

Review of the Labour and Industry Act 1958

'In progress' Draft Report

Victorian Competition and Efficiency Commission

June 2007

1 Introduction

1.1 Background to the Inquiry

This review is being conducted in the context of the Victorian Government's commitment to repeal old and redundant legislation and to reduce regulatory overlap and duplication. Old and redundant regulation can impose unnecessary costs and create uncertainty, which may adversely impact on businesses and the community. Such legislation may also hinder the achievement of the government's economic, social and environmental objectives as it may conflict with other policy instruments or it may not be the most efficient and effective way to achieve policy objectives. The policy problems themselves, or the economic and social environment, may also have changed since the legislation was introduced and better instruments may now be available to achieve the government's policy objectives.

The *Labour and Industry Act 1958* (the Act) was Victoria's primary source of workplace regulation when it was first enacted. Among other things, it played an important role in regulating working conditions, wages and occupational health and safety. However, over time it has been significantly amended and many of its original functions have now been replaced by other legislative tools.

The remaining provisions of the Act cover a mixed range of issues such as conditions in factories, restrictions on the delivery of bread and the appointment of inspectors. The substantive part of the current Act is 53 pages long (excluding the table of amendments and explanatory notes). The extent to which the Act has been amended over time is indicated by the fact that the table of amendments is 12 pages long.

The majority of amendments made have been to repeal provisions in the Act. One way of assessing the extent to which the Act has been amended is to consider the number of sections in the original Act, which remain in the current version. The Act originally contained 207 sections when it was passed in 1958, of which 35 remain (approximately 17 per cent of the original Act). If parts 1, 2 and 10 (introductory, administration and general and supplementary) are excluded in order to focus on those parts of the Act which impose obligations on business or have some material impact, then only 14 sections, or 8 per cent, of the original Act remain. In addition, there are no current regulations made under the Act.

The purpose of this review is to determine whether repealing the Act would place an undue burden on any sections of the community, or prevent the achievement of the Victorian Government's policy objectives.

1.2 Conduct of the inquiry

After receipt of the terms of reference, the Commission advertised the inquiry in the daily press (the Age and Herald-Sun newspapers) as well as in the Victorian Government Gazette. The terms of reference and inquiry particulars were also listed on the Commission's website.

The Commission then released an issues paper explaining the scope of the inquiry and calling for public submissions. The issues paper was also sent to approximately 25 government, industry and labour organisations expected to have a possible interest in the inquiry, and to the Commission's general contact list.

In response to the Issues Paper and advertisements, the Commission received 4 submissions to the inquiry.

1.3 Scope of the inquiry

The terms of reference determine the scope of the inquiry. In particular, the Commission was to:

- identify provisions in the Act that are redundant (not enforced or covered by other legislation or regulation); and
- assess the impact of repealing the Act.

In undertaking this assessment, the Commission was directed to provide a report which:

- outlines the policy objectives of the legislation;
- provides indicative estimates of the compliance and administrative burdens of the legislation;
- for those provisions of the Act that are not redundant, reviews alternative means of achieving the same policy outcome, at lower cost to the community, including by non-regulatory means;
- provides indicative estimates of the likely savings and implementation costs;
- assesses the relationship between the Act's objectives and its current provisions;
- identifies and considers whether provisions transferred to other pieces of legislation maintain, at a minimum, the broad objective of the Act; and

- reviews any other institutional or structural issues that affect the efficiency or effectiveness of this legislation in achieving the intended policy outcomes.

1.4 The Commission's approach

Undertaking a review of legislation which has been in place for considerable time and which has been extensively amended presents challenges. The Commission was aware of the need to examine carefully the relevance and continued need for all provisions in the Act before drawing any conclusions or making any recommendations.

The importance of carefully examining existing legislation before recommending its repeal was noted by a number of speakers during the consideration of the Statue Laws Repeals Bill recently debated in Parliament. For example, the member for Mill Park (a past member of the Scrutiny of Acts and Regulations Committee) noted that:

It is not as simple as just identifying Acts that may seem quaint or obsolete. ... Great care must be taken to ensure there will be no unintended consequences on other laws which may make reference to the Act that is being recommended for repeal or to which the proposed repealed Act may refer. That is very important so that Parliament is not left having to revisit repealed Acts or repeal bills such as this for the purpose of correcting oversights or unintended consequences of Acts that we may have repealed. (Hansard 2007, p. 1214)

The Commission's research was aimed at answering the following questions, which would inform the Commission's thinking and development of recommendations:

- What are the objectives of the Act?
- How has the Act been amended over time and what was the rationale for the amendments?
- What evidence is there that the provisions of the Act continue to be used? For example, is there evidence that inspections have been conducted on the basis of the Act and what prosecutions have taken place?
- Are there any links between the Act and other legislation or regulations; for example, are there cross references between legislation?
- Are there any regulatory instruments or regulations put in place by the Act or which require the Act's continuation?

- Are there any provisions in the Act which overlap or duplicate other legislation?
- What are the likely implications if the Act was repealed?

The Commission's research focused on searching out information sources and data which would help answer these questions and provide a basis for making informed recommendations.

The public inquiry process is an important source of information because it draws on the experiences and knowledge of those affected by the Act. There was little interest in the inquiry despite the VCEC writing to over 300 stakeholders and advertising widely. Only four submissions were received from inquiry participants. However, this in itself provides information to the Commission as to the importance and continued relevance of the Act. If the Act were having significant positive or negative impacts on sections of the community they would have a strong incentive to raise the matter with the Commission.

In addition, there has not been extensive comment or discussion of the Act in recent years, which was confirmed through the Commission's approach of searching available information sources for references to the Act.

The approach adopted by the Commission involved identifying and consulting information sources which would help provide the information required to answer the types of questions listed above. These sources included:

- Submissions from industry participants – an essential part of the public inquiry process, drawing on those with direct experience of the Act
- Previous inquiries and reports – a number of previous reports were identified. These helped provide information on the thinking and analysis which led to amendments to the Act over time.
- Government responses to previous inquiries and reports – this source provided information on the rationale for amending the Act and the Government's thinking as to the role of the Act at the time.
- Relevant journals and academic sources – these provided a significant amount of historical information and analysis of the changing role of the Act and the rationale for many of the amendments.
- Search of legislation – an important research step to identify cross references between different legislative instruments.
- Search of Hansard – to identify topical references to provisions in the current Act, but also to examine second reading speeches both for the

Labour and Industry Act, but also other major amending pieces of legislation.

The Commission's public inquiry process and other research enabled it to develop an understanding of:

- the historical development of the Act, and how it has changed over time
- its current relevance and importance to the Victorian community.

This information and the conclusions drawn are presented in this report.

