

Victorian Law Reform Commission Act 2000

Act No. 44/2000

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1. Purpose and outline of Act	1
2. Commencement	2
3. Definitions	3
PART 2—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE COMMISSION	4
4. Establishment of the Commission	4
5. Functions of the Commission	4
6. Powers of the Commission	5
PART 3—CONSTITUTION AND PROCEDURE OF THE COMMISSION	7
7. Constitution of the Commission	7
8. Terms and conditions of office of members	7
9. Payment of members	8
10. Vacancies, resignations, removal from office	8
11. Validity of acts or decisions	8
12. Meetings of the Commission	9
13. Chairperson may allocate references or constitute Divisions	10
14. Meetings of a Division	10
15. Staff	11
16. Appointment of consultants	11
PART 4—FINANCE AND REPORTS	12
17. Funding of Commission	12
18. Control on expenditure	12
19. Annual report	12
20. Parliamentary requirement for information	12
21. Interim reports and reports on references	13
PART 5—MISCELLANEOUS	14

<i>Section</i>	<i>Page</i>
22. Regulations	14
23. Amendment of Legal Practice Act 1996	14
24. Repeal of Law Reform Commission (Repeal) Act 1992	15
NOTES	16
INDEX	17



Victoria

No. 44 of 2000

Victorian Law Reform Commission Act 2000[†]

[Assented to 6 June 2000]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purpose and outline of Act*¹

(1) The purpose of this Act is to establish the Victorian Law Reform Commission as a central agency for developing law reform in Victoria.

(2) In outline this Act—

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- establishes the Victorian Law Reform Commission (VLRC) with a full-time chairperson and full and part-time members;
 - provides for the employment of a chief executive officer and other staff in VLRC and for it to be also assisted by consultants;
 - sets up arrangements under which VLRC may be funded by annual payments out of the Law Reform and Research Account (an account in the Public Purpose Fund maintained by the Legal Practice Board);
 - requires VLRC to report to the Attorney-General on law reform proposals referred to it by him or her;
 - enables VLRC to suggest references and undertake relevant educational programs;
 - limits VLRC's powers to deal with property and spend money;
 - allows Divisions of the Commission to be constituted to deal with references;
 - requires VLRC to supply information to Parliament and Parliamentary Committees;
 - repeals the **Law Reform Commission (Repeal) Act 1992**.
- (3) Sub-section (2) is intended only as a guide to readers as to the general scheme and effect of this Act.

2. Commencement

- (1) Subject to sub-section (2), this Act comes into operation on a day or days to be proclaimed.
 - (2) If a provision of this Act does not come into operation before 1 July 2001, it comes into operation on that day.
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3. Definitions

In this Act—

"chairperson" means chairperson of the Commission appointed under section 7(2);

"Commission" means Victorian Law Reform Commission established under section 4;

"Division" means Division of the Commission constituted under section 13;

"member" means member of the Commission appointed under section 7(2) and includes the chairperson;

"reference" means reference by the Attorney-General to the Commission under section 5.

**PART 2—ESTABLISHMENT, FUNCTIONS AND POWERS OF
THE COMMISSION**

4. *Establishment of the Commission*

- (1) The Victorian Law Reform Commission is established by this Act.
- (2) The Commission—
 - (a) is a body corporate with perpetual succession;
 - (b) has a common seal;
 - (c) may sue and be sued in its corporate name;
 - (d) subject to section 6, may acquire, hold and dispose of real and personal property;
 - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) All courts must take judicial notice of the common seal of the Commission affixed to a document and, until the contrary is proved, must presume that it was duly affixed.
- (4) The common seal of the Commission must be kept in such custody as the Commission directs and must not be used except as authorised by it.

