

QUEENSLAND LAW REFORM COMMISSION

HENRY VIII CLAUSES

REPORT NO. 39

29 June 1990

A Report of the Queensland Law Reform Commission

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QUEENSLAND

A REPORT OF THE LAW REFORM COMMISSION

"HENRY VIII CLAUSES"

Q.L.R.C. R.39 (1990)

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LAW REFORM COMMISSION

The Law Reform Commission has been functioning since the 1st March, 1969 and is constituted by the Law Reform Commission Act 1968 - 1984.

MEMBERS:-

The Honourable Mr. Justice B.H. McPherson C.B.E., Chairman

Mr. P.A. Keane, Q.C., Deputy Chairman

Ms. R.G. Atkinson

Mr. W.A. Lee

Ms. H. O'Sullivan

Mr. A.A. Preece

OFFICERS:-

Mr. P.M. McDermott, Principal Legal Officer

Mr. L.A.J. Howard, Secretary

The office of the Commission is at the Central Courts Building, 179 North Quay, Brisbane.

The short citation for this Report is Q.L.R.C. R.39(1990).


PREFACE

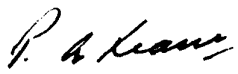
LAW REFORM COMMISSION


REPORT - "HENRY VIII CLAUSES"

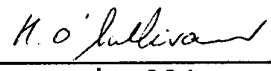
Q.L.R.C. R.39


On the 23rd January, 1990 the Hon. D.McM. Wells, the Attorney-General of Queensland, referred the matter of "Henry VIII clauses" to the Law Reform Commission. In accordance with this reference a working paper was prepared which contained a discussion of the law relating to "Henry VIII clauses", and a draft Bill. This working paper was circulated to persons and bodies from whom comment and criticism were invited. The Commission now submits a report upon this reference.

Signed: 
The Hon. Mr Justice
B.H. McPherson C.B.E.
Chairman

Signed: 
Mr. P.A. Keane, Q.C.
Deputy Chairman

Signed: 
Ms. R.G. Atkinson
Member

Signed: 
Ms. H. O'Sullivan
Member

Signed: 
Mr. A.A. Preece
Member

Brisbane,
29th June, 1990.

CHAPTER ONE
HENRY VIII CLAUSES

Definition

A "Henry VIII clause" is a clause in an Act of Parliament which enables the Act to be amended by subordinate or delegated legislation. The name of the clause is derived from Henry VIII, presumably because that monarch persuaded Parliament to enlarge his power to make law by means of Proclamations.¹ Since the time of Coke it has been the law that the Crown cannot legislate by means of Proclamation in the absence of Parliamentary authorization.² Allen has remarked that "Henry VIII clauses" are so "named after that monarch in disrespectful commemoration of his tendency to absolutism".³

Legislative Restrictions on Judicial Review

On a number of occasions in 1916 the Supreme Court of Queensland held invalid regulations which were contrary to the intention of the Legislature.⁴ In commenting upon these decisions Dr. T.P. Fry observed : "By thus upholding Parliamentary Statutes against Cabinet Regulations which sought to impose penalties which Cabinet was unable to induce Parliament to impose, the Supreme Court proved itself a bulwark to constitutional government".⁵ To preclude challenge to regulations some statutes provide that any regulations which have been made shall have effect "as if enacted in this Act". The House of Lords in Institute of Patent Agents v. Lockwood⁶ held

¹ See, Craies on Statute Law (6th ed., 1963), p. 293.

² See, Case of Proclamations (1611) 12 Coke 74 ; Australian Alliance Assurance Co. v. Goodwyn [1916] St.R.Qd. 225.

³ See, C.K. Allen, Law and Orders, 2nd ed., p. 198. See also, D.M. Walker, The Oxford Companion to Law (1980), p. 562.

⁴ See, Australian Alliance Assurance Co. Ltd. v. Attorney-General [1916] St.R.Qd. 135 ; Colonial Sugar Refining Co. Ltd. v. Attorney-General [1916] St.R.Qd. 278.

⁵ See, T.P. Fry, "Australian Disregard of the Doctrine of the Separation of Powers" (1933) 5 (4) Rocky Mountain Law Review 221, p. 229.

⁶ [1894] A.C. 347.

that the effect of such a clause is to remove any regulations from the scrutiny of the courts.⁷ Else-Mitchell J. has observed : "Provisions of this type will be found in a few Commonwealth and State Acts, notably in Queensland".⁸ Else-Mitchell J. cited the following Queensland statutes as instances: viz., Diseases in Plants Act of 1929 ; Grazing Districts Improvement Act of 1930 ; Heavy Vehicles Acts of 1925 to 1931 ; State Transport Act of 1932. The Commission has thought it appropriate, at this stage, to draw attention to this matter.

