



SCRUTINY OF ACTS AND
REGULATIONS COMMITTEE

Report on the Statute Law Revision Bill 2012

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Scrutiny of Acts and Regulations Committee

Report on the Statute Law Revision Bill 2012

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Referral to Committee

Extracted from the Minutes of the Proceedings of the Legislative Council

No 58 — Thursday, 1 March 2012

- 13 **STATUTE LAW REVISION BILL 2012 — REFERRAL TO SCRUTINY OF ACTS AND REGULATIONS COMMITTEE** — Mr D.M. Davis moved, by leave, That the proposals contained in the Statute Law Revision Bill 2012 be referred to the Scrutiny of Acts and 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.

Recommendation

Recommendation

The Committee is satisfied that the amendments made to the Acts listed in the Schedule are not of a substantive nature and only correct minor errors or omissions or repeal spent sections, divisions or parts of Acts or remedy incorrect legislative instructions or failed amendments.

The Committee considers that the amendments are therefore appropriate to be included in a statute law revision Bill

Statute Law Revision Bill 2012

| | |
|----------------------------------|---------------------|
| Introduced | 1 March 2012 |
| Second Reading Speech | 1 March 2012 |
| House | Legislative Council |
| Minister introducing Bill | Mr D.M. Davis MLC |
| Portfolio responsibility | Premier |

Reference to the Committee

On 1 March 2012 on the motion of the Mr D.M. Davis MLC, the Legislative Council resolved to refer the Statute Law Revision Bill 2012 (the 'Bill') to the Scrutiny of Acts and Regulation Committee (the 'Committee') for inquiry, consideration and report.

The role of the Committee

The role of the Committee in considering the Bill is to ensure that the amendments sought to be made to a large number of unrelated Acts are not of a substantive policy nature, rather that they are strictly confined to the correction of minor errors or omissions such as cross-references, spelling, drafting or grammatical errors. Other acceptable statute law revision amendments update nomenclature such as the names of government agencies, successor Act names or repeal spent sections, Divisions or Parts of Acts. In other instances amendments correct ineffective legislative instructions or amendments. The Committee accepts that such house keeping amendments are intended to clarify the original intent of the Act or update provisions in those Acts. Where statute law revision amendments are intended to apply retrospectively the Committee will seek to ensure that there is a rationale and legitimate reason for applying the amendment to that particular retrospective date.

The Committee is guided in its approach in considering statute law revision Bills by established principles of statutory interpretation. The Committee notes the following extract from a leading Australian authority on statutory interpretation –

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. The result of this approach has been to make the courts slow to infer that a change of substance has been made to an Act where an interpretation not changing the previous operation of the Act is tenable.

D. C. Pearce and R. S. Geddes, 'Statutory Interpretation in Australia'
(Butterworths, 6th Edition (2006), at page 262).

**Laird v Portland Municipality* [1958] Tas SR 90

Notwithstanding this legal assumption the Committee is mindful that any Bill including a statute law revision Bill may make substantive changes to Acts.

Purpose of this Bill

The Bill proposes to make statute law revision amendments to 57 Acts to:

- correct minor errors or omissions such as cross-references, spelling, drafting or grammatical errors
- update nomenclature such as the names of government departments agencies or names of successor Acts
- repeal spent subsections, sections, divisions or parts of Acts
- remedy ineffective legislative instructions or amendments.

Extracts from the Second Reading Speech

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

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 and makes any amendments that should have been made as consequential amendments when legislation was first passed.

... The Bill will make technical improvements to the State's statutes, rather than substantive amendments. The technical corrections effected by the Bill will make it easier for the State's statutes to be administered, interpreted and applied.

Office of the Chief Parliamentary Counsel

The Committee received advice from the Chief Parliamentary Counsel, Ms Gemma Varley and Parliamentary Counsel, Ms Elizabeth Moore.

The Chief Parliamentary Counsel also provided the Committee with a certificate dated 2 March 2012 declaring that the 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 certificate of the Chief Parliamentary Counsel is shown at **Appendix 1**.

The Committee considered the evidence and noted the certificate.

Statement of Compatibility

The Committee notes the Statement of Compatibility attached to the Second Reading Speech¹ 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 Act 2006*.

Content

[Clauses]

[1]. Provides that the purpose of the Bill is to revise the statute law of Victoria.

