Scrutiny of Acts and Regulations Committee

Alert Digest No. 7 of 2025

May 2025

On the following Acts and Bills

Appropriation (2025-2026) Bill 2025

Appropriation (Parliament 2025-2026) Bill 2025

Corrections Legislation Amendment Bill 2025

Energy and Land Legislation Amendment (Energy Safety) Act 2025 [House Amendments]

Fire Services Property Amendment (Emergency Services and Volunteers Fund) Bill 2025 [House Amendments]

Roads and Ports Legislation Amendment (Road Safety and Other Matters) Bill 2025

Terrorism (Community Protection) and Control of Weapons Amendment Act 2025

Parliament of Victoria

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Member for Narre Warren South

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Member for Hawthorn

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Terms of Reference – Scrutiny of Bills

The functions of the Scrutiny of Acts and Regulations Committee are –

(a) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament as to whether the Bill directly or indirectly –
   (i) trespasses unduly upon rights or freedoms;
   (ii) makes rights, freedoms or obligations dependent upon insufficiently defined administrative powers;
   (iii) makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions;
   (iv) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the *Privacy and Data Protection Act* 2014;
   (v) unduly requires or authorises acts or practices that may have an adverse effect on privacy of health information within the meaning of the *Health Records Act* 2001;
   (vi) inappropriately delegates legislative power;
   (vii) insufficiently subjects the exercise of legislative power to parliamentary scrutiny;
   (viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities;

(b) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament –
   (i) as to whether the Bill directly or indirectly repeals, alters or varies section 85 of the *Constitution Act* 1975, or raises an issue as to the jurisdiction of the Supreme Court;
   (ii) if a Bill repeals, alters or varies section 85 of the *Constitution Act* 1975, whether this is in all the circumstances appropriate and desirable;
   (iii) if a Bill does not repeal, alter or vary section 85 of the *Constitution Act* 1975, but an issue is raised as to the jurisdiction of the Supreme Court, as to the full implications of that issue;

Parliamentary Committees Act 2003, section 17

Table of Contents

Parliament of Victoria, Australia

Scrutiny of Acts and Regulations Committee

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Useful information

Role of the Committee

The Scrutiny of Acts and Regulations Committee is an all-party Joint House Committee, which examines all Bills and subordinate legislation (regulations) introduced or tabled in the Parliament. The Committee does not make any comments on the policy merits of the legislation. The Committee's terms of reference contain principles of scrutiny that enable it to operate in the best traditions of non-partisan legislative scrutiny. These traditions have developed since the first Australian scrutiny of Bills committee of the Australian Senate commenced scrutiny of Bills in 1982. They are precedents and traditions followed by all Australian scrutiny committees. Non-policy scrutiny within its terms of reference allows the Committee to alert the Parliament to the use of certain legislative practices and allows the Parliament to consider whether these practices are necessary, appropriate or desirable in all the circumstances.

The *Charter of Human Rights and Responsibilities Act 2006* provides that the Committee must consider any Bill introduced into Parliament and report to the Parliament whether the Bill is incompatible with human rights.

Interpretive use of Parliamentary Committee reports

Section 35 (b)(iv) of the *Interpretation of Legislation Act 1984* provides –

> In the interpretation of a provision of an Act or subordinate instrument consideration may be given to any matter or document that is relevant including, but not limited to, reports of Parliamentary Committees.

When may human rights be limited

Section 7 of the *Charter* provides –

> Human rights – what they are and when they may be limited –
>
> (2) A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including—
>
> (a) the nature of the right; and
>
> (b) the importance of the purpose of the limitation; and
>
> (c) the nature and extent of the limitation; and
>
> (d) the relationship between the limitation and its purpose; and
>
> (e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

Glossary and Symbols

'*Assembly*' refers to the Legislative Assembly of the Victorian Parliament

'*Charter*' refers to the Victorian *Charter of Human Rights and Responsibilities Act 2006*

'*Council*' refers to the Legislative Council of the Victorian Parliament

'*DPP*' refers to the Director of Public Prosecutions for the State of Victoria

'*human rights*' refers to the rights set out in Part 2 of the Charter

'*IBAC*' refers to the Independent Broad-based Anti-corruption Commission

'*PCA*' refers to the *Parliamentary Committees Act 2003*

'*penalty units*' refers to the penalty unit fixed from time to time in accordance with the *Monetary Units Act 2004* and published in the government gazette (as at 1 July 2024 one penalty unit equals $197.59)

'*Statement of Compatibility*' refers to a statement made by a member introducing a Bill in either the Council or the Assembly as to whether the provisions in a Bill are compatible with Charter rights

'*VCAT*' refers to the Victorian Civil and Administrative Tribunal

[ ] denotes clause numbers in a Bill or section numbers in an Act.