⁷ See also, Rt.Hon. Lord Hewart of Bury, The New Despotism (1929), pp. 168-169.

⁸ See, The Hon. Mr. Justice Else-Mitchell, "Administrative Law" in R.N. Spann (ed.) Public Administration in Australia (1967), 258 at p. 264 (n.15).

CHAPTER TWODONOUGHMORE COMMITTEE

In 1929 the Committee on Ministers' Powers was established under the Chairmanship of Lord Donoughmore, to examine delegated legislation. One of the terms of reference required the Committee to report "what safeguards are desirable or necessary to secure the constitutional principles of the sovereignty of Parliament and the supremacy of the Law". In 1932 the Donoughmore Committee issued their report. The Committee condemned the practice whereby Acts of Parliament could be amended by delegated legislation. The Committee reported:

"It cannot but be regarded as inconsistent with the principles of parliamentary government that the subordinate law-making authority should be given by the superior law-making authority power to amend a Statute which has been passed by the superior authority ... Even with safeguards, ... it is clearly a power which in theory at any rate may be unscrupulously used ... If it does prove necessary in the public interest to amend an Act of Parliament, ... and the matter is of sufficient political urgency, parliamentary time can be found, particularly with the aids available under Standing Orders to curtail debate ... It has been found possible to bring certain important and complicated legislative schemes into operation without such a power, relying upon the ordinary method of an amending Bill in Parliament to meet unexpected emergencies ... It is a standing temptation to Ministers and their subordinates either to be slipshod in the preparatory work before the Bill is introduced in Parliament or to attempt to seize for their own Departments the authority which properly belongs to Parliament ... It can only be essential for the limited purpose of bringing an Act into operation and it should accordingly be in most precise language restricted to those purely machinery arrangements vitally requisite for that purpose; and the clause should always contain a maximum limit of one year after which the powers should lapse ... The use of the so-called "Henry VIII Clause" ... should not be permitted by Parliament except upon special grounds stated in the Ministerial Memorandum attached to the Bill."⁹

Since the Donoughmore committee report was published, the use of "Henry VIII clauses" in the United Kingdom has been abandoned in public general Acts, examples of the power to amend Acts are

mainly confined to local Acts.¹⁰

¹⁰ See, Craies on Statute Law (6th ed., 1963), p. 293 ; C.K. Allen, Law in the Making (7th ed., 1964), p. 589.

CHAPTER THREE
QUEENSLAND STATUTES

"Henry VIII clauses" are to be found in various Queensland statutes. The practice of statutes being passed which included such provisions appears to have been prevalent in 1929. In that year a number of statutes were passed which contained "Henry VIII clauses". Section 27 of The Diseases in Plants Act of 1929 provided :

"In addition to and without in any way limiting the powers of the Governor in Council under this Act, the Governor in Council is hereby empowered from time to time by Order in Council to issue such orders and give such directions and prescribe such matters and things, whether in addition to or amendment of this Act, as will be calculated to give full effect to the objects and purposes of this Act".

The Banana Industry Protection Act of 1929 contains two "Henry VIII clauses", viz. ss. 14 and 22. These provisions respectively provided :

" 14. The provisions of The Diseases in Plants Act of 1929 and any Proclamations, Orders in Council, or regulations thereunder shall, where necessary, convenient, or expedient, be applied and observed in respect of the provisions of this Act, and to the Board, Chief Inspector, or agent, and generally to all matters and things concerned:

Provided that for the purposes of this Act such provisions aforesaid may be amended, added to, or modified in such manner as the Governor in Council may from time to time by Order in Council prescribe, or in such other manner as the Governor in Council may think fit."

" 22. The Governor in Council may from time to time by Order in Council extend the provisions of this Act, with such modifications thereof or additions thereto as are deemed by him to be necessary in the particular circumstances, so that the same shall also become applicable to any fruit or classes of fruit other than bananas, as may be prescribed in such Order in Council."

Until recently s. 27 of the Diseases In Plants Act 1929-1972 provided :

" 27. Order in Council. In addition to and without in any way limiting the powers of the Governor in Council under this Act, the Governor in Council is hereby empowered from time to time by Order in Council to issue such orders and give such directions and prescribe such matters and things, whether in addition to or amendment of this Act, as will be calculated to give full effect to the objects and purposes of this Act."

