



SCRUTINY OF ACTS AND
REGULATIONS COMMITTEE

Report on the Statute Law Revision Bill 2006

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**Scrutiny of Acts and Regulations
Committee**

**Report on the Statute Law Revision
Bill 2006**

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Scrutiny of Acts and Regulations Committee

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Referral to Committee

Extracted from the Minutes of the Proceedings of the Legislative Council

No 13 — Tuesday, 17 April 2007

- 13** **STATUTE LAW REVISION BILL 2006** — Mr Madden moved, by leave, that the proposals contained in the Statute Law Revision Bill 2006 be referred to the Scrutiny of Acts Regulations Committee for inquiry, consideration and report.

Question – 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

Recommendation 1

The Committee has reviewed the retrospective amendments proposed to be made by items 7.2, 57 and 61.1 and in each case considers the amendments to be justified and appropriate to be included in a statute law revision Bill.

Recommendation 2

The Committee considers that the amendments made by the 77 items in the Schedule are justified and appropriate to be included in a statute law revision Bill

Unproclaimed Acts Watch List

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

Statute Law Revision Bill 2006

Introduced	19 December 2006
Second Reading Speech	17 April 2007
House	Legislative Council
Minister introducing Bill	Mr John Lenders MLC
Portfolio responsibility	Premier

Reference to the Committee

On the motion of the Hon. Justin Madden MLC the Legislative Council agreed 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

In considering a statute law revision Bill the Committee seeks to ensure that any amendments made to Acts are not of a substantive nature but are strictly confined to the correction of references, spelling, drafting and grammatical errors which are intended to clarify the original intent of the legislation, or concern the repeal of amending Acts (or certain provisions in Acts) that have achieved their objective and now serve no useful purpose remaining on the statute books.

Purpose of this Bill

The Committee notes that Bill was introduced in the Legislative Council as the Privilege Bill of the Legislative Council at the commencement of the 56th Parliament.

The explanatory memorandum of the Bill declares that the purpose of the Bill is to revise further the statute law of Victoria by making amendments to a number of Acts to correct grammatical and typographical errors and to update certain references. The Bill also seeks to repeal certain provisions that have achieved their purpose and are now spent or redundant and may now be safely repealed.

¹ *Parliamentary Committees Act 2003*, section 33(1)(a).

² Referral to the Committee by motion in the Legislative Assembly, 1 March 2007.

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

...the Statute Law Revision Bill 2006, is a regular mechanism for reviewing statute law in this State. The Bill is vital to the orderly management of the State's statutes, so that the laws remain clear, relevant and accurate.

The Bill corrects a number of ambiguities, minor omissions and errors found in statutes to ensure the meaning of Acts is clear and reflects the intention of Parliament.

The Bill corrects spelling and grammatical errors in Acts.

The Bill makes any amendments that should have been made as consequential amendments when legislation was first passed, but were overlooked. The Bill repeals redundant transitional provisions of Acts which are no longer required because of the passage of time and subsequent legislative enactments. The Bill also repeals substantive provisions of acts which had fulfilled their purpose of amending or repealing other Acts. These provisions are no longer required because they have amended or repealed the relevant provisions in other Acts.

...

The Bill also amends statutes to make them consistent with changes that have been made through administrative arrangements orders under the Administrative Arrangements Act 1983.

In previous statute law revision Bills the Committee noted the following passage from the leading Australian 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.*

D. C. Pearce and R. S. Geddes, 'Statutory Interpretation in Australia' (Butterworths, 5th Edition, p. 213).

**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 amendments proposed to be made are 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 amendments 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 Minister's Second Reading Speech,³ which declares that the Minister 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]. Other than the specified items which provide for retrospective amendment the provisions in the Act will come into force on the day after Royal Assent.

Retrospective amendments

Item 7.2 on 1 September 2006

Item 57 on 10 October 2006

Item 61.1 on 1 December 2006

[3]. Declares that on the commencement of an item in the Schedule the Act specified in the heading to that item is amended as set out in that item.

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

The Retrospective amendments

As a matter of course the Committee will draw attention to provisions in Bills which seek to have retrospective impact and will comment where such a Bill may have an adverse effect on a person. Not all retrospective amendments will attract an adverse comment by the Committee. For example, retrospective provisions may provide benefits to persons or may seek to correct inadvertent errors such as an incorrect cross-reference. In other cases a retrospective commencement may seek to clarify a legal action or decision that was always thought to have existed but where possible ambiguity may exist in the absence of the clarification.

In brief the three retrospective provisions before the Committee on this occasion respectively seek to –

- correct a consequential amendment which was inadvertently missed by an amending Act,
- correct a reference to an Act by its new amended title,
- ensure that a proposed amendment was legally effective.

The Committee notes the reasons given in the explanatory memorandum for the necessity to use retrospective commencement provisions.

Item 7.2 – *Children and Young Persons Act 1989* – amends section 155(1)(d) to replace the reference to “child’s” with “person’s” consistent with the amendments made to section 155 by section 32 of the *Children, Youth and Families (Consequential and Other Amendments) Act 2006*. To ensure section 155(1)(d) operates

³ Parliamentary Debates, Legislative Assembly, 15 March 2007.

effectively from the commencement of section 32, this item is made retrospective to 1 September 2006—the date of commencement of section 32.