Appropriation (2025-2026) Bill 2025

Member	Hon Jaclyn Symes MP	**Introduction Date**	20 May 2025
Portfolio	Treasurer	**Second Reading Date**	20 May 2025

Summary

The Bill provides for appropriation out of the Consolidated Fund for the ordinary annual services of the Government for the financial year 2025/2026.

Note the Statement of Compatibility:

> The Appropriation (2025-2026) Bill 2025 will provide appropriation authority for payments from the Consolidated Fund for the ordinary annual services of Government for the 2025/2026 financial year. The amounts contained in Schedule 1 to the Appropriation (2025-2026) Bill 2025 provide for the ongoing operations of departments, including new output and asset investment funded through annual appropriation. Schedule 2 of the Appropriation (2025-2026) Bill 2025 contains details concerning payments from the Advance to Treasurer in the 2023/24 financial year. Schedule 3 of the Appropriation (2025-2026) Bill 2025 contains details concerning payments from advances made pursuant to section 35 of the *Financial Management Act 1994* in the 2023/24 financial year.

Clause 2 is the commencement clause. All provisions of the Bill commence on Royal Assent. Clause 10 is the repeal clause. The Act is automatically repealed on the fourth anniversary of Royal Assent.

It permits the Treasurer to issue $99 787 859 000 as set out in Schedule 1 out of the Consolidated Fund in respect of the financial year 2025/2026; and an additional amount not exceeding the increased amount payable in respect of the financial year 2025/2026 in respect of salaries and related costs[1] as a result on any legislation or determination[2] if the amounts in Schedule 1 are not sufficient to provide for the payment of that increased amount **[3]**. It appropriates the Consolidated Fund to the extent necessary for these purposes **[4]**. Note the Explanatory Memorandum:

> This Bill provides appropriation authority for payments from the Consolidated Fund for the ordinary annual services of the Government for the 2025/2026 financial year. The amounts contained in Schedule 1 to the Bill provide for the ongoing operations of Departments, new output initiatives and new asset investment insofar as these are funded by way of annual appropriation. The Schedule also includes payments made on behalf of the State. These payments are not related to the direct provision of outputs by Departments and are generally passed on by Departments for specific purposes. In some cases (where stated), the annual appropriations in Schedule 1 include line items that are specifically referenced in separate legislation, but unlike special appropriations, require annual appropriations by Parliament.
>
> In addition to the annual appropriations contained in this Bill, funds are also made available to Departments by way of special appropriation. Special appropriations arise through provisions that are contained in legislation. These appropriations provide for the specific purposes set out in that legislation

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1 'salaries and related costs includes wages or other amounts in the nature of salary, payments by way of overtime or penalty rates or in lieu of long service leave or for retiring gratuities, superannuation contributions, annual leave loadings, payroll tax payments and WorkCover insurance policy premiums.'

2 'determination includes any regulation or any award, order or determination of a person or body authorised to determine minimum salaries or wages under any law of the Commonwealth or of the State, or any agreement approved in accordance with *the Fair Work Act 2009* or *Workplace Relations Act 1996* of the Commonwealth, or any agreement entered into by or on behalf of the State'.

> and they do not lapse annually like the annual Appropriation Act. Details of these can be found in Table A.4 of *Budget Paper No. 5: Statement of Finances*.

It provides that the amounts applied to an item[3] in Schedule 1 must not exceed the amount specified except for: amounts determined by the Treasurer in respect of depreciation; or as provided for by section 30 ('Transfer between items of departmental appropriation') or 31A ('Transfer between items of Court Services Victoria appropriation') of the *Financial Management Act 1994* **[5]**. Note the Explanatory Memorandum:

> Where an item in Schedule 1 provides that section 29 of the *Financial Management Act 1994* applies, money received from the provision of services or asset sales by that Department or by specific purpose payment by the Commonwealth or by a municipal council may be credited to that item during the financial year and is deemed to have been appropriated. Estimates of appropriations annotated pursuant to section 29 of the *Financial Management Act 1994* may be found in Tables A.5 and A.6 of *Budget Paper No. 5: Statement of Finances*.