The Committee of Subordinate Legislation has for some time been having discussions with the Department of Primary Industries on the matter of "Henry VIII clauses". In recent years the Department of Primary Industries has endeavoured to remove objectionable "Henry VIII clauses" from the statutes administered by the Department. In 1989 The Banana Industry Protection Act of 1979 and The Diseases in Plants Act of 1929 were repealed. Legislation which replaced those statutes does not contain a "Henry VIII clause" : see, Banana Industry Protection Act 1989, Plant Protection Act 1989. Other Government Departments have in recent years recognised that "Henry VIII clauses" should be removed from the statute book. "Henry VIII clauses" in ss. 6 and 57(2) of the Inspection of Machinery Act 1951-1990 were removed by the repeal of that Act by the Workplace Health and Safety Act 1989. The "Henry VIII clause" in s. 43(2) of the Industrial Conciliation and Arbitration Act 1961-1989 will be removed by the repeal of that Act by the passage of the Industrial Relations Bill.

Early Criticism of Queensland Practice

Not long after the Donoughmore committee report was published, the Queensland practice of inserting "Henry VIII clauses" in statutes was criticized by Dr. T.P. Fry who obviously regarded the practice as an infringement of the doctrine of the Separation of Powers. Dr. Fry wrote :

"Amendment of Statutes. Parliaments have on occasions given to Cabinet power to amend the enabling Statute. Such an enabling clause has been nick-named the "Henry VIII Clause" because that king is popularly regarded as the personification of executive autocracy. Nine Imperial Statutes between 1888 and 1929 conferred this power on Cabinet or Minister, but in eight a time limit was imposed upon its operation. The practice in the States and Commonwealth of Australia is to delegate such a power almost never, and then only for a special purpose and for a limited period, except in Queensland, where the annual volume of Statutes in many a recent year has contained almost as many instances as have occurred in all Great Britain's modern history. (The Diseases in Plants Act 1929 is typical in this respect.) In no Queensland Statute has the power been limited in time or subjected to the supervision of the Courts. In addition, it has become a common practice of the Queensland Parliament to delegate to Cabinet power to amend by Regulation not only the enabling Statute but also any other Statute. (The Industrial and

Conciliation Act 1929 is typical in this respect.) Thus, an attempt to remove some future Supreme Court judge by Regulation under some future Slaughtering Act might be made by some future Minister who possesses a vein of humour as well as a propensity for slaughtering judges."¹¹

¹¹ See, T.P. Fry, "Australian Disregard of the Doctrine of the Separation of Powers" (1933) 5(4) Rocky Mountain Law Review 221, pp. 226-227.

CHAPTER FOUR**COMMITTEE OF SUBORDINATE LEGISLATION**

In modern times the matter of "Henry VIII clauses" has received consideration in Queensland because of the important work undertaken by the Committee of Subordinate Legislation. It is of interest to note that the Committee of Subordinate Legislation was a Parliamentary Committee which was recognised as "operative" in the Fitzgerald Report.¹² Essentially the Committee of Subordinate Legislation considers all Regulations, Rules, By-laws, Ordinances, Orders in Council, or Proclamations which under any Act are required to be laid on the Table of the House, and which are subject to disallowance by resolution. Various statutes provide for subordinate legislation to be subject to disallowance by the Legislative Assembly.¹³

The Committee of Subordinate Legislation was first established by resolution of the Legislation Assembly on 26th November, 1975, and re-established by subsequent resolutions because the Committee lapses upon prorogation of the House. From its inception each resolution has contained similar terms of reference. For the purpose of this working paper it is relevant to note that all terms of reference have required the Committee to consider :

"whether the Regulations contain matter which in the opinion of the Committee should properly be dealt with in an Act of Parliament" (cl. 5(c)).

In the terms of reference the word "Regulations" is defined to include all Regulations, Rules, By-Laws, Ordinances, Orders in Council, or Proclamations (cl. 4).

In 1977 the Committee of Subordinate Legislation first drew attention to the problem of "Henry VIII clauses". The Committee reported : "It is the Committee's view that as a matter of principle, statutes should not provide for their own amendment

¹² See, Report of a Commission of Inquiry Pursuant to Orders in Council (1989), p. 124.

