relevant minister. When a draft bill is expressed in a form acceptable to the parliamentary party, it can be introduced to the Parliament.

3. *Parliamentary process* – for many members of the public the most bewildering stage. Generally a bill may be initiated in either House of the Parliament of Victoria although in practice most bills originate in the lower House. All financial bills must be introduced in the Legislative Assembly.

A distinction is made between a government bill, introduced by the appropriate minister, and a private member's bill, brought on by someone other than a minister.

Examination of the bill is then conducted in three formal stages:

- Permission to introduce the bill into Parliament and to proceed with it is obtained in the *First Reading*. The member introducing the bill may be asked to give a brief explanation of it but otherwise, no debate is allowed.
- In the *Second Reading*, some time after the first reading, the principles but not the details of the bill are debated. If at this stage the House decides to examine the bill's clauses

it has the option of proceeding to the stage where the bill is scrutinised clause by clause and amendments may be considered.

In the Legislative Council this is called the *Committee of the Whole* stage. In the Legislative Assembly this is called the *Consideration in Detail* stage. Occasionally, bills are referred to a select committee for examination.

The committee/consideration in detail stage is not compulsory. When bills are considered uncontroversial or are of a minor nature, the House may choose to avoid this stage and pass directly to the third and final stage of parliamentary examination.

- At the *Third Reading*, further debate may be permitted, but this is restricted and rarely happens. If the third reading is agreed to, the bill is then passed. When the bill has passed the House of origin it is sent to the other chamber, where a similar scrutiny procedure is followed. Amendments may be made or suggested, in which case messages pass between the two Houses until unanimity is achieved. The bill is now expressed in identical terms, agreed upon and accepted by both Houses. When this occurs the parliamentary process has finished.
4. *Royal Assent* – the Queen, represented by the Governor, approves the bill. It is now referred to as an Act of Parliament.
 5. *Commencement* – the time from which the law, as specified in the Act of Parliament, applies. In Victoria this occurs on a day specified in the Act or if the Act so provides, on a day proclaimed by the Governor.

SUMMARY

Bill: a proposed law that is introduced into Parliament

Royal Assent: approval given to an Act of Parliament by the Queen or her representative in Victoria, the Governor

Act (or statute): a bill that has been passed by Parliament and received Royal Assent

Amending Act: an Act passed by Parliament to alter another existing Act of Parliament

STATUTE LAWS IN VICTORIA

The first Act of the Parliament of Victoria was entitled *An Act for defining the Privileges, Immunities and Powers of the Legislative Council and Legislative Assembly of Victoria respectively*. It was given Royal Assent on 25 February 1857 and was numbered Act No. 1.

For many years the Parliament of Victoria numbered its Acts sequentially. In 1985 this process changed and Acts were numbered according to the year in which they were passed. The Parliament of Victoria passed 12,891 Acts between its inception in 1851 and December 2011.

Many of these are repealing, amending or single purpose Acts. On average, there are about 580 principal Acts in force at any one time which cover most of the statute law in Victoria. For the latest versions of these Acts please visit *Legislation & Bills* at www.parliament.vic.gov.au (click on *Current Acts – Victorian Law Today*).

CONSOLIDATING STATUTE LAWS

Legislation passed by the early Parliaments of Victoria was sometimes imprecise. Many of the colony's earliest bills were borrowed from British statutes with little modification for local conditions. Poor technical drafting and imprecision further contributed to legislative confusion.

This problem was partly improved by the creation in 1879 of the Office of the Parliamentary Counsel and the appointment of parliamentary drafters to prepare technically proficient bills for the Parliament.

The problem was also overcome by periodic consolidations. This is the process by which repetitions, contradictions, redundancies and obsolescence are eliminated and the law is unified into a coherent, mutually reinforcing whole.

In 1864-5 the first of five consolidations of Victorian law took place. Further consolidations took place in 1890, 1915, 1929 and 1958.

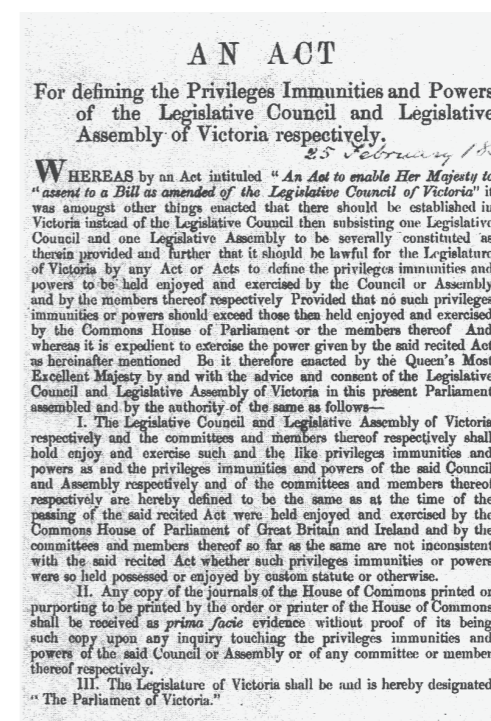
The diagram inside this information sheet illustrates the complex process of making statute law. It is a process of checks and balances that ensures that statute law is appropriate and relevant to the needs of all Victorians.

The consolidation system is now replaced by regular reprints of Acts and Regulations prepared by the Office of Chief Parliamentary Counsel, which are admissible as evidence.

FURTHER READING

Chisholm, R. C. and G. Netheim, *Understanding law: an introduction to Australia's legal system*, 5th ed., Butterworths, Sydney, 1997.

Gifford, DJ and K. Gifford, *How to Understand an Act of Parliament*, 8th ed., The Law Book Company, Sydney, 1994.



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