It provides that a corresponding amount is applied to the appropriate item in Schedule 1 in respect of the financial year 2025/2026 for arrangements, expenses or obligations which arise in financial year 2025/2026 for payment of an amount in a future financial year **[6]**. Note the Explanatory Memorandum:

> Unapplied appropriation under the *Appropriation (2024-2025) Act 2024* has been estimated and is included in the Budget Papers. At the end of the 2024/2025 financial year actual unapplied appropriations are finalised, approved carryover amounts determined, and the 2025/2026 appropriations increased accordingly, pursuant to section 32 of the *Financial Management Act 1994*.

It deems sums specified in Schedule 2 which have been expended from the Public Account to meet urgent claims[4] to have been appropriated from the Consolidated Fund for the provision of outputs, additions to the net asset base and payments made on behalf of the State specified in Schedule 2 and provides that those sums shall be repaid to the Public Account **[7]**. It provides that sums specified in Schedule 3 have been expended to meet urgent claims out of the advance appropriated by *Appropriations (2023-2024) Act 2024* and deems those payments appropriated for the purposes and services specified in Schedule 3 **[8]**. Note the Explanatory Memorandum:

> Advances during 2024/2025 from the Treasurer's Advance and those available under section 35 of the *Financial Management Act 1994* are not brought to account in this Bill. They are tabled in the Parliament as part of the *Financial Report for the State of Victoria 2024/2025* and formally brought to account in the Appropriation (2026-2027) Bill. Advances relating to 2023/2024, which were published in the *Financial Report for the State of Victoria 2023/2024*, are brought to account in clauses 7 and 8 of, and Schedules 2 and 3 to, this Bill.

Comments under the PCA

The Committee makes no comment pursuant to its terms of reference under section 17 of the *Parliamentary Committees Act 2003*.

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[3] The items listed in Schedule 1 are: Courts (see clause 9); Education; Energy, Environment and Climate Action; Families, Fairness and Housing; Government Services; Health; Jobs, Skills, Industries and Regions; Justice and Community Safety; Premier and Cabinet; Transport and Planning; and Treasurer and Finance.

[4] *Financia Management Act 1994*, sub-section 35(1): 'There may be issued temporarily out of the Public Account in a financial year any money (not exceeding in total 0·5% of the total amount appropriated by the annual appropriation Act for that year) required to be provided for advances to the Minister to enable him or her to meet urgent claims before Parliamentary sanction is obtained.'

Charter Issues

The Bill is compatible with the rights set out in the *Charter of Human Rights and Responsibilities Act 2006*.

Appropriation (Parliament 2025-2026) Bill 2025

Member	Hon Jaclyn Symes MP	**Introduction Date**	20 May 2025
Portfolio	Treasurer	**Second Reading Date**	20 May 2025

Summary

The Bill provides for appropriation out of the Consolidated Fund for the Parliament for the financial year 2025/2026.

Clause 2 is the commencement clause. All provisions of the Bill commence on Royal Assent. Clause 7 is the repeal clause. The Act is automatically repealed on the fourth anniversary of Royal Assent.

It permits the Treasurer to issue $297 204 000 as set out in Schedule 1 out of the Consolidated Fund in respect of the financial year 2025/2026; and an additional amount not exceeding the increased amount payable in respect of the financial year 2025/2026 in respect of salaries and related costs[5] as a result on any legislation or determination[6] if the amounts in Schedule 1 are not sufficient to provide for the payment of that increased amount **[3]**. It appropriates the Consolidated Fund to the extent necessary for these purposes **[4]**. Note the Explanatory Memorandum:

> This Bill provides appropriation authority for payments from the Consolidated Fund to the Parliament for the 2025/2026 financial year. The amounts contained in Schedule 1 to the Bill provide for the ongoing operations of the Parliament and the body or office of certain independent officers of the Parliament, new output initiatives and new asset investment in so far as these are funded by way of annual appropriation.
>
> In addition to the annual appropriations contained in this Bill, funds are also made available to the Parliament by way of special appropriation. Special appropriations arise through provisions that are contained in legislation. These appropriations provide for the specific purposes set out in that legislation and they do not lapse annually like the annual Appropriation Act. Details of these can be found in Table A.4 of *Budget Paper No. 5: Statement of Finances*.