¹³ See, e.g., Dean v. Attorney-General of Queensland [1971] A.C. 391, 402.

by subordinate legislation".¹⁴ In 1979 the Committee drew attention to certain dangers inherent in uniform legislation. An example was the uniform Companies Act which provided for the amendment of the Second Schedule of the Companies Act by Order in Council.¹⁵ In 1980 the Committee of Subordinate Legislation drew attention to several examples of Schedules to Acts of Parliament being amended by Order in Council. This had occurred in relation to the Art Unions and Amusements Act, the Coal Mining Act, and the Industry and Commerce Training Act.¹⁶ In respect of the Coal Mining Act legislative reform to remove the "Henry VIII clause" from that Act was effected by the Coal Mining Amendment Act 1981. Similar reform was effected to the Industry and Commerce Training Act by the Industry and Commerce Training Act Amendment Act 1982. The Committee of Subordinate Legislation has also drawn attention to the Irrigation Act and Water Act which both contained provisions which enabled Schedules to be amended by Order in Council. Reform is not now needed in this area as these statutes have recently been repealed.¹⁷ In 1982 the Committee of Subordinate Legislation drew attention to the Physiotherapists Act of 1964 which enabled the Governor in Council to amend the Schedules of qualifications for registration. This was remedied by the Medical Act and Other Acts Amendment Act 1981 (No. 76 of 1981). It can therefore be seen that useful reform has occurred since the Committee of Subordinate Legislation first drew attention to this matter.

In 1984 the Committee of Subordinate Legislation reported that Orders in Council had been made to amend the Trustee Companies Act, the Water Act, the Friendly Societies Act, the Fishing Industry Organization Act. On this occasion the Committee of Subordinate Legislation voiced its concern that Acts

¹⁴ See, Report of the Committee of Subordinate Legislation (Sept., 1977) (Chairman, R.A. Armstrong, M.L.A.).

¹⁵ See, Sixth Report of the Committee of Subordinate Legislation (April, 1979) (Chairman, R.A. Armstrong M.L.A.), p. 2.

¹⁶ See, Tenth Report of the Committee of Subordinate Legislation (Sept., 1980) (Chairman, P.R. McKechnie M.L.A.), p. 3.

¹⁷ See, Water Resources Act 1989 (No. 112 of 1989).

of Parliament could be amended by subordinate legislation. The Committee of Subordinate Legislation reported :

"The Committee continues to oppose the practice of amending Acts of Parliament by subordinate legislation. It is the Committee's firm belief that if a matter is sufficiently important to be incorporated in an Act, it ought to be amended only by an Act. If the matter is of such lesser importance that it can be amended by subordinate legislation, then it ought to be written as subordinate legislation in the first instance".¹⁸

The Committee of Subordinate Legislation reiterated these concerns in 1986.¹⁹ In 1988 the Committee of Subordinate Legislation again commented adversely on the practice of amending Acts of Parliament by subordinate legislation. The Committee of Subordinate Legislation on that occasion reported :

"The Committee has sought to overcome the problem by suggesting to the particular Minister that those matters appropriate for amendment by subordinate legislation be removed from the Act and written separately as subordinate legislation."²⁰

Essentially there is a need for great scrutiny of legislation. Professor Pearce has commented :

"Parliamentarians pay too little heed to the regulation - making sections of Acts. If "Henry VIII" clauses are allowed to pass by default, the parliamentary institution is placed in jeopardy."²¹

Statute Law (Miscellaneous Provisions) Act

On recent occasions the Committee of Subordinate Legislation has taken the view that minor administrative amendments should be made to Acts without requiring separate amending Bills. The Committee was in favour of using an omnibus miscellaneous provisions Bill to effect minor and technical changes to legislation. The New South Wales Statute Law (Miscellaneous

¹⁸ See, Fourteenth Report of the Committee of Subordinate Legislation (April, 1984) (Chairman, G.L. Simpson M.L.A.).

¹⁹ See, Fifteenth Report of the Committee of Subordinate Legislation (August, 1986), p. 2 (Chairman, G.L. Simpson M.L.A.).

²⁰ See, Sixteenth Report of the Committee of Subordinate Legislation (April, 1988), p. 3..

²¹ See, D.C. Pearce, Delegated Legislation (1977), p. 8.

Provisions) Act was cited as an appropriate example of reform.²² Cabinet subsequently gave approval for the introduction of such legislation.²³ The Statute Law (Miscellaneous Provisions) Act 1989²⁴ was subsequently passed. This legislation is obviously the pattern of similar statutes in the future. In 1989 the Committee of Subordinate Legislation reported :

"Once the legislation is in place, the Committee believes that the practice of amending Acts of Parliament by subordinate legislation can be discontinued and urges Ministers to avail themselves of the new legislation in preference to amending by subordinate instrument".²⁵

²² See, Sixteenth Report of the Committee of Subordinate Legislation (April, 1988) (Chairman, L.W. Stephan M.L.A.), p. 4.

²³ See, Seventeenth Report of the Committee of Subordinate Legislation (September, 1989) (Chairman, L.W. Stephan M.L.A.), p. 5.