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2 Assessment of the Labour and Industry Act

2.1 Introduction

This chapter presents the Commission's assessment of the remaining provisions of the Act and the implications of its repeal. This chapter directly addresses the two key elements of the terms of reference, which require the Commission to:

- identify provisions in the Act that are redundant
- assess the impact of repealing the Act.

The chapter begins with a brief history of the Act, and discusses some key past reviews. The objectives of the Act are then considered and the continued relevance of its remaining provisions assessed. The chapter concludes with an assessment of the impacts of repealing the Act.

2.2 Brief history and past reviews

The 1958 version of the Act was created through consolidating a number of Acts, including the Labour and Industry Act 1953 and other Acts affecting matters such as long service leave, wages boards, shops etc.¹ The introduction to the Act describes it as:

An Act to consolidate the Law relating to the Ministry of Labour and Industry, Industrial Matters and the Supervision and Regulation of Factories, Shops and other Premises.

The Act evolved from the Factories and Shops Act 1885, which was enacted following a Royal Commission on Employees in Shops conducted in 1882. The original Act was designed to improve conditions in a number of 'sweated trades'. However, over time the coverage and importance of the Act increased as it came to regulate a wider range of matters and more workers. Writing in 1965, Hince highlighted the wide ranging coverage and importance of the Labour and Industry Act in Victoria:

This statute provides for a general regulation of factories and shops including such matters as conditions of employment, trading hours and hours of work, safety provisions, annual leave and long service leave and the employment of junior workers. And this same statute provides the legislative frame-work for the

¹ The Act consolidated the following: Labour and Industry Act 1953, Labour and Industry (Long Service Leave) Act 1955, Labour and Industry (Shops) Act 1955, Labour and Industry (Long Service Leave) Act 1956, Labour and Industry (Wages Boards) Act 1956, Labour and Industry (Amendment) Act 1957, Labour and Industry (Long Service Leave) Act 1957, and Labour and Industry (Carriage of Bees) Act 1957.

operation of the wages boards and the Industrial Appeals Court. (Hince, 1965, p. 164)

Importantly from an historical perspective, the Act provided the basis for the wages board system which determined wages in a range of industries and had been in existence since 1896.²

Table 2.1 provides an overview of the parts and provisions of the Act as enacted in 1958. It highlights the diverse range of matters originally regulated by the Act. The final column of the table shows sections of the original Act which have been repealed (shaded) and those which remain (unshaded).

Table 2.1 The Labour and Industry Act 1958 (as originally enacted)

Parts	Division Titles	Sections	Sections Remaining (Unshaded)
Part 1: Introductory		ss. 3-7	
Part 2: Administration	Division 1: The Department	ss. 8-14	
	Division 2: General	ss. 15-19	
Part 3: Industrial Tribunals	Division 1: Constitution of Wages Boards	ss. 20-29	
	Division 2: Powers of Wages Boards	ss. 30-33	
	Division 3: Determinations	ss. 34-41	
	Division 4: Industrial Appeals Court	ss. 42-48	
Part 4: Registration of Premises		ss. 49-55	
Part 5: Factories	Division 1: Conditions in Factories	ss. 56-65	

² For a discussion of the wages board system in Victoria see: Hince (1965), (1974), (1980) and Fox (1984).

	Division 2: Outside Workers	ss. 66-69	
	Division 3: Females and Young Persons	ss. 70-73	
	Division 4: Hours of Work	ss. 74-77	
Part 6: Shops	Division 1: Introductory	ss. 78-79	
	Division 2: Trading Hours, General	ss. 80-83	
	Division 3: Trading Hours in Metropolitan District	ss. 84-87	
	Division 4: Trading Hours Outside Metropolitan District	ss. 88-90	
	Division 5: General	ss. 91-98	
Part 7: Various Trades	Division 1: Carriage of Goods	ss. 99-101	
	Division 2: Bread	ss. 102-106	
	Division 3: Meat	ss. 107-108	
	Division 4: Milk	s. 109	
	Division 5 Watchmen	s. 110	
	Division 6: Billposting	s.111	
	Division 7: Stamping Furniture	ss. 112-121	
Part 8: Places and Conditions of Employment	Division 1: Places of Employment	ss. 122-127	
	Division 2: Conditions of Employment	ss. 128-141	
	Division 3: Annual Holidays	ss. 142-149	
	Division 4: Long Service Leave	ss. 150-164	

	Division 5: Apprentices and Improvers	ss. 165-173	
Part 9: Safety Provisions	Division 1: Machinery Guards, Precautions against Accidents etc	ss. 174-181	
	Division 2: Steam Engines and Boilers	ss. 182-184	
	Division 3: White Phosphorus	s. 185	
Part 10: General and Supplementary	Division 1: Inspections	ss. 186-88	
	Division 2: Legal Proceedings	ss. 189-199	
	Division 3: Offences and Penalties	ss. 200-205	
	Division 4: Regulations	ss. 206-207	

2.2.2 Reviews of the Act

The Act was subject to a major review of all provisions in 1975-8, and two reviews focusing on the provisions regulating shop trading hours were undertaken in the 1980s.³ These reviews led to substantial amendment of the Act – largely the repeal of many provisions and sections, the majority of which were subsequently enacted in new legislation to achieve better the government’s objectives (table 2.1 highlights the large number of amendments which have been made to the Act)

The most wide ranging review was undertaken by the Committee for Review of the Labour and Industry Act 1958 (hereafter referred to as the Review Committee). The Review Committee comprised employer, labour and

³ Earlier elements, which subsequently formed part of the Act had also been subject to a number of reviews including: a Royal Commission on the operation of the Factories and Shops Law of Victoria in 1902-3, an inquiry to invite and examine suggestions for amendments of the Factories and Shops Acts between 1941-49 which led, in large part, to the development of the Labour and Industry Act 1953. The Minister of Labour and Industry also held a major conference on trading hours in 1957, which included employer, employee and consumer groups.

government representatives, and was established by the Minister for Labour and Industry in March 1975. The review's terms of reference were to:

... inquire into the adequacy, relevance and suitability of the provisions of the *Labour and Industry Act*, having regard to present-day requirements, to consider evidence that may be placed before the committee, and to report to the Minister with recommendations.

The review presented four reports to the Victorian Government. The first, in April 1976, addressed the system of wage fixing boards established by the Act. The second report, presented in November 1976, reviewed the sections of the Act dealing with the marketing of bread and shop trading hours. The third report, presented in December 1976, dealt with wage fixing tribunals in the public sector and provisions of the Act which discriminated against women. The fourth and final report, presented in March 1978, dealt primarily with industrial safety, health and welfare but also made recommendations with respect to 'outside workers', long service leave and miscellaneous provisions of the Act. The Committee published a consolidated report in 1978 'for ease of reference' (Committee for Review of the Labour and Industry Act 1958, 1978, p. 1).