5. *Functions of the Commission*

- (1) The functions of the Commission are—
 - (a) to examine, report and make recommendations to the Attorney-General on any proposal or matter relating to law reform in Victoria that is referred to the Commission by the Attorney-General;
 - (b) to examine, report and make recommendations to the Attorney-General on any matter that the Commission considers

raises relatively minor legal issues that are of general community concern if the Commission is satisfied that the examination of that matter will not require a significant deployment of the resources available to the Commission;

- (c) to suggest to the Attorney-General that a proposal or matter relating to law reform in Victoria be referred to the Commission by the Attorney-General;
 - (d) to monitor and co-ordinate law reform activity in Victoria;
 - (e) to undertake educational programs on any area of the law relevant to a reference, whether past or current.
- (2) The Attorney-General may—
- (a) modify the terms of a reference;
 - (b) give directions to the Commission as to—
 - (i) the priority it must give to a reference;
 - (ii) the time within which it must report on a reference;
 - (c) at any time before the Commission is to report on a reference, require it to submit an interim report to him or her within a specified time.

6. Powers of the Commission

- (1) Subject to sub-section (2), the Commission has power to do all things necessary or convenient to be done for, or in connection with, performing its functions.
 - (2) The Commission must not, without the prior written approval of the Attorney-General—
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- (a) acquire any property, right or privilege for a consideration of more than \$250 000 or any higher amount prescribed for the purposes of this paragraph; or
 - (b) dispose of any property, right or privilege that has a value, or for a consideration, of more than \$250 000 or any higher amount prescribed for the purposes of this paragraph; or
 - (c) obtain a lease over any land or premises.
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**PART 3—CONSTITUTION AND PROCEDURE OF THE
COMMISSION**

7. *Constitution of the Commission*

- (1) The Commission consists of—
 - (a) a full-time chairperson; and
 - (b) such number of full-time and part-time members as the Governor in Council considers necessary to enable the Commission to perform its functions.
- (2) The chairperson and other members are appointed by the Governor in Council.
- (3) The Attorney-General may appoint a member to act as chairperson for a period not exceeding 6 months—
 - (a) during a vacancy in the office of chairperson; or
 - (b) while the chairperson is absent from Victoria or is, for any other reason, unable to perform the duties of the office of chairperson.
- (4) While a member is acting as chairperson, he or she has and may exercise all the powers, and must perform all the duties, of the chairperson.

8. *Terms and conditions of office of members*

- (1) A member holds office—
 - (a) subject to section 10, for the term (not exceeding 4 years) that is specified in his or her instrument of appointment, and is eligible for re-appointment; and
 - (b) on any other terms and conditions, not inconsistent with this Act, that are specified in his or her instrument of appointment.
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- (2) The **Public Sector Management and Employment Act 1998** does not apply to a member in respect of the office of member.

9. *Payment of members*

A member is entitled to be paid the remuneration and allowances that are specified in his or her instrument of appointment or are fixed from time to time in respect of him or her by the Governor in Council.

10. *Vacancies, resignations, removal from office*

- (1) A member's office becomes vacant if he or she—
- (a) without the Attorney-General's approval, fails to attend 3 consecutive meetings of the Commission; or
 - (b) is convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence.
- (2) A member may resign by writing delivered to the Governor in Council.
- (3) The Governor in Council may remove a member from office if of the opinion that the member—
- (a) is guilty of improper conduct in carrying out the duties of his or her office;
 - (b) is mentally or physically incapable of carrying out satisfactorily the duties of his or her office; or
 - (c) has failed to comply with any term or condition of appointment.

11. *Validity of acts or decisions*

- (1) An act or decision of the Commission is not invalid merely because of—

- (a) a defect or irregularity in, or in connection with, the appointment of a member; or
 - (b) a vacancy in the membership of the Commission.
- (2) Anything done by or in relation to a member purporting to act as chairperson is not invalid merely because—
- (a) there was a defect or irregularity in relation to the acting appointment; or
 - (b) the occasion for the person to act had not arisen or had ceased.