²⁴ (No. 103 of 1989).

²⁵ See, Seventeenth Report of the Committee of Subordinate Legislation (Sept., 1989) (Chairman, L.W. Stephan M.L.A.), p. 5.

CHAPTER FIVEPROPOSALS FOR REFORM(i) Law Reform (Statutes) Act

The Commission considers that, with certain exceptions, "Henry VIII clauses" should be generally removed from the statute book. The Commission has conducted a survey of the Queensland statute book to ascertain what clauses should be repealed. The Commission has prepared a draft Law Reform (Statutes) Act which removes "Henry VIII clauses" from a number of Queensland statutes. This draft Bill could form the basis of discussion. This matter would be of interest to the Committee of Subordinate Legislation. The draft Law Reform (Statutes) Act is appended to this working paper.

The Law Reform (Statutes) Act will remove various objectionable "Henry VIII clauses" from the present statute book. But all will be of no avail if the Parliament continues to pass legislation which contains "Henry VIII clauses". In 1979 the Committee of Subordinate Legislation reported:

"The solution to this problem lies in Parliament's own hands, for as long as Parliament permits the inclusion in Bills of clauses which allow the amendment of Acts by Order in Council, it will continue to place the scrutiny and control of its Legislation outside its own power".²⁶

For example as recently as last year the Parliament passed a statute which contained a "Henry VIII clause". Section 24 of the Trustee Companies Act and Another Act Amendment Act 1989²⁷ contains a substitutionary provision which provides :

"The Governor in Council by Order in Council from time to time, subject to such conditions as he thinks fit, may amend the Second Schedule to this Act".

²⁶ See, Sixth Report of the Committee of Subordinate Legislation (April, 1979) (Chairman, R.A. Armstrong M.L.A.), p. 2.

²⁷ (No. 77 of 1989).

(ii) Instances where "Henry VIII clauses" should be retained

There are "Henry VIII clauses" in a number of statutes which the Commission considers should not be the subject of the proposed exercise.

(a) Rules of the Supreme Court. Rules of the Supreme Court are made under s. 11 of the Supreme Court Act of 1921 which has long been considered to be a grant of ample power to modify the operation of existing legislation.²⁸ However, the Rules of Court may only modify a provision in an Act of Parliament that relates to "the practice or procedure of the Court". The rule making power is therefore narrow in scope and confined to a proper object. It should also be borne in mind that there is a safeguard in that any Rules of Court are subject to Parliamentary disallowance.²⁹ This is also a sensitive matter as the power of the Supreme Court to manage its own affairs and regulate practice and procedure should be preserved. In view of the previous work by the Commission on the review of the Supreme Court Act it should be mentioned that the need for Executive approval of rules was only introduced in 1921.³⁰ The Commission considers that it would be appropriate to delete the necessity for approval by the Executive Government of Rules of Court to have regard to the doctrine of the Separation of Powers. The Jury Act 1929-1990 also provides for Rules of Court to be made in respect of juries, these Rules of Court are also subject to disallowance by the Legislative Assembly (s. 51). Also under the Jury Act an Order in Council may revoke or modify the exemption from service on juries which is provided for by the Act (s. 8). Although not a "Henry VIII clause" in the classic sense the provision effectively enables an Order in Council to amend s. 8(1) of the Jury Act. There is, however, a safeguard in that an Order in

²⁸ See, Tylors (Australia) Ltd. v. Macgroarty [1928] St.R.Qd. 371,374 ; Re Hogan [1987] 2 Qd.R. 688,690.

²⁹ See, Supreme Court Act, s. 11(4).

³⁰ Cf., The Supreme Court of Queensland 1859-1960 (1989), pp. 317-318.

Council is subject to disallowance by the Legislative Assembly (s. 8(2)). Nonetheless the Commission considers that this provision should be repealed.

(b) Uniform legislation. It has already been mentioned that in 1979 the Committee of Subordinate Legislation first drew attention to certain dangers inherent in uniform legislation. There are a number of instances where the State has agreed to adopt uniform legislation. Some of these statutes enabled Schedules in the Acts, generally relating to fees, to be varied by subordinate legislation.³¹ This is a matter where at officer level the appropriate policy should be implemented. In this area the views of other States would have to be considered.

(c) Circumstances warranting immediate Executive action. The Commission considers that there are various instances which may warrant immediate Executive action.