It provides that the amounts applied to an item[7] in Schedule 1 must not exceed the amount specified except for: amounts determined by the Treasurer in respect of depreciation; or as provided for by section 31 ('Transfer between items of Parliamentary appropriation') of the *Financial Management Act 1994* **[5]**. Note the Explanatory Memorandum:

> Where an item in Schedule 1 provides that section 29 of the *Financial Management Act 1994* applies, money received from the provision of services or asset sales by that Department or by specific purpose payment by the Commonwealth or a municipal council may be credited to that item during the financial year and is deemed to have been appropriated. Estimates of appropriations annotated pursuant to section 29 of the *Financial Management Act 1994* may be found in Tables A.5 and A.6 of *Budget Paper No. 5: Statement of Finances*.

It provides that a corresponding amount is applied to the appropriate item in Schedule 1 in respect of the financial year 2025/2026 for arrangements, expenses or obligations which arise in financial year

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5 'salaries and related costs includes wages or other amounts in the nature of salary, payments by way of overtime or penalty rates or in lieu of long service leave or for retiring gratuities, superannuation contributions, annual leave loadings, payroll tax payments and WorkCover insurance policy premiums.'

6 'determination includes any regulation or any award, order or determination of a person or body authorised to determine minimum salaries or wages under any law of the Commonwealth or of the State, or any agreement approved in accordance with the *Fair Work Act 2009* or *Workplace Relations Act 1996* of the Commonwealth, or any agreement entered into by or on behalf of the State'.

7 The items listed in Schedule 1 are: Legislative Council; Legislative Assembly; Parliamentary Investigatory Committees; Parliamentary Services; Parliamentary Budget Office; Integrity Oversight Victoria; Auditor-General; Independent Broad-based Anti-corruption Commission; Victorian Ombudsman.

2025/2026 for payment of an amount in a future financial year **[6]**. Note the Explanatory Memorandum:

> Unapplied appropriation under the *Appropriation (Parliament 2024-2025) Act 2024* has been estimated and is included in the Budget Papers. At the end of the 2024/2025 financial year actual unapplied appropriations are finalised, approved carryover amounts determined and the 2025/2026 appropriations increased accordingly, pursuant to section 32 of the *Financial Management Act 1994*.

Comments under the PCA

The Committee makes no comment pursuant to its terms of reference under section 17 of the *Parliamentary Committees Act 2003*.

Charter Issues

The Bill is compatible with the rights set out in the *Charter of Human Rights and Responsibilities Act 2006*.

Corrections Legislation Amendment Bill 2025

Member	Hon Enver Erdogan MP	**Introduction Date**	13 May 2025
Portfolio	Corrections	**Second Reading Date**	14 May 2025

Summary

The Bill amends the *Serious Offenders Act 2018* (SO Act), *the Sex Offender Registration Act 2004* (SOR Act) and *Corrections Act 1986* (C Act).

The Bill—

- alters provisions on post-sentence supervision and detention
- expands a provision on sentencing of prison offences
- alters provisions on parole
- makes miscellaneous amendments

Preliminary

Clause 2 is the commencement provision. All of the Bill except for sections 10 to 13 and Parts 3 and 5 commences on the day after Royal Assent. Sections 10 to 13 (on prosecutions under the SO Act) and Parts 3 and 5 (on reporting periods under the SOR Act) commence on 1 March 2026 unless proclaimed earlier.

Post-sentence supervision and detention

Parts 2 and 3 amend the SO Act and SOR Act. Note the Second Reading Speech:

> The government completed a review of the *Serious Offenders Act in 2023*. The review found that the Serious Offenders Act is operating effectively and as intended, and also made 13 recommendations to further enhance the post sentence scheme. Following government's commitment to implement the recommendations from the 2023 Review of the Serious Offenders Act, the Bill introduces a number of legislative amendments to improve the operation of the post sentence scheme.