Item 57 – *Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006* – amends item 71 of the Schedule to the Act to correct the reference to the *Mineral Resources Development Act 1990* to the *Mineral Resources (Sustainable Development) Act 1990*. The title to the *Mineral Resources Development Act 1990* was amended by section 4 of the *Mineral Resources Development (Sustainable Development) Act 2006* which came into operation on 30 August 2006. The *Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006* was given Royal Assent on 10 October 2006 and the amendment to item 71 has been made retrospective to that date to ensure that the amendments made by item 71 were effective when that item commenced.

Item 61.1 – *Sex Offenders Registration Act 2004* – amends section 70(2)(e) to update the reference to impaired mental functioning. Section 70(2)(e) was amended by section 51(4) of the *Working with Children Act 2005*. The reference to “impaired mental functioning” in section 51(4) was to have been replaced with “a cognitive impairment” by section 47 of the *Crimes (Sexual Offences) Act 2006*. Section 51(4) of the *Working with Children Act 2005* commenced on 3 April 2006. However, section 47 of the *Crimes (Sexual Offences) Act 2006* did not come into operation until 1 December 2006 and the proposed amendment was ineffective. This item is made retrospective to 1 December 2006 — the date of commencement of section 47 of the *Crimes (Sexual Offences) Act 2006* to ensure that the provision operated as intended.

Recommendation

The Committee has reviewed the retrospective amendments proposed to be made by items 7.2, 57 and 61.1 and in each case considers the amendments to be justified and appropriate to be included in a statute law revision Bill.

Schedule

The schedule consists of 77 items amending Acts in a number of minor ways. By way of example the Committee has chosen a few proposed amendments to illustrate the diversity of amendments that may be expected to be found in a statute law revision Act.

Item 1 – *Arts Victoria Act 1972* – repeals section 13A, a transitional provision. Any residual effect of section 13A will be preserved by section 14 of the Interpretation of Legislation Act 1984.

Item 3 – *Building Act 1993* – amends section 220(1) to refer to the relevant Minister. This amendment arises from Administrative Arrangements Order (No. 192) 2007.

Item 4 – *Cemeteries and Crematoria Act 2003* – repeals sections 181, 182, 183, 184 and 185 which amend other Acts. The sections have commenced operation and are spent.

Item 8 – *Children, Youth and Families Act 2005* – amends section 378(1)(f) to replace the reference to “child’s” with “person’s” consistent with amendments to be made by section 21 of the *Children, Youth and Families (Consequential and Other Amendments) Act 2006* which will substitute “person” for “child” wherever occurring in that section.

Item 14 – *Corrections Act 1986* – amends section 47B(2) to refer to the correct title of the Human Rights Commissioner appointed under the *Human Rights and Equal Opportunity Commission Act 1986* of the Commonwealth and to make it consistent with the definition in section 3 of the Corrections Act 1986.

Item 26 – *Firearms Act 1996* – amends section 3 to repeal the definition of airgun as it is not in the correct alphabetical order.

Item 28 – *Gene Technology Act 2001* – repeals Part 13. Part 13 contains provisions amending other Acts. Part 13 has commenced operation and is spent. There are notes to sections 195, 196 and 197 in this Part. These notes are historical only and can be repealed.

Item 43 – *Museums Act 1983* – amends the heading to Part III to update the reference to the Council of the Museum of Victoria to the Museums Board of Victoria to make it consistent with the amendments made by Part III of the *Arts Institutions (Amendment) Act 1996*.

Item 65 – *Terrorism (Community Protection) Act 2003* – amends section 18(8) to correct a grammatical error. (Inserts the word ‘in’ after the words ‘referred to’.)

Item 75 – *Water Act 1989* – amends section 33U(1)(e) to remove an unnecessary full stop; section 64GB(8) to remove an unnecessary hyphen; section 259(1)(c) to remove an unnecessary comma, and section 306(1)(b) to remove an unnecessary word.

Recommendation

The Committee considers that the amendments made by the 77 items in the Schedule are justified and appropriate to be included in a statute law revision Bill

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.⁴

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

The Committee reported on these unproclaimed Acts in April 2007 and resolved to write to the Minister for Planning concerning⁵ the continued need to retain these unproclaimed Acts. The Committee notes that the *Werribee South Land Act 1991* was proclaimed in September 2006 and has now been removed from the unproclaimed Acts watch list.

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

⁴ *Parliamentary Committees Act 2003*, section 17(a)(vi).

⁵ The Hon. Rob Hulls MP, Minister for Planning, 29 September 2005.

Appendix 1

Certificate of Chief Parliamentary Counsel



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19 April 2007

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

Scrutiny of Acts and

23 APR 2007

Regulations Committee

Dear Mr Carli

STATUTE LAW REVISION 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 Council on 17 April 2007.

In accordance with the agreed practice, I certify that this Bill contains only amendments appropriate for a statute law revision Bill and does not make any substantive changes to the statute law of Victoria. The effect of any transitional or saving provisions repealed by the Bill 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 30 April 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 Watch List

The Committee provides the following information⁶ 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. *Metung Land Act 1991*

⁶ Source: Office of the Chief Parliamentary Counsel of Victoria.