Trustee Companies. The Second Schedule to the Trustee Companies Act 1968-1989 contains a list of authorized trustee companies. It has already been mentioned that section 72 (1)(iii) of the Trustee Companies Act³² provides that the Governor in Council from time to time, subject to such conditions as he thinks fit, may amend the Second Schedule of the Act by omitting the name of a company that is to be a trustee company. This power should be retained as it may have to be exercised at a time when the House is not in session. Also the Attorney-General would not be able to apply to the Court under s.73(3) of the Trustee Companies Act to revoke the appointment of a company as executor, administrator, trustee, receiver, committee, guardian, liquidator, official liquidator or attorney until the company had been omitted from the Second Schedule. The draft Law Reform (Statutes) Act requires Parliamentary approval for the addition or change of name of a trust company. It may be argued that in the case of the Trustee Companies Act the problem of "Henry VIII clauses" can be avoided by prescribing authorized trustee

³¹ E.g., Companies Act 1961, s. 7(11).

³² As inserted by the Trustee Companies Act and Another Act Amendment Act 1989

companies by Regulation. In such a case there would be admittedly no "Henry VIII clause", but greater power would be given to the Executive Government. Although Regulations are subject to Parliamentary disallowance, this proposal would give more power to the Executive who would then have exclusive power to decide what trustee companies would be authorized. At present under the Trustee Companies Act Parliamentary authorization is necessary before a company may act as a trustee.

Departments of State. Another area in which immediate Executive action is warranted concerns the Departments of State of the Government of Queensland. The Schedule to the Public Service Management and Employment Act 1988 enumerates the Departments that were in existence when the Act was passed. However, the Act enables the Governor in Council by Order in Council to amalgamate or discontinue a Department, or declare an entity to be a Department (see, ss. 4,8,11). Recently, the Government of Queensland took action to reorganise the structure of Government Departments in Queensland and an appropriate Order in Council was made to give effect to this policy : see, Vol. 292 (No. 117) Q.G.G. 2489 - 2492 (7 December, 1989). The organization and arrangement of Government Departments is a matter which is within the prerogative of the Executive Government.

Heritage Protection. The need to take urgent Executive action may also be warranted in relation to heritage protection. The Commission is unaware whether protected historic buildings will be enumerated in a Schedule in any heritage protection legislation. If this approach is taken it may be necessary for other historic buildings which are not so enumerated to be urgently protected.

(d) Innovative legislation. It may be necessary in some circumstances for innovative legislation to be amended urgently. The Commission understands that is why s.14 of the Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980 enabled an Order in Council to be made "for the further or more effectually or particularly carrying out the objects and purposes of this Act and for curing irregularities". Although not a "Henry VIII clause" in the classic sense, it enables more

privileges to be granted to the corporation in question. The genesis of this particular Act is discussed in the Fitzgerald Report.³³ In the circumstances the Commission has proposed the deletion of this particular provision. Parliamentary approval should be necessary in such a situation where extraordinary privileges are given to a corporation. Also, the fact that the Parliament will sit more often removes the rationale of such a provision.

(e) Brisbane Forest Park. Section 8 of the Brisbane Forest Park Act 1977-1988 makes provision for the exclusion of public roads and the inclusion of closed roads within the Brisbane Forest Park by amending the First Schedule by Order in Council. The area of land comprising the lands particularized in the First Schedule is declared by the Act to be the Brisbane Forest Park (s. 5). If s. 8 of the Act was repealed it would have the consequence that a road could not be excluded from, or included within a Park, except by Special Act. The Act at present is, however, deficient in that there is no requirement that an Order in Council under s. 8 is subject to Parliamentary disallowance, cf. s. 7(3). The Brisbane Forest Park Act will be repealed when s. 70 of the Recreation Areas Management Act 1988 (No. 110, 1988) is proclaimed into force : see Second Schedule.

(f) Agreements which may be amended by Order in Council. There are a number of statutes which ratify agreements and which provide that an Order in Council may amend an agreement which has the force of law.³⁴ The Commission recognises that these agreements may have to be amended at a time when the Legislative Assembly is not in session. These statutes generally provide that Orders in Council are subject to disallowance by the

³³ See, Report of a Commission of Inquiry Pursuant to Orders in Council (1989), pp. 104-105.

³⁴ See, e.g., Breakwater Island Casino Agreement Act 1984 ; Central Queensland Coal Associates Agreement Act 1968-1984 ; Gateway Bridge Agreement Act 1980-1985 ; Greenvale Agreement Act 1977, 1978, and 1980 (repealed by Queensland Nickel Agreement Act 1988) ; Jupiters Casino Agreement Act 1983 ; Motorways Agreements Act 1987-1988 ; Queensland Nickel Agreement Act 1988.