The Committee notes the Review Overview Report tabled on 1 November 2023.[8]

Part 2 amends the SO Act. It requires that all offenders on whom a court imposes monitoring conditions be electronically monitored and wear a monitoring device 24 hours a day **[4]**. It allows the Post Sentence Authority to direct certain offenders about who may live with them or (at certain times) visit them **[5]**. Note the Statement of Compatibility:

> [I]t is my view that these provisions are appropriately circumscribed so as not to authorise any arbitrary interferences with these matters… [D]irections about where a person on a supervision order can live play a critical role in managing the individual's risk by limiting their exposure to possible triggers and protecting people who are vulnerable to being harmed. There are also a number of safeguards in place to ensure directions are only given where necessary and proportionate to this purpose, thereby protecting against any arbitrary application of a direction. Firstly, under the new section 36A(1), the Authority will only be able to give directions about who a person can live with if the Court both imposes

[8] Department of Justice and Community Safety, *Review of the Serious Offenders Act 2018: Review overview report*, available at <https://www.parliament.vic.gov.au/496237/globalassets/tabled-paper-documents/tabled-paper-7556/review-overview-report.pdf>, p. 2: 'A detailed 142-page report was prepared following the Review, which will be provided to stakeholders involved in implementing the Review's recommendations. This Review Overview Report summarises the Review's key findings and recommendations. It also contains an overview of the SOA and explains the conduct of the Review.'

> a condition on a supervision order restricting where the person can live, and authorises the Authority to give directions in relation to that condition. Under the new section 36A(2), the Court will also retain discretion to order that the Authority cannot give directions about who a person can live with. Finally, the Authority is also subject to a number of obligations to protect rights of offenders, including the right to privacy. For example, section 139 of the SOA requires the Authority to aim to ensure directions constitute the minimum interference with the right of an offender's liberty, privacy or freedom of movement necessary to achieve the purpose of the condition. The Authority is also a public authority under the Charter and is required to give proper consideration to, and act compatibly with, Charter rights (including the right to privacy) when making decisions in accordance with section 38 of the Charter. This would include any decision to give a direction to a person subject to a supervision order about who they can live with.

It allows the Post Sentence Authority to not notify victims of pending decisions if satisfied that notification is inappropriate or impracticable (and to consider the Secretary's opinion on those matters) **[6]**. Note the Review Overview Report:[9]

> In relation to victims' rights, the SOA requires the Authority to give notice of a proposed direction to victims included on the Victims Register. The Authority and other stakeholders highlighted that the current provisions do not recognise that many directions are administrative or short-term in nature and/or do not recognise that the Authority may need to repeatedly make the same directions under changing versions of the offender's order. There were concerns that informing a registered victim of every direction may 'retraumatise' victims unnecessarily.

It permits a police officer who arrests an offender on suspicion of contravening a supervision order to release the offender unconditionally **[8]**. Note the Statement of Compatibility:

> These changes will make it clear that police can release a person while they conduct further investigations to confirm if a contravention occurred, ensuring the person is not remanded for an extended period. This amendment will therefore reduce the risk of arbitrary detention of people on supervision orders, protecting their right to liberty.

It provides that proceedings for contravening an interim order made by the Court of Appeal be heard by the court to which the matter was remitted **[9]** and that various provisions relating to proceedings for an offence of contravening an order also apply to the offence of attempting to contravene an order **[10-13, 22]**. Note the Statement of Compatibility:

> The Bill will… help reduce fragmentation of criminal proceedings by clarifying that the court that made a supervision order should be responsible for hearing and determining offences of attempting to contravene a supervision order, not just offences where a contravention has occurred. In effect, this change will require attempted contravention offences to be uplifted to the County Court or the Supreme Court (whichever court made the supervision orders), along with any related summary offences. This will support continuity of judicial oversight of the offender and reduce fragmentation of proceedings.

It replaces a provision on use and disclosure of information obtained under the SO Act with separate provisions **[14]**. Note the Explanatory Memorandum:

> Clause 14 does not substantially change the circumstances in which information can be used or disclosed.

See the comments under the PCA. It increases the maximum membership of the Post Sentence Authority to 13 persons, including two deputy chairpersons, five full time members and ten sessional members; and provides that at least one member be a person descended from, and identifying and accepted as, an Aboriginal or Torres Strait Islander **[16]**.

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[9] Department of Justice and Community Safety, *Review of the Serious Offenders Act 2018: Review overview report*, available at <https://www.parliament.vic.gov.au/496237/globalassets/tabled-paper-documents/tabled-paper-7556/review-overview-report.pdf>, p. 8.