The Review Committee received a large number of submissions and held meetings and hearings with interested parties during the course of its inquiry. The reports are, however, brief, with little documented discussion and analysis supporting the recommendations. A large number of recommendations are simply listed with no supporting discussion. This lack of supporting analysis was criticised by some. For example, Fristacky, commenting on the first report, which led to an overhaul of the wages board system in Victoria stated:

In general, the report represents a consolidation of the criticisms and submissions presented to the Review Committee ... This is possibly understandable in an eleven page report by a part-time Committee, but after a year's inquiry a more thorough analysis could be expected. (Fristacky, 1977, pp. 335-336)

However, in spite of the lack of published analysis, the Government accepted the major recommendations of the review. This resulted in many provisions being repealed and enacted in new legislation, such as the:

- Industrial Relations Act 1979
- Industrial Safety, Health and Welfare Act 1981
- Occupational Health and Safety Act 1985
- Accident Compensation Act 1985.

Two reviews were subsequently conducted into the provisions of the Act regulating shop trading hours in Victoria. The first review was initiated in 1981

by the Minister for Labour and Industry⁴, but was terminated in 1982 following a change in Government at the 1982 State election.

In 1985 the Victorian Government directed the Regulation Review Unit (RRU) to undertake an inquiry into:

- The shop trading anomalies in the Labour and Industry Act 1958
- The form and level of penalties for breaches of that Act.

Although the terms of reference were limited and did not call for a general examination of shop trading hours, the review recommended, among other things, the introduction of a general Shops Act. It recommended that the new Shops Act should provide a clear, simple and coherent regulatory framework for all shops and that the Act have a clear statement of objectives (RRU, 1985, p. 5).

The relevant Minister (the Minister for Industry, Technology and Resources) noted in his second reading speech for the Shop Trading Bill that the government accepted the review's call for the:

... replacement of the frequently amended and often confusing provisions of the Labour and Industry Act which relate to shops, with a simpler, cohesive, Shop Trading Act drafted in plain English. (Hansard, 1986, p. 2966)

The Shop Trading Act 1987 was subsequently enacted and the provisions of the Labour and Industry Act relating to shop trading hours repealed.

2.3 Assessment of the current Labour and Industry Act

The current Labour and Industry Act consists of the residual provisions remaining after the substantial amendments made to the original Act – largely as a result of the reviews conducted in the 1970s and 80s. This section examines the objectives of the Act, and assesses the continued relevance of the remaining provisions.

2.3.1 Objectives of the Act

Part of the terms of reference for this review direct the Commission to outline the policy objectives of the Act. This can encompass consideration of both the original objectives of the Act when it was enacted in 1958, and the current

⁴ Committee for Review of the Shop Trading Hours Provisions of the Labour and Industry Act 1958 (1982). This report is also often referred to as the Prior Committee Review, after the Chair of the Committee.

objectives being pursued by the Act. Clear identification of the objectives is important because, as stated by the Victorian Guide to Regulation:

The objectives should be a clear statement of what end is to be achieved. ... Proper identification of the objectives is important because this will help to identify the best approach to addressing the problem. ...

Clear objectives also enable more effective monitoring to assess the success of the regulation in achieving its stated aim. (Government of Victoria, 2007, pp. 3-5-3-5.)

The original objectives of the Act

Sources for determining the original objectives of the Act include: the Act itself, the second reading speech when the Act was introduced into Parliament, other statements by the Government or relevant minister and other documents referring to the Act published at the time.

Unfortunately, neither an examination of the Act itself, nor the second reading speech provides a clear indication of the original objectives of the Act.

The Act itself does not contain an explicit statement of objectives; however, it does confer wide ranging 'duties' on the Minister responsible for enforcing the Act. In the current version of the Act, Division 1, Section 10 sets out the general powers and duties of the Minister, which are:

... to take all such steps as may be desirable to secure the preparation effective carrying out and co-ordination of measures conducive to the industrial welfare of the people, including measures relating to –

- (a) conditions of employment generally including wages hours of work rest periods and holidays;
- (b) establishment of employment offices and the prevention and mitigation of unemployment;
- (c) the employment of children young persons including vocational guidance;
- (d) industrial safety health and welfare including the control of dangerous methods and materials the guarding of machinery, the prevention of accidents, the control and regulation of the industrial aspects of noxious trades, industrial lighting and ventilation, and the provision of amenities;
- (e) industrial relations including the prevention and settlement of industrial disputes;
- (f) the training of persons for industrial services;
- (g) the initiation and direction of research and the collection preparation publication and dissemination of information and statistics relating to any of the matters referred to in this section;

- (h) the encouragement and the establishment development and expansion of industries throughout Victoria.

This part of the Act provides a long list of duties but does not provide a clear indication of the specific objectives of the Act. It covers issues ranging from wages and conditions of work in shops and factories to industrial development and expansion in Victoria.

In relation to section 10 of the Act, the Review undertaken in the 1970s recommended that:

While this has some historical interest as being a list of functions considered appropriate in 1953 for the Department of Labour and Industry to undertake, it seems now rather meaningless and should therefore be repealed. If it is retained, however, it should be rewritten in more realistic terms. (Review Committee 1978, p. 5)

Similar sentiments are expressed by the Department of Innovation, Industry and Regional Development (DIIRD), which notes that:

The 'duty' provision appears to reflect out-dated drafting practices and contains no substantive obligations. It reflects a redundant drafting provision. (sub. 3 p. 2)

Another possible source for identifying the original objectives of an Act is the second reading speech.

There is no second reading speech for the 1958 version of the Act because it was a consolidation of a number of Acts relating to conditions in shops and factories. However, the major component of the Act is the 1953 version of the Labour and Industry Act. The second reading speech for the Labour and Industry Act 1953 indicates that it was:

... intended to improve the machinery for providing proper working conditions and the just settlement of any differences which may arise between employers and employees are introduced by this Bill. (Hansard, Assembly, 1953, p.1975)

As with the list of duties referred to in the Act, this statement indicates the broad scope of issues which are potentially subject to the provisions of the Act but with no detail. There is not, for example, an explanation of how the various provisions are meant to contribute to the intended outcome of the Act.

The Regulation Review Unit (1985) in its assessment of the part of the Act regulating shop trading hours commented that:

It is a century old statute that is a monument to ad hoc decision makers and to narrow self-interests. The Act attempts to meet a number of competing purposes but, like many old statutes, does not have any objectives prescribed in its text. (RRU 1985, p. 41)

Current objectives of the Act

Sources for determining the current objectives of the Act include the Act itself and any other statements or documents referring to the current use of the Act.