Legislative Assembly.³⁵ Parliamentary supervision is thus ensured.

(iii) Conclusion

The Law Reform Commission considers that consideration should be given to the enactment of the draft Law Reform (Statutes) Act as appended to this working paper. This measure will remove objectionable provisions from the statute book. So that any statutes which are enacted in the future do not contain any "Henry VIII clauses" it would be necessary for there to be a Cabinet direction that such clauses should generally be omitted from any Bills. Where it is considered that a "Henry VIII clause" is warranted it should be necessary that Cabinet should be appropriately informed, and a direction obtained in that regard. Whilst on the subject of subordinate legislation the Commission in the working paper expressed the view that it would be appropriate to ensure that the Committee of Subordinate Legislation does not lapse upon prorogation of the Legislative Assembly. Since that working paper has been issued it is noted that the Committee of Subordinate Legislature has recently been constituted on a different basis. The Committee was established on 6 March, 1990 upon the motion of the Chairman, R.D. Barber M.L.A. ; the relevant clause of the motion provides that the Committee is to "continue in existence for the life of the current Parliament, notwithstanding prorogation" (cl. 12).

³⁵

See, e.g., Jupiters Casino Agreement Act 1983, s. 5 ; Queensland Nickel Agreement Act 1988, s. 8.

LAW REFORM (STATUTES) ACT 1990

ANALYSIS OF CONTENTS

1. Short title

2. Amendment of Acts

3. Savings

SCHEDULE

An Act to make various amendments to the statute law of Queensland to ensure that statutes may only be amended by the Parliament and not by the Executive Government.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:-

1. Short title. This Act may be cited as the Law Reform (Statutes) Act 1990.

2. Amendment of Acts. A provision of an Act specified in the first column of the Schedule is amended as specified in the second column of that Schedule opposite the reference to that provision and the Act, as so amended, may be cited as specified in the third column of that Schedule in relation to that Act.

3. Savings. This Act shall not affect the validity of any Order in Council made under an Act specified in the first column of the Schedule.

SCHEDULE

Act and provision amended	Amendment	Citation
[s. 2]		
<u>Anzac Day Act</u>		
<u>1921-1987</u>		
s. 5 (3)	Omit the whole subsection	<u>Anzac Day Act</u> <u>1921-1990</u>
<u>Art Unions and Amusements Act 1976-</u>		
<u>1984</u>		
s. 34	Omit the whole section	<u>Art Unions and Amusements Act 1976-1990</u>
s. 45	Omit the whole section	
<u>Building Act 1975-</u>		
<u>1984</u>		
s. 8	Omit the whole section	<u>Building Act 1975-1990</u>
s. 9	Omit the whole section	
s. 10	Omit the whole section	
<u>Clean Air Act 1963-</u>		
<u>1989</u>		
s. 7 (2)	Omit the whole subsection	<u>Clean Air Act 1963-</u> <u>1990</u>

SCHEDULE - Continued

[s. 2]

Act and provision amended	Amendment	Citation
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Co-ordination of
Rural Advances and
Agricultural Bank Act
1938-1982

s. 28

Delete the following:

"The Governor in Council may from time to time, add to this table by including other objects therein and fixing, respectively, the maximum amount of advance for each such object ; and the table in force for the time being as so added to shall be deemed to be the table referred to in this section."

Co-ordination of
Rural Advances and
Agricultural Bank Act
1938-1982

Fisheries Act1976-1989

s. 9

Omit the whole section.

Fisheries Act
1976-1990

SCHEDULE - Continued

[s. 2]

Act and provision amended	Amendment	Citation
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Fishing Industry
Organization and
Marketing Act 1982-
1989

s. 132(5)(b)	Omit the whole paragraph	<u>Fishing Industry Organization and Marketing Act 1982- 1990</u>
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Friendly Societies
Act 1913-1986

s. 8(2)(b)	Omit the whole paragraph	
s. 8A(2)	Omit the whole subsection	<u>Friendly Societies Act 1913-1990</u>

SCHEDULE - Continued

[s. 2]

Act and provision amended	Amendment	Citation
<u>Jury Act</u> <u>1929-1990</u>	Omit subsection (2)	<u>Jury Act 1929-1990</u>
<u>Justices Act 1886-</u> <u>1987</u>	s. 98 Delete the following : "The Governor in Council may from time to time by Order in Council published in the Gazette amend the said Schedule by altering or deleting any of the forms therein contained or by adding to the Schedule any other forms (whether in addition to or in substitution for any forms in the Schedule), and the said Schedule as so amended shall thereupon become for the time being the Third Schedule to this Act and shall have effect accordingly."	<u>Justices Act 1886-</u> <u>1990</u>