[2]. Provides that the Act, other than specified items² comes into force on the day after Royal Assent.

¹ *Parliamentary Debates*, Legislative Council, 1 March 2012.

[3]. Provides that on commencement, the Acts listed in the items in the Schedule are amended as set out in the item.

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

Schedule – Amendment of Acts

The Schedule contains 57 items making minor amendments to the Acts specified by those items.

In auditing the proposed amendments the Committee has categorised the proposed amendments under broad groupings as follows –

1. Retrospective provisions

In each case below retrospective operation seeks to remove any doubt that the amendments made took effect as intended from the commencement of the section.

Item 5 – *Children, Youth and Families Amendment (Security of Youth Justice Facilities) Act 2011*

Amends section 1 to replace the reference to the ‘Bill’ with a reference to the ‘Act’. The amendment is sought to be made retrospective to 2 November 2011, which is the day on which the *Children, Youth and Families Amendment (Security of Youth Justice Facilities) Act 2011* received the Royal Assent, to ensure that section 1 was enacted as intended.

Item 6 – *Children’s Services Amendment Act 2011*

Amends item 2.2 of the Schedule to correct a reference to section 182(1)(f) of the *Children, Youth and Families Act 2005*. It was incorrectly referred to as section 182(f). This amendment is sought to be made retrospective to 31 December 2011, the day before item 2.2 came into operation, to remove any doubt that the amendment took effect as intended.

Item 15 – *Emergency Management Legislation Amendment Act 2011*

Amends section 32(3) to correct a reference to section 19(1) of the *Terrorism (Community Protection) Act 2003*. It was incorrectly referred to as section 19(1)(b). This amendment is sought to be made retrospective to 2 November 2011, the day before section 32(3) came into operation, to remove any doubt that the amendment took effect as intended.

Item 17.1 – *Evidence (Miscellaneous Provisions) Act 1958*

Substitutes section 19B(2) as was intended by section 8(2) of the *Crimes Legislation Amendment Act 2010* which has now been repealed. Section 8(2) referred to the *Evidence (Miscellaneous Provisions) Act 1958* by an incorrect title (the *Evidence Act (Miscellaneous Provisions) 1958*). This amendment is sought to be made retrospective to 17 March 2010, the day that section 8(2) of the *Crimes Legislation Amendment Act 2010* came into operation, to remove any doubt that the amendment took effect as intended.

Item 27 – *Liquor Control Reform Further Amendment Act 2011*

This item amends section 14(1) to correct an incorrect reference to section 22(ca) of the *Liquor Control Reform Act 1998*. The reference should have been to section 22(1)(ca). This amendment is sought to be

² Section 2(2) lists the specified items ((a) to (m)) which relate to the Acts in the Schedule which are to have retrospective operation.

made retrospective to 19 February 2012, the day before section 14(1) came into operation, to remove any doubt that the amendment took effect as intended.

Item 28 – Magistrates Court Amendment (Assessment and Referral Court List) Act 2010

This item amends section 4(2)(a). Section 4(2) amends the definition of proper venue in section 3(1) of the *Magistrates' Court Act 1989*, however section 4(2)(a) contains an incorrect reference to "paragraph (c)" rather than "paragraphs (c)". This amendment is sought to be made retrospective to 20 April 2010, the day before section 4(2) came into operation, to remove any doubt that the amendment took effect as intended.

Item 43 – Resources Legislation Amendment Act 2011

This item amends section 6. Section 6 amends section 77S of the *Mineral Resources (Sustainable Development) Act 1990* by replacing various instances of the phrase "an exploration and mining licence". However, section 77S does not contain this phrase; it contains the phrase "an exploration or mining licence" instead. This amendment is sought to be made retrospective to 19 October 2011, the day after the *Resources Legislation Amendment Act 2011* received the Royal Assent. This is to ensure that section 6 takes effect as intended.

Item 45.1 – Road Safety Amendment (Hoon Driving and Other Matters) Act 2011

Item 45.1 amends section 20 which inserted section 103ZD in the *Road Safety Act 1986* on 30 June 2011. Section 20 was expressed to insert section 103ZD after section 103ZC. However section 103ZC did not exist on 30 June 2011 as it was not inserted in the *Road Safety Act 1986* until 1 July 2011 by section 39 of the *Road Safety Amendment (Hoon Driving) Act 2010*. This item amends section 20 so that is expressed to insert section 103ZD after section 103ZB. This amendment is sought to be made retrospective to 29 June 2011, the day before the day on which section 20 came into operation, to remove any doubt that the amendment took effect as intended.