Part 3 amends the SOR Act. It provides that registrable offenders who are subject (by reason of being imprisoned for a serious sexual offence) to a supervision or detention order (under the SO Act) must comply with reporting obligations in the SOR Act for at least 5 years after the expiry of the order; **[27]** and for transitional arrangements **[28-29]**. Note the Statement of Compatibility:

> The amendments serve a legitimate purpose of protecting community safety and deterring recidivism by supporting police to monitor the affected cohort. The amendments are also proportionate to that purpose. They target a clearly defined cohort of particularly high-risk individuals and clearly specify the new way in which this cohort's reporting periods are to be calculated, ensuring they apply to a particularly high-risk period when a person is on a post sentence order or transitions away from being closely managed under the post-sentence scheme.
>
> …there are a number of safeguards in place to ensure any limitation on these rights is proportionate to that purpose:
>
> - The Bill will only extend or reinstate reporting obligations if a court has imposed a SOA order for a serious sex offence, which requires the court to find that the individual poses an unacceptable risk of further serious offending.
> - The Chief Commissioner of Victoria Police and the Courts will also retain the power to suspend reporting obligations where they are no longer justified – for example, where a person has experienced significant cognitive decline…
>
> Both the SORA and the SOA are civil schemes that are preventative rather than punitive in nature. Altering the reporting obligations of people subject to SOA orders is directed towards prevention of further offending and protection of the community rather than further punishment of offenders. The altered reporting periods under the Bill will also only arise if the court has assessed that the individual poses an unacceptable risk of further serious offending by imposing a SOA order for a serious sex offence – a measure targeted at protection of the community and prevention of further offending rather than punishment.

Sentencing of prison offences

Clause 30 amends the C Act. It extends the definition of 'prison offence' in the C Act to include offences against sections 15A to 18 of the *Crimes Act 1958*[10] that are 'committed against a custodial worker on duty'[11].

The Committee notes that the C Act provides for mandatory reporting of suspected prison offences to disciplinary officers; proper investigations by those officers; and (unless an officer is satisfied that the offence wasn't committed or was trivial) recording the offence on the register of prison offences. Disciplinary officers may reprimand, withdraw a privilege from or charge a prisoner. Governors may hear a charge and, if they find the offence was committed, reprimand, impose a fine of 1 penalty unit or withdraw a privilege from a prisoner. Disciplinary officers and governors may additionally take steps to have the matter dealt with under the criminal law.

The Committee also notes that sub-section 16(3) of the *Sentencing Act 1991* provides:

> Every term of imprisonment imposed on a prisoner by a court in respect of a prison offence or an escape offence must, unless otherwise directed by the court because of the existence of exceptional circumstances, be served cumulatively on any uncompleted sentence or sentences of imprisonment or

[10] The offences are: causing serious injury intentionally in circumstances of gross violence; causing serious injury recklessly in circumstances of gross violence; causing serious injury intentionally; causing serious injury recklessly; and causing injury intentionally or recklessly.

[11] 'custodial worker means— (a) a Governor; or (b) a prison officer; or (c) an escort officer; or (d) a person authorised… to exercise a function or power of a Governor, a prison officer or an escort officer'. A custodial worker is on duty if '—the Governor, prison officer or escort officer is performing a function or exercising a power as a Governor, prison officer or escort officer (as the case may be)' or, for authorised persons, 'the person is exercising a function or power specified in the instrument of authorisation in accordance with any conditions or limitations specified in that instrument'.

detention in a youth justice centre or youth residential centre imposed on that prisoner, whether before or at the same time as that term.

Note the Second Reading Speech:

> Too many people in prison who cause injury to custodial officers are not required to serve any additional prison time for their offending. Despite an existing presumption in the Sentencing Act that requires sentences for prison offences to be served cumulatively, a lack of clarity in the legislation means that some perpetrators who cause injury to custodial officers receive concurrent sentences to be served at the same time as their existing sentences. This means they spend no additional time in prison after assaulting a custodial officer.
>
> Custodial officers have a right to feel safe at work. The impacts of assaults on custodial officers are often significant, and can include ongoing health impacts and trauma requiring specialised support and treatment. Assaults on custodial officers also compromise perceptions of safety at work, leading to difficulties attracting and retaining staff, and can have flow on effects for the safety of prisons more broadly.
>
> The Bill addresses these issues by putting it beyond doubt that certain offences involving injury to custodial officers are 'prison offences' and attract the presumption of sentence cumulation in the Sentencing Act. This means more perpetrators in prison will be required to serve additional prison time if they cause injury to custodial officers.