The Act itself could provide information as to its current objectives if such objectives had been added to the Act and amended over time to reflect the Act's changing role. However, as noted above, the list of 'duties' in the Act does not provide a satisfactory indication of the objectives of the Act and the list has only been amended twice over time and so is unlikely to remain relevant to the present operation of the Act.⁵ Nor have the amendments sought to help clarify the objectives of the Act.

The Commission has been unable to find any other policy documents commenting on the current role and objectives of the Act.

It is therefore difficult to identify the specific objectives the Act is currently trying to achieve other than to promote 'industry welfare' through a series of measures listed in section 10. Many, if not all, of the 'duties' listed in the Act are now subject to more modern legislation.

2.3.2 Assessment of the remaining provisions

The terms of reference for the review direct the Commission to identify provisions in the Act which are redundant. The terms of reference indicate that a provision is redundant if it:

- is not enforced, or
- is covered by other legislation or regulation.

It is important to note that the criteria for redundancy specified in the terms of reference only require one element to be demonstrated to prove redundancy. This is a weaker test than if both were required to prove redundancy.

The following sections of the report outline each remaining substantive part of the Act and assess the continued relevance of the remaining provisions.

Part 1 - Introductory

Part I of the Act provides introductory material relating to the coverage of the Act, including provision for the Act to apply to the Crown and the water

⁵ Duty (d), which related to industrial safety, health and welfare, was repealed by the Occupational Health and Safety Act 1985. Duty (f), which related to the training of persons for industrial services, was repealed by the Vocational Education and Training Act 1990.

boundaries of municipal councils.⁶ Part 1, Section 3 of the Act is concerned with the definition of terms used in the Act. These include for example, ‘bread’, ‘furniture’, ‘shop’ and a range of other common terms used in the Act.

The section also provides a definition of ‘factory’ (box 2.1), which continues to be used as the relevant definition of a factory in two current Acts:

- The Education and Training Reform Act 2006
- Pipelines Act 2005.

The definition of factory provided in Section 5.4.1 of the Education and Training Reform Act 2006 states that ‘factory’ means factory within the meaning of the Labour and Industry Act 1958’. This definition is important for the purposes of regulating school students’ participation in work experience programs.

The Pipelines Act 2005 regulates the construction and operation of pipelines in Victoria⁷. Schedule 1 details pipelines which are excluded from the Act, and these include a pipeline situated wholly within a ‘factory within the meaning of the Labour and Industry Act 1958 and designed for use solely for the purposes of the factory’.

Box 2.1 Definition of a ‘factory’

The Labour and Industry Act provides the following definition of a ‘factory’:

"factory" means any premises or place where any manufacturing process is carried on and where-

(a) two or more persons are directly or indirectly employed in such process (whether on their own account or behalf or for hire or reward); or

(b) if-

(ii) steam water gas oil or electric power (exceeding .4 kilowatts) is used in any manufacturing process; or

(iv) any process is used involving mixing or pasting or smelting in connexion with the manufacture or repair of electric accumulators or involving the use of a compound of lead; or

(v) any bread or pastry is made or baked for trade or sale or any confectionery or cereal food for human consumption is prepared or manufactured for trade or sale; or

(vi) fish or poultry are prepared for trade or sale by wholesale -

one or more persons is so employed - and includes any premises or place where electricity is generated or mechanically transformed for the supply of heat or light or

⁶ Section 5 requires that where a municipal council is bounded by a lake or sea-shore; the Act applies in the lake or sea for a distance of 5 kilometres from the boundary.

⁷ The Act came into force on 1 April 2007.

power or where coal gas is made and any clay pit or quarry worked in connexion with and occupied by the occupier of any pottery or brickyard; but does not include any part of a poultry farm where poultry are not dressed for trade or sale by wholesale;

Source: Labour and Industry Act 1958

The definition of a ‘factory’ currently in the Act appears to be outdated and unnecessarily complex. The definition has not been reviewed or amended for some time.

However, a definition of ‘factory’ remains relevant for both the Education and Training Reform Act 2006 and the Pipelines Act 2005. One issue is whether a single definition is appropriate in both circumstances, and second, even if a single definition remains relevant, whether it should remain in the Labour and Industry Act or be incorporated into the Act which used the definition.

The issue of alternative means of dealing with non-redundant provisions of the Act is considered in section 2.4.4.

Part 2 - Administration

In addition to setting out the duties of the Minister (discussed in the previous section examining the objectives of the Act) and establishing a Department to implement the Act, Section 15 makes provision for the employment of ‘inspectors of factories and shops’. Section 16 makes it an offence under the Act for any departmental officers or employees to reveal trade secrets. Section 17 requires the Secretary of the Department to prepare an annual report for the Minister, which is to be presented to Parliament. No annual reports have been presented to Parliament for since 1985⁸.

DIIRD (sub. 3) notes that the section of the Act establishing the Department of State and Regional Development has been repealed by the Public Administration Act 2004, which came into effect on 1 January 2007.

There are currently no inspectors employed under the Act. DIIRD (sub. 3, p.1) indicates that there have been no inspectors employed under the Act since at least 1992.⁹ And the duties and conduct of public sector employees is now subject to the Public Administration Act 2004.

Part 2 of the Act is therefore redundant as the provisions are either duplicated by other legislation or are not actively enforced.

⁸ In 1985 the Department of Labour and Industry was amalgamated with the Ministry of Employment and Training and the Ministry of Industrial Affairs to form the Department of Employment and Industrial Affairs.

⁹ Inspectors employed under the Labour and Industry Act are also inspectors for the purposes of the Bread Industry Act 1959.

Part 3 – Industrial Tribunals

This part of the Act was repealed in 1979 by the Industrial Relations Act.

Part 4 – Registration of Premises

This part of the Act originally required the annual registration of factories and premises and for factory plans to be approved by the Department. Part 4 has been extensively amended and only section 50 remains, which requires the Department to approve plans for new or altered factories.

The Review Committee recommended in 1978 that both the requirement to register factories and shops annually (section 49) and section 50 be retained. They argued it was a valuable tool to keep such premises under review and that local municipalities did not have the resources to survey factory building plans.

Section 49 was subsequently repealed – and a new system of shop registration put in its place by the Shop Trading Act 1987 as recommended by the RRU report (RRU, 1985, p. i). However, section 50 remained in the Act.

No participant to the inquiry has provided any evidence that Section 50 of the Act is currently enforced. In addition, this requirement is redundant as alternative mechanisms are currently used to approve plans for new or altered factories. The Building Commission (sub 1, p. 1) notes that:

The Building Regulations provide for administrative processes relating to plan approvals such as set out in section 50 of the Labour and Industry Act.