Item 47.1, 47.3, 47.4 and 47.5 – Sentencing Amendment (Community Correction Reform) Act 2011

Item 47.1 amends section 68, which inserts new section 115B in the *Sentencing Act 1991*. This amendment corrects an incorrect reference to the new section being inserted after section 115A of the *Sentencing Act 1991*, which at the time of insertion did not exist. The reference is amended to refer to section 115 instead of 115A and is sought to be made retrospective to 15 January 2012, the day before the day on which section 68 came into operation, to remove any doubt that the amendment took effect as intended.

Item 47.3 amends item 4.5 in the Schedule to correct an incorrect reference to a provision number. Item 4.5 amends a note at the foot of section 268(1)(b) of the *Criminal Procedure Act 2009*. However, the amendment incorrectly refers to the note being at the foot of section 268(1). This amendment is sought to be made retrospective to 15 January 2012, the day before the day on which item 4.5 came into operation, to remove any doubt that the amendment took effect as intended.

Item 47.4 amends item 6.2 in the Schedule to correct an incorrect instruction so that it refers to "in" the definition of prohibited person in section 3(1) of the *Firearms Act 1996* rather than "for" that definition. This amendment is sought to be made retrospective to 15 January 2012, the day before the day on which item 6.2 came into operation, to remove any doubt that the amendment took effect as intended.

Item 47.5 amends item 11.2 in the Schedule to correct an incorrect instruction so that it refers to "in" the definition of custodial sentence in section 3 of the *Serious Sex Offenders (Detention and Supervision) Act 2009* rather than "for" that definition. This amendment is sought to be made retrospective to 15 January 2012, the day before the day on which item 11.2 came into operation, to remove any doubt that the amendment took effect as intended.

Item 55 – Transport Legislation Amendment (Public Transport Development Authority) Act 2011

This item amends section 4 which inserted a new Part 10 in the *Transport Integration Act 2010*. Section 4 was expressed to insert Part 10 after Part 9. However, Part 9 had not been inserted in the *Transport Integration Act 2010* by the date that section 4 came into operation. This item amends section 4 to insert Part 10 after Part 8. (Part 9 has now been inserted after Part 8 and the positioning of all Parts is correct.) This amendment is sought to be made retrospective to 14 December 2011, the day before the day on which section 4 came into operation, to remove any doubt that the amendment took effect as intended.

2. Spelling, typographical, punctuation, missing words, extraneous words or grammatical errors

Items – 1, 2, 3, 7, 10, 12, 13, 14, 16, 18, 19, 20, 21, 22.1, 22.2, 21.3, 24, 25, 26, 29, 30, 31, 32, 33, 34, 36, 40, 41, 42, 44, 45.2, 46, 47.2, 48, 52, 53, 54.

3. Cross-reference errors

Items – 6, 15, 27, 28, 35, 47.3, 51, 57.

4. Updating nomenclature (Act names, agency or department names)

Items – 4, 8, 37, 38, 39, 43, 50, 56.

5. Repeal of spent provisions that have commenced operation and have achieved their purpose

Items – 9, 11, 17.2, 17.3, 22.4, 23, 49.

6. Ineffective legislative instruction (e.g. 'insert' instead of 'substitute' or failed amendment)

Items – 5, 17.1, 28, 45.1, 47.1, 47.4, 47.5, 55.

Recommendation

The Committee is satisfied that the amendments made to the Acts listed in the Schedule are not of a substantive nature and only correct minor errors or omissions or repeal spent sections, divisions or parts of Acts or remedy incorrect legislative instructions or failed amendments.

The Committee considers that the amendments are therefore appropriate to be included in a statute law revision Bill.

Appendix 1

Chief Parliamentary Counsel's Certificate



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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 REVISION BILL 2012

As you are aware, this Bill was introduced into the Legislative Council on 1 March 2012 and referred to the Scrutiny of Acts and Regulations Committee on 1 March 2012.

In accordance with the usual practice for this kind of Bill, I certify that the Schedule to 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.

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 Council