SCHEDULE - Continued

[s. 2]

Act and provision amended	Amendment	Citation
<u>Life Assurance</u>		
<u>Companies Act</u>		
<u>1901-1978</u>		
s. 14	Omit the whole section	<u>Life Assurance</u> <u>Companies Act</u> <u>1901-1990</u>
<u>Lotto Act</u>		
<u>1981-1984</u>		
s. 3	Omit subsection (2)(c) and (d)	<u>Lotto Act 1981-1990</u>
<u>Mines Regulation Act</u>		
<u>1964-1983</u>		
s. 6A(4)	Omit the whole subsection	<u>Mines Regulation Act</u> <u>1964-1990</u>

SCHEDULE - Continued

[s. 2]

Act and provision amended	Amendment	Citation
<u>Port of Brisbane Authority Act</u> <u>1976-1989</u>	Omit subsections (2) and (3)	<u>Port of Brisbane Authority Act</u> <u>1976-1990</u>
<u>Primary Producers' Co-operative Associations Act</u> <u>1923-1988</u>	Omit subsections (2) and (3)	<u>Primary Producers' Co-operative Associations Act</u> <u>1923-1990</u>
<u>Primary Producers' Organization and Marketing Act</u> <u>1926-1987</u>	Delete the following: ", either wholly or with all such modifications thereof or additions thereto as are deemed by him necessary to meet the particular circumstances,"	

SCHEDULE - Continued

[s. 2]

Act and provision amended	Amendment	Citation
s. 9(2)	Delete the following: "(whether wholly or with any modifications thereof or additions thereto) ... or added"	<u>Primary Producers'</u> <u>Organization and</u> <u>Marketing Act</u> <u>1926-1990</u>
<u>Property Law Act</u> <u>1974-1990</u>		
s. 260	(i) At the end of paragraph (a) insert the word "and", (ii) At the end of paragraph (b) substitute a full stop for the semi-colon, and (iii) Omit paragraph (c).	<u>Property Law Act</u> <u>1974-1990</u>

SCHEDULE - Continued

[s. 2]

Act and provision amended	Amendment	Citation
<u>Registration of Plans</u> <u>(H.S.P. (Nominees)</u> <u>Pty. Limited)</u> <u>Enabling Act 1980</u>		
s. 14	Omit the whole section	<u>Registration of Plans</u> <u>(H.S.P. (Nominees)</u> <u>Pty. Limited)</u> <u>Enabling Act 1980-</u> <u>1990</u>
<u>State Housing Act</u> <u>1945-1986</u>		
s. 15	Delete - "Such provisions may from time to time be altered or added to by the Governor in Council, by Order in Council published in the Gazette, and the said Schedule as so altered or added to shall thereupon become, for the time being, the Schedule to this Act and have effect accordingly."	<u>State Housing Act</u> <u>1945-1990</u>

SCHEDULE - Continued

[s. 2]

Act and provision amended	Amendment	Citation
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Trustee Companies Act1968-1989

s. 72(1)	(i) In paragraph (a) omitting sub-paragraphs (i) and (ii) and renumbering sub-paragraph (iii) as sub-paragraph (i) ; and	
s. 72(2)	(ii) Omit paragraph (b)	
s. 72(6)	Omit the whole subsection	
	Omit the whole subsection	

Trustee Companies
Act 1968-1990

SCHEDULE - Continued

[s. 2]

Act and provision amended	Amendment	Citation
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Valuation of Land Act1944-1987

s.10

Delete -
 "; Provided that
 the Governor in Council
 may, from time to time,
 by Order in Council,
 alter or vary such
 districts, or abolish
 districts or constitute
 additional districts"

Valuation of Land Act
1944-1990

Veterinary SurgeonsAct 1936-1986

s. 11

Delete -
 "Amendment of rules,
 such rules may from
 time to time be
 amended to by the
 Governor in Council
 by Order in Council
 published in the
 Gazette."

Veterinary Surgeons
Act 1936-1990

SCHEDULE - Continued

[s. 2]

Act and provision amended	Amendment	Citation
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Workers' CompensationAct 1916-1988

s. 15

Delete -

"Such provisions may from time to time be amended or added to by the Governor in Council by Order in Council published in the Gazette.

Any such Order in Council shall be laid before the Legislative Assembly.

If the Legislative Assembly within the next forty days after any such Order in Council has been laid before it resolves that such Order in Council ought to be annulled, the same shall, after the date of such resolution, be of no effect."

Workers' CompensationAct 1916-1990