12. *Meetings of the Commission*

- (1) The chairperson must convene as many meetings of the Commission as he or she considers necessary for the efficient conduct of its affairs.
 - (2) The chairperson or, in his or her absence, a member appointed to act as chairperson under section 7(3), must preside at a meeting of the Commission.
 - (3) The quorum for a meeting of the Commission is a majority of the members in office for the time being.
 - (4) A question arising at a meeting of the Commission is determined by a majority of the votes of the members present and voting on the question.
 - (5) The person presiding has a deliberative vote and, in the event of an equality of votes on any question, a second or casting vote.
 - (6) Subject to this Act, the Commission may regulate its own procedure.
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13. Chairperson may allocate references or constitute Divisions

- (1) The chairperson may—
 - (a) allocate a reference to a particular member;
or
 - (b) constitute a Division of the Commission consisting of not less than 3 members for the purposes of a reference.
- (2) The chairperson may appoint himself or herself as a member of a Division.
- (3) The chairperson may at any time—
 - (a) re-allocate a reference to another member; or
 - (b) dissolve a Division.

14. Meetings of a Division

- (1) A meeting of a Division must be convened and presided over by the chairperson (if he or she is a member of the Division) or in any other case by a member of the Division appointed for the purpose by the chairperson.
- (2) In the event of the absence from a meeting of a Division of the member who is to preside under sub-section (1), the members present may elect one of their number to preside at that meeting.
- (3) The quorum for a meeting of a Division is 2.
- (4) A question arising at a meeting of a Division is determined by a majority of the votes of the members of the Division present and voting on the question.
- (5) The person presiding at a meeting of a Division has a deliberative vote.

- (6) If at a meeting of a Division at which only 2 members are present, those members differ in opinion on a question, the member presiding must postpone the determination of that question to a meeting of the Division at which more than 2 members of the Division are present.
- (7) In the event of an equality of votes on any question at a meeting of the Division at which more than 2 members are present, the member presiding has a second or casting vote.
- (8) Subject to this Act, a Division may regulate its own procedure.

15. *Staff*

- (1) A chief executive officer of the Commission must be employed under Part 3 of the **Public Sector Management and Employment Act 1998**.
- (2) As many other employees as are necessary to enable the Commission to perform its functions may be employed under Part 3 of the **Public Sector Management and Employment Act 1998**.
- (3) The staff structure of the Commission shall be determined by the chairperson having regard to the Commission's budget.

16. *Appointment of consultants*

- (1) The chairperson may engage persons with suitable qualifications and experience as consultants to the Commission either in an honorary capacity or for remuneration.
 - (2) The remuneration of consultants shall be determined by the chairperson having regard to the Commission's budget.
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PART 4—FINANCE AND REPORTS

17. *Funding of Commission*

The money available to the Commission comprises—

- (a) amounts paid to it under section 383(2) of the **Legal Practice Act 1996**²; and
- (b) money appropriated by the Parliament for the purposes of the Commission.

18. *Control on expenditure*

Money given to the Commission must only be spent by it in defraying expenses incurred by it in performing its functions, including paying any remuneration, salaries or allowances payable to members, staff or consultants.

19. *Annual report*

The Commission must include—

- (a) a brief summary of each reference received by it during the financial year; and
- (b) a statement on the progress made by it during the financial year on each of its references—

in its annual report of operations under Part 7 of the **Financial Management Act 1994**³.

20. *Parliamentary requirement for information*

- (1) The Commission must comply with any information requirement lawfully made of it by a House of the Parliament or a Parliamentary Committee within the meaning of the **Parliamentary Committees Act 1968**.

- (2) In this section "**information requirement**" means a requirement to give information of a specified kind within a specified period relating to—
- (a) the performance by the Commission of its functions; or
 - (b) the exercise by the Commission of its powers; or
 - (c) the Commission's expenditure or proposed expenditure.

21. *Interim reports and reports on references*

- (1) The Commission may from time to time, and must if required to do so under section 5(2)(c), make interim reports on any work under a reference.
 - (2) The Commission must, at the end of its work under a reference, make a final report on the work.
 - (3) The Commission must submit to the Attorney-General copies of every interim or final report under this section.
 - (4) The Attorney-General must cause a copy of every interim or final report submitted to him or her under this section to be laid before each House of the Parliament within 14 sitting days of that House after he or she receives the report.
 - (5) The Commission must make copies of any interim or final report available to the public, whether for purchase or without charge.
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PART 5—MISCELLANEOUS

22. Regulations

The Governor in Council may make regulations for or with respect to any matter or thing required or permitted to be prescribed or necessary to be prescribed to give effect to this Act.