Swan Hill Rural City Council (sub. 2, p.1) also argues that the registration of premises provisions contained in part 4 of the Act are covered by other legislation and instruments including the:

- Planning & Environment Act (1987)
- Building Act (1993)
- Building Code of Australia (2006)
- WorkSafe Safety design laws (2005)
- Designing Safer Buildings & Structures (2005)

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AFMEPKI Union, (sub. 4)) argued in favour of the retention of a requirement for departmental approval of alterations and building of new factories, as such a register would:

... provide the Victorian WorkCover Authority with a register of new buildings and alterations for investigating and ensuring compliance with health and safety regulations. (sub. 4, p. 2)

However, given that this provision in the Act is not being currently enforced, its retention would not provide additional information which could be used to inform occupational health and safety inspections of factories.

Data on permits issued for new factory buildings or for extensions and alterations to existing factory buildings are available from the Building Commission. If additional information is required to help identify factories for inspection (and this is a question outside the scope of this review), the Act is not the appropriate legislative mechanism for this purpose.

This part of the Act is therefore redundant as it is not currently enforced and a system for the oversight and approval of factory plans is provided by more recent legislative and regulatory instruments.

Part 5 (heading repealed)

Part 5 of the Act – previously entitled ‘Factories’, but the heading has been repealed – regulated conditions in factories including matters such as safety, health and welfare. The remaining sections in this part are:

- Section 56: requires factories to contain the prescribed amount of space and ventilation – although the Act does not indicate what these amounts are.
- Section 57: requires that fire prevention appliances be kept ready for use (including the provision of fire-buckets full of water).
- Section 60: makes provisions for inspectors to notify councils of any sanitary defects in a factory and requires the local council to make inquiries and take such actions as required.
- Section 61: makes it an offence to allow any part of a factory (where the operations of the factory are generally or occasionally carried out) to be used as a sleeping place, with provisions for sleeping places in bake houses and other proscribed factories.

The Review Committee recommended in the 1970s that section 56 be replaced by a more general provision requiring the occupier or employer to provide a safe system of work. It also noted that sections 57, 60 and 61 (among other sections) appeared to be obsolete.

Section 56 originally contained many more provisions than are currently in the Act. It was substantially amended by the introduction of the Industrial Safety, Health and Welfare Act 1981 – along the lines recommended by the Review Committee. The Minister noted in his second reading speech for the Industrial Safety, Health and Welfare Bill that the bill replaces legal prescriptions with

general principles and a clear outline of the duties and responsibilities of employers and employees. In particular the Minister noted that:

... the specific type provisions now contained in the Labour and Industry Act have been repealed and only those sections which provide general guidance have been re-enacted. (Hansard, 1981, p. 8338)

In light of these comments it is not clear why a single element of section 56 was retained in the Act. Moreover, to the extent that the provision of adequate space and ventilation is an occupational health and safety issue, the matter is covered by the general duties relating to health and safety applying to the designers of buildings or structures under section 28 of the Occupational Health and Safety Act 2004. Section 28 specifies that:

A person who designs a building or structure or part of a building or structure who knows, or ought reasonably to know, that the building or structure is to be used as a workplace must ensure, so far as is reasonably practicable, that it is designed to be safe and without risks to the health of persons using it as a workplace for the purpose for which it was designed.

The Commission received no evidence that section 56 of the Act is currently enforced. In addition, the Building Commission (sub. 1) has indicated that sections 56 and 57 are redundant because these matters are covered by the Building Code of Australia, which has been adopted throughout Australia and provides for national technical uniformity in building controls.

Sections 57, 60 and 61 were found to be obsolete by the Review Committee and there is no evidence that they are currently enforced. DIIRD (sub. 3) also noted that these provisions would be covered by the Building Regulations under the Building Act 1993. It also stated that 'In any event the provisions appear somewhat dated' (sub. 3 p. 3).

The AFMEPKI Union (sub. 4) argued that there is a need to retain a provision similar to section 61 (which prohibits the use of a factory as a sleeping place – with some exceptions) either in the Act, or if the Act is repealed in other legislation in similar terms. The AFMEPKI Union stated that:

The Union's opposition to this [the removal of the section] is based on its direct experience of guest workers being forced to live in the factories they work. These workers are especially vulnerable because of their lack of knowledge of Victorian industrial arrangements and their often non-English speaking backgrounds. (sub. 4, p. 3)

The Commission received no evidence that this section of the Act is being enforced. To the extent that sleeping in factories presents an occupational health and safety risk to workers, it would appear to be a matter more appropriately

addressed by the relevant occupational health and safety regulation than in the Labour and Industry Act.

The provisions contained in Part 5 of the Act are therefore redundant because the matters being regulated are either subject to other regulatory instruments or they are no longer enforced.

Part 6 – Shops

This part of the Act was repealed by the Shop Trading Act 1987.

Part 7 – Various Trades

This part of the Act originally comprised seven divisions, relating to the carriage of goods, bread, meat, milk, watchmen, billposting and stamping furniture. However, all have been repealed except one, which deals exclusively with bread.

Division 2 relating to bread makes it an offence to deliver bread at certain times on a Saturday or Sunday (for example, it is an offence to cart or deliver bread before 6 am or after noon on a Sunday). There are also restrictions on the sale of bread beyond 48.3 kilometres from where it was baked.

Section 104, sub-section 4A lists municipal councils and districts where the restrictions on the carting of bread more than 48.3 kilometres do not apply. However, the list of municipal councils and districts has not been updated to reflect the municipal amalgamations which took place in 1994. Sub-section 5 also permits the Minister to issue certificates of exemption from the 48.3 kilometre restriction.

Evidence presented to the Review Committee suggested that the section was originally intended to protect local bakers in rural areas from competition from larger, more capital intensive bakers. It was therefore considered by some to be a means to protect employment in country towns.

The Review Committee noted that at the time of its report in 1978, Victoria was the only State or Territory which imposed such restrictions on the carting of bread and recommended that the relevant sections of the Act be repealed. If they were retained, the Committee recommended that they be administered by the Department of State Development as ‘... decentralisation is the only possible justification for their retention’ (Review Committee 1978, p. 38).