23. Amendment of Legal Practice Act 1996

- (1) In section 383(1) of the **Legal Practice Act 1996**, after "Board" **insert** ", with the approval of the Attorney-General,".
- (2) In section 383 of the **Legal Practice Act 1996**, after sub-section (1) **insert**—
 - "(2) There must be paid to the Victorian Law Reform Commission each year out of the Law Reform and Research Account such amount as the Attorney-General directs.
 - (3) The Board must, at the direction of the Attorney-General, pay out of the Law Reform and Research Account to the Victorian Law Reform Commission, by way of advance on account of an amount to which it may become entitled under sub-section (2), such amount as the Attorney-General directs.
 - (4) Any amount paid by way of advance under sub-section (3) is repayable to the Board by the Victorian Law Reform Commission at the end of the period (not being less than 12 months) that the Board determines and bears interest at any rate that the Board determines.
- (4A) Any repayments received by the Board in respect of an advance made by it under sub-

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Reprint No. 2
as at
15 August
1999. Further
amended by
No. 52/1999.

Victorian Law Reform Commission Act 2000
Act No. 44/2000

section (3) must be credited to the Law Reform and Research Account."

- (3) In section 383(5) of the **Legal Practice Act 1996**, after "Account" **insert** ", after allowing for any amount required to be paid out of the Account under sub-section (2),".

24. *Repeal of Law Reform Commission (Repeal) Act 1992*

No. 84/1992.

The **Law Reform Commission (Repeal) Act 1992** is **repealed**.

Victorian Law Reform Commission Act 2000
Act No. 44/2000

Notes

NOTES

[†] *Minister's second reading speech—*
Legislative Assembly: 4 May 2000
Legislative Council: 25 May 2000

The long title for the Bill for this Act was "to establish the Victorian Law Reform Commission and define its functions and powers, to repeal the **Law Reform Commission (Repeal) Act 1992** and amend the **Legal Practice Act 1996** and for other purposes."

- ¹ The index attached to this Act does not form part of this Act and is provided for convenience of reference only.
- ² Section 383(2) of the **Legal Practice Act 1996** provides that there must be paid to the Commission each year out of the Law Reform and Research Account such amount as the Attorney-General directs. This is an account in the Public Purpose Fund established under section 372 of that Act and maintained by the Legal Practice Board.
- ³ Under Part 7 of the **Financial Management Act 1994** the Commission will be required to prepare a report of its operations during each financial year and submit it to the Auditor-General. The chief executive officer of the Commission will be required to prepare, and submit to the Auditor-General, financial statements of the Commission for each financial year. The report and audited financial statements are required to be laid before Parliament.

INDEX

<i>Subject</i>	<i>Section</i>
Act	
commencement	2
consequential amendments	23
purpose and outline	1
Attorney-General	5, 7, 21
Chairperson	
acting	7, 11
allocation of references	13
appointment	7
constitution of Divisions	13
Consultants	16
Definitions	
chairperson	3
Commission	3
Division	3
information requirement	20
member	3
reference	3
Divisions	13-14
Information requirements of Parliament	20
Meetings	
of Commission	12
of Divisions	14
Property	
limits on Commission's power to deal in	6
References	
allocation by chairperson	13
functions of Commission regarding	5
reporting on	21
Regulations	22
Repeals	24
Reports	
annual	19
on information required by Parliament	20
on references	19, 21
Victorian Law Reform Commission	
chairperson	7, 13
compliance with information requirements	20
Divisions	13-14
establishment	4
functions	5
funding and expenditure	17-18
members	7-9
meetings	12
powers	6
reports	19-21

Victorian Law Reform Commission Act 2000
Act No. 44/2000

Index

<i>Subject</i>	<i>Section</i>
staff	15
vacancies, resignations, removal from office	10
validity of acts or decisions	11