In 1989 the government introduced the Bread Industry (Repeal) Bill into parliament. The bill was intended to repeal the Bread Industry Act 1959 and to repeal sections 104 to 106 of the Labour and Industry Act 1958 (that is, those sections relating to bread). In the second reading speech for the Bill, the Minister for Labour stated that the restrictions on the delivery of bread contained in the Labour and Industry Act were:

... inconsistent with the government's objectives of achieving a market in which choice is maximised and price minimised. There is evidence that prices in country areas are not subject to the same pressures as in the metropolitan market. Repeal of the legislation will allow both small and large manufacturers to compete in larger markets and to allow specialty producers greater access to new markets. (Hansard, Assembly 1989, pp. 1788-1789)

Opponents of the Bill argued that the repeal of the relevant sections of the Labour and Industry Act would lead to the closure of small country bakeries and the loss of jobs in rural areas. An opposition member stated that the provisions in the Act:

... represented a deliberate attempt to enhance and protect employment opportunities in rural Victoria. ... Further, many bakeries could go to the wall if the Bill [Bread Industry (Repeal) Bill] is passed. (Hansard 1990, p. 309)

The Bill was not passed by the Parliament.

However, the issue remained alive for some time following the defeat of the bill. The Act provides for the Minister to issue exemption certificates to allow for the delivery of bread outside the prescribed limits. The increasing number of exemptions being issued was raised a number of times in Parliamentary debates during 1991. For example, in May 1991 the member for North Western province in the Legislative Council raised for the attention of the relevant Minister:

... the decision by the government to issue a large number of exemptions under section 104(4) of the Labour and Industry Act. That section prevents the cartage of bread over distances in excess of 48.3 kilometres. ... Those rural bakeries directly employ about 600 people and the latest move will effectively lead to the loss of hundred of jobs. (Hansard, May 1991, p.1902)

The issue has not been referenced in Hansard since 1991.

There is also no evidence that these provisions of the Act have been enforced in recent years.

The structure of the bread industry has also changed significantly over time, making such a provision less relevant. There has been a growth in the proportion of bread supplied by manufacturing chains or franchises which bake locally but enjoy the economies of being part of a large organisation. BRI Australia (2003) noted that franchised bread production is the fastest growth area in the baking industry in Australia. The three main franchise bakeries are estimated to have 279 outlets in Victoria (BRI Australia, 2003, p. 19).¹⁰ The proportion of bread baked locally in supermarkets has also increased significantly over time. BRI Australia

¹⁰ The franchise bakeries are Bakers Delight, Brumby's and Banjo's.

estimates that in 2003 there were 316 in-store bakeries in the major supermarkets in Victoria. (2003, p. 20)

These provisions in the Act, if enforced, attempt to create local monopolies for the supply of bread – with the intention of protecting local bakeries from competition. However, the Act’s reference to transport from the point of baking is largely circumvented by the trend to franchise and supermarket bakeries which compete with ‘traditional’ local bakeries. If enforced, the current provisions are more likely to harm innovative specialist local bakers from reaching a wider market.

In addition, such provisions are out of step with more modern notions of competition and competition policy. If the government wished to support local bakeries there are more direct and transparent policy instruments available to achieve that objective, such as direct subsidies.

This part of the Act is redundant because it is no longer enforced. It is also inconsistent with the Victorian Government’s COAG commitments to implement broader competition policies. In addition, should the government wish to support rural bakeries, the attempt to create local monopolies is unlikely to be the best policy instrument.¹¹

Part 8 – Places and Conditions of Employment

This part of the Act comprises two divisions: the first relating to places of employment; and the second relating to conditions of employment.¹²

Division 1 relating to places of employment contains the following sections:

- Section 122 requires certain information to be posted in the workplace – including the name and address of the inspector for the district, applicable holidays, etc.
- Section 123 requires that factory walls and ceilings be lime washed once every fourteen months (painted or varnished surfaces are to be washed with soap and water).
- Section 125 specifies conveniences for employees including the requirement to construct ‘privies and urinals’ for workers, provide ‘ventilation as prescribed’ and provide ‘such heating and cooling devices

¹¹ If the Government wished to retain such a provision, one option suggested by DIIRD is that it could be moved to the Bread Industry Act 1959 (DIIRD, sub 3, p. 3).

¹² Part 8 of the Act originally comprised 5 divisions, however, three relating to annual holidays, long service leave and apprentices and improvers have been repealed.

plant and equipment as are prescribed'. However, there is no indication in the Act as to what are the specific requirements.

The Review Committee (1978, p. 38) argued that the requirements of section 123 and 125 would best be achieved through regulations rather than be contained in the Act. It also noted that section 123 may be redundant.

The AFFEPKI Union (sub. 4) argued that there should be a requirement to provide separate toilet facilities for both male and female workers - as provided for in section 125 the Act. The Union notes that under existing Occupational Health and Safety Codes of Practice there is a ratio system, which may result in only one toilet being available on a worksite.

However, the Building Commission (sub. 1) notes that section 125 is redundant as the requirement to provide toilet facilities is adequately dealt with by the Building Code of Australia.¹³ Swan Hill Rural City Council (sub. 2) also argues that all the provisions contained in Part 8 of the Act relating to places and conditions of employment are now covered by other, more recent, legislation and instruments.

There is no evidence that any of these provisions of the Act are currently enforced.

Division 2 relates to conditions of employment. Only Section 139 remains; the other sections in the division have been repealed. Section 139 requires that factories and warehouses (with certain exceptions) be closed on ANZAC day. The exemptions are listed in schedule seven of the Act.

The Review Committee recommended that this section should be repealed on the grounds that:

It is not known why these particular places of employment should be discriminated against. The Labour and Industry Act is designed principally to govern and regulate relationships between employers and employees with regard to wages and conditions of employment and safety, health and welfare and is not considered to be the appropriate vehicle for enforcement of the observance of Anzac Day. (Review Committee, 1978, p. 39)

The Review Committee recommended that if the substance of section 139 is to be retained it should be included in the ANZAC Day Act 1958.

¹³ Part F2 'Sanitary and other facilities' in volume one of the Building Code of Australia deals with requirements relating to toilet facilities. Table F2.3 provides that – Unisex facilities may be provided instead of separate facilities for each sex, if not more than 10 persons are employed; and facilities may be combined if the majority of employees are of one sex and not more than 2 employees are of the other sex, provided the facilities for females include adequate means for the disposal of sanitary towels, and the facilities are separated by means of walls, partitions and doors to afford privacy. (Building Commission 2007b)

The ANZAC Day Act 1958 currently regulates the holding of sporting events, the opening of cinemas and showing of films for payment or donation and the holding of other entertainment on ANZAC day. It does not provide for a general holiday on ANZAC day. (The Act has been substantially amended over time and once regulated a wider range of activities). This Act does not therefore duplicate the provisions of the Labour and Industry Act.

Public holidays in Victoria are currently regulated by the Public Holidays Act 1993. The Act specifies ANZAC day as a public holiday and hence there is already a general provision for the ANZAC day holiday.

However, the Public Holidays Act regulates the entitlements of employees on public holidays. It does not regulate operating hours or what activities can be undertaken on ANZAC day – these are regulated by a number of specific Acts, including, among others, the:

- Shop Trading Reform Act 1996 (which specifies which shops must close between 12.01 am and 1:00 pm on ANZAC Day)
- Liquor Control Reform Act 1998 (which imposes restrictions on when licensed premises can serve alcohol on ANZAC Day)
- Racing Act 1958 (which regulates horse racing on ANZAC Day)
- Labour and Industry Act 1958 (which requires all factories, except those with a specific exemption, to close on ANZAC Day and for their employees to be given a holiday).

The Scrutiny of Acts and Regulations Committee (SARC) of the Victorian Parliament conducted a Parliamentary review of ANZAC Day laws in 2002.¹⁴ SARC (2002) found considerable scope to consolidate the laws relating to ANZAC Day and recommended that this be done in a new Act – the ANZAC Day Commemoration Act. It also recommended that the existing provisions in the Labour and Industry Act be retained in that Act.

The Government, in its response to the SARC review, indicated that it did not support the recommendation to consolidate laws relating to ANZAC Day into a single new Act. The Government of Victoria (2003) responded that:

While the Government supports the principle that an ANZAC Day Act should broadly enshrine the observance of ANZAC Day in legislation, it is more appropriate that the particular operative provisions should remain in the Acts which cover their subject matter, as a matter of good legislative policy. (p. 4)

¹⁴ The Scrutiny of Acts and Regulations Committee (2002) identified nine statutes relating to ANZAC Day in Victoria.

The Victorian Government accepted SARC's recommendation that the ANZAC Day provisions of the Labour and Industry Act remain.

The Act has been so extensively amended over time that it is difficult to argue that it continues to 'cover its subject matter'. The Commission appreciates the great significance of ANZAC Day and the need to promote its observance. However, the Commission is in agreement with the views of the Review Committee expressed in the 1970s that the Act is not the appropriate mechanism to promote the observance of ANZAC Day.

All the provisions in this part of the Act, except for section 139 relating to ANZAC Day, are therefore redundant as they are either not enforced, or in the case of the majority of provisions their intent is achieved through more modern policy instruments. The question of how to deal with the non-redundant provision of the Act is considered in section 2.4.4.

Part 10 – General and Supplementary

This part of the Act sets out the power of inspectors, and stipulates how legal proceedings for offences under the Act can be initiated and conducted. Division 4 also makes provisions for a wide-ranging regulation making power.

There are no inspectors currently employed under the Act and no prosecutions have been initiated under the Act for some time.

DIIRD (sub. 3) notes that according to the Office of the Chief Parliamentary Counsel website there are no regulations currently in force under the Act. It should also be noted that Section 5 of the Subordinate Legislation Act 1994 automatically revokes statutory rules 10 years after they are made (unless revoked sooner).

DIIRD notes that 'These are consequential provisions, and will be obsolete if the remainder of the Act is repealed' (sub. 3, p. 3).

However, the Bread Industry Act 1959 (BIA) makes reference to this part of the Act. Section 10 of the BIA makes every inspector under the Labour and Industry Act and every other person authorised by the Minister to be an inspector for the purposes of the BIA. The powers of these inspectors are as specified in Division 1 of Part 10 of the Labour and Industry Act.

Another link between the two Acts is that section 11 of the BIA relating to prosecutions states that the provisions of section 191 of the Labour and Industry Act, which relate to proceedings against offenders, shall apply in respect of proceedings under the BIA.

In addition, section 14 of the BIA, which deals with appeals against convictions, states that section 47 of the Labour and Industry Act applies with respect to

offences against the BIA. However, section 47 of the Labour and Industry Act was repealed in 1979 by the Industrial Relations Act.

In terms of the Labour and Industry Act, all provisions in Part 10 are redundant as there are no inspectors and have been no prosecutions under the Act for some time. The implications of the link between the Act and the Bread Industry Act 1959 are considered in section 2.4.4.

2.4 Impact of repealing the Act

The second major element of the terms of reference for the review require the Commission to assess the impact of repealing the Act. The Commission is also to consider whether the repeal of the Act would place an undue burden on any section of the community, or prevent the achievement of the Government's policy objectives.

2.4.1 Achieving the objectives of the Act

Part of the terms of reference for the inquiry ask the Commission to provide a report which:

- Outlines the policy objectives of the legislation
- Assesses the relationship between the Act's objectives and its current provisions
- Identifies and considers whether provisions transferred to other pieces of legislation maintain, at a minimum, the broad objective of the Act.

This section discusses how the repeal of the Act would impact on the achievement of its objectives.

The Act does not contain specific objectives (see 2.3.1); rather it imposes wide ranging duties on the Minister to 'secure the preparation effective carrying out and co-ordination of measures conducive to the industrial welfare of the people'. Section 10 then provides a list of matters which are encompassed by this general duty.

It is difficult to relate the remaining provisions of the Act to achieving the specific duties of the Minister as specified in section 10 of the Act. One direct link appears to be with the provisions of section 139, making ANZAC day a holiday, with the duty contained in Section 10(a) referring to conditions of employment generally including hours of work, rest periods and holidays. Another link is between the provisions regulating the delivery of bread with the duty contained in section 10(h) to encourage the establishment and expansion of industries throughout Victoria.

The other remaining provisions in the Act have little, if any, direct relationship with achieving the ‘duties’ of the Minister. This reflects the fact that the Act has been extensively amended over time and many of the major elements of the Act relating to, for example, wages and conditions, occupational health and safety and shop trading hours, are now the subject of other legislation.

2.4.2 Compliance and administrative costs

The Commission has received no evidence that any of the provisions of the Act are currently enforced, or that business is undertaking any actions to comply with the provisions of the Act. The Act does not therefore appear to be imposing any direct compliance costs on Victorian businesses.

The Commission did not use the Standard Cost Model (SCM) to estimate the administrative costs imposed by the Act because none of the provisions of the Act are currently enforced. The model assumes 100 per cent compliance, however, if actual information on compliance rates is available, as in this case, then that information should be used (Government of Victoria 2007, p. F17).

In order to undertake a SCM measurement it is necessary to have actual information on the time taken to comply with the administrative requirements of a legislative provision. There is no actual information on which to base such estimates and so they would be hypothetical and speculative.

However, some administrative costs will be incurred by those required to be aware of the provisions of the Act even if they are not enforced. For example, to obtain registration by the Building Practitioners Board to be an ‘erector or supervisor of temporary structures’ (class 1 or 2), the applicant must be prepared to demonstrate knowledge and skills in a range of competencies.¹⁵ One of these is knowledge of and ability to apply various acts and regulations including the Labour and Industry Act 1958.

Although the Act is not currently being enforced, if the various provisions of the Act were enforced they have the potential to impose substantial compliance and administrative costs on business. For example:

- section 50 requires persons intending to build or alter factories to submit plans to the department for approval
- section 122 requires various pieces of information to be posted in workplaces.

¹⁵ An erector or supervisor of temporary structures sets up and dismantles large tents, marquees, stages, scaffolding, seating stands, equipment platforms, towers and prefabricated buildings.

The section 50 requirement for departmental approval of plans for building or altering factories could potentially impose administrative burdens on a large number of businesses. Data from the Building Commission (2007a) indicated that in 2006 there were 347 permits issued for the construction of new factory buildings and 224 permits for extensions or alterations to existing factory buildings in Victoria.

In addition, division 2 of part 7 which regulates the delivery of bread – if enforced – has the potential to create local monopolies. This could hinder competition in the bread industry and subsequently adversely affect consumers of bread.

2.4.3 Likely savings and implementation costs

Repeal of the Act will not generate significant cost savings to government or businesses in Victoria. However, this is only because the Act is not currently being enforced. If it were enforced, the costs could be material, although, as noted in section 2.4.2, the costs are difficult to measure.

However, the scope for cost savings should be assessed against the benefits being generated by the Act. The Act at present generates no apparent benefits. The fact that successive governments have decided not to enforce the Act suggests that they do not believe the benefits from enforcement would be significant.

In addition, repeal of the Act would remove the necessity for those in business to familiarise themselves with the provisions of the Act.

2.4.4 Alternative means of dealing with non-redundant provisions

The majority of the Act is redundant and could be repealed. However, the following provisions of the Act remain relevant:

- the definition of ‘factory’ (section 3)
- the requirement that factories close on ANZAC Day and that their employees be given a holiday (section 139)
- those sections of the Act referred to in the Bread Industry Act 1959 (division 1 of part 10 and section 191).

Definition of ‘factory’

The definition of ‘factory’ contained in the Act is adopted in the Education and Training Reform Act 2006 and the Pipelines Act 2005 through a reference to section 3 of the Labour and Industry Act 1958.

The existing definition in the Act is outdated and unlikely to be the most appropriate definition of a factory for the purposes of both of these Acts. It is also not clear that a single definition is appropriate for both regulating school students' participation in work experience activities and for the regulation of pipelines. In addition, the definition may need to evolve over time in different ways for the regulation of education activities and pipelines.

The need to have a definition of 'factory' does not justify retaining the Labour and Industry Act – a more sensible approach would be to insert a more modern definition of 'factory' in each of the two Acts. This would permit the definition to be tailored to the specific requirements of each Act and provide the flexibility to amend each definition independently if required.

Observance of ANZAC Day

The closure of factories on ANZAC Day is regulated by the Act. However, this provision is not sufficient justification to retain an otherwise obsolete and redundant Act on the statute books. This provision could be transferred to another more appropriate Act – the ANZAC Day Act 1958. At the same time it would be necessary to include a definition of factories covered by the provision.

Interaction with the Bread Industry Act 1959

The Bread Industry Act makes three references to the Labour and Industry Act., in relation to the appointment of inspectors, proceeding against offenders and appeals.

The repeal of the Labour and Industry Act would not have a material impact on the matters dealt with by the first and third cross-references. The Bread Industry Act already provides for the Minister to appoint inspectors for the purpose of the Act. The third reference in the Bread Industry Act is to the appeals processes established in section 47 of the Labour and Industry Act. However, this section of the Act was repealed in 1979 by the Industrial Relations Act.

The provisions of section 191 of the Act, in relation to proceedings against offenders, continue to apply to prosecutions under the Bread Industry Act. This link is not sufficient to retain the Labour and Industry Act. Appropriate and possibly updated provision for prosecution could be added to the Bread Industry Act if that capacity were still required. The continued relevance of the Bread Industry Act is being considered in the Commission's current inquiry into food regulation in Victoria.¹⁶

¹⁶ In its draft report for the inquiry into food regulation (VCEC 2007), the Commission asked for participant comment on the Bread Industry Act. The Commission's final report on food regulation will be presented to the Treasurer in September 2007.

3 Conclusions and recommendations

All substantive provisions of the Act are redundant, in the sense that they are either no longer enforced, or are replicated by other legislation (often both criteria apply). The Act could therefore be repealed without placing an undue burden on any sections of the community, or preventing the achievement of the Victorian Government's policy objectives.

The three aspects of the Act appear to have current relevance.

The definition of a 'factory' is used by other legislation currently in force. Even though the definition itself seems somewhat outdated, continuing reference to the definition does not, however, justify the retention of the Act. A revised definition, or two purpose specific definitions, could be readily inserted into the relevant Acts.

The provisions of the Act which require the closure of factories on ANZAC Day and for employees to be given a holiday also remain relevant. Again, preserving this requirement in legislation does not justify the retention of the Act – it could be readily inserted into the ANZAC Day Act 1958.

The Bread Industry Act 1959 adopts the provisions in the Act relating to proceedings against offenders. An examination of the Bread Industry Act is beyond the scope of this review. A preliminary examination of the Act suggests, however, that it has many features which make it obsolete and redundant. This issue is being considered by the inquiry into food regulation, currently being conducted by the Commission.

Draft Recommendations

That the Labour and Industry Act 1958 is redundant and should be repealed.

That revised definitions of 'factory' be inserted into the Education and Training Reform Act 2006 and the Pipelines Act 2005.

That a provision for the closure of factories on ANZAC Day be made under an appropriate Act, for example, the ANZAC Day Act 1958. An appropriate definition of factory should be included with the amendment.

Appendix A: Consultation

A.1 Introduction

This appendix describes the consultations undertaken by the Victorian Competition and Efficiency Commission during the review of the Labour and Industry Act 1958.

The Commission advertised the inquiry in the daily press and in the Victorian Government Gazette and published an issues paper in March 2007 following the receipt of the terms of reference on 19 March 2007. The issues paper outlined:

- the scope of the inquiry
- how to make a submission
- the inquiry time table.

A.2 Submissions

The issues paper invited participants to make submissions; and the Commission received 4 submissions from interested parties (Table A.1). The submissions are public documents that can be viewed on the Commission's website: www.vcec.vic.gov.au

Table 3.2 Submissions received

<i>Participant</i>	<i>Submission no.</i>
Building Commission	1
Swan Hill Rural City Council	2
Department of Innovation, Industry and Regional Development	3
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	4

A.3 Stakeholder consultation

The Commission offered to meet with a range of organisations to obtain further information to assist in the preparation of the report. However, there was little interest in such meetings. Early in the inquiry a meeting was held with a representative of Industrial Relations Victoria.

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