Note the Statement of Compatibility:

> Reforms to strength sentencing outcomes for causing injury to custodial officers will operate alongside emergency worker harm laws, which impose statutory minimum sentences for these same offences committed against emergency workers, including custodial officers. The combined effect of these provisions will mean that courts must require people who commit causing injury offences against custodial officers to serve the mandatory minimum sentence cumulatively unless exceptional circumstances exist so as to displace the presumption of cumulation, and unless a special reason exists so as to displace the mandatory minimum sentence…
>
> [T]he reforms are necessary to ensure effective denouncement and deterrence of assaults on custodial officers and preserve their right to security of person. The existing presumption of sentence cumulation for prison offences in the Sentencing Act recognises that sentences for offences committed in the prison environment may not provide effective denouncement or deterrence if further time is not added on to the person's existing sentence (particularly if they are nearing the end of their custodial sentence). The reforms also recognise that a safe workplace and workforce are fundamental to a safe, secure, humane and rehabilitative prison system, and alongside broader reforms being rolled out across the Corrections system, will help make prisons safer for both staff and people in custody.
>
> The reforms are also carefully tailored to achieve the important purpose of protecting custodial officers' safety and the overall safety and security of the prison environment while minimising any impact on human rights of offenders. That is, the reforms do not constitute an unreasonable expansion or change to the existing law, but seek to clarify the intended application of an existing presumption of sentence cumulation that already applies to prison offences and that some courts are already applying to causing injury offences committed in prisons against custodial workers. The relevant offences are also narrow and well-defined, and target particularly serious and violent crimes against exposed custodial officers. The reforms therefore seek to impose the minimum limitation necessary to achieve the policy purpose. Courts will also retain some discretion to determine sentence length (within the constraints of emergency worker harm laws), and to impose a concurrent sentence in exceptional circumstances. This will help protect against the imposition of a sentence of imprisonment that is inappropriate, unjust or disproportionate to the offending.

See the Charter report.

<u>Parole amendments</u>

Part 4 amends the C Act. It limits a prohibition on parole (for prisoners serving sentences for certain homicide offences unless the Adult Parole Board is satisfied that the prisoner has cooperated

satisfactorily to reveal the location (or last known location) of the body or remains of the victim of the offence and the place where they may be found) to 'circumstances in which the body or remains of the deceased victim have not been located' **[31]** and validates past parole orders made for those prisoners in those circumstances **[36]**.Note the Explanatory Memorandum:

> The provision operates retrospectively and provides certainty about the validity of parole orders described in the definition in new section 112E(1).

See the comments under the PCA. Note the Statement of Compatibility:

> [T]he Bill will amend the 'No Body, No Parole' provision to correct the unintentionally broad application of the provision. The amendment will make it clear that the presumption against parole in section 74AABA of the Corrections Act does not apply if the victim's body or remains have been located and there is no longer a need to incentivise the offender to cooperate with police to locate it.

The Committee notes its report on the 2016 Bill for the Act that added section 74AABA to the C Act:[12]

> [T]he Committee observes that the terms of new section 74AABA are not expressly limited to homicide prisoners 'where the victim's body was never found', but rather apply to any homicide prisoner unless the Board is satisfied that the prisoner 'cooperated satisfactorily' to identity the last known location of the body or remains of the victim. So, in a homicide case where the victim's remains were found without the prisoner's assistance, new section 74AABA may permanently prevent the Adult Parole Board from making a parole order for such a prisoner.

The Committee notes that, when upholding the validity of Queensland's 'no body, no parole' law, the High Court of Australia remarked:[13]

> Recovery of the victim's body or remains serves the public interest in providing some comfort and certainty to the families and friends of the victim. That is plainly a legitimate purpose for a State to pursue in calibrating a regime for the grant of parole. It is not a purpose that is punitive in any sense relevant to Ch III of the Constitution. Such a non-punitive purpose is discernible from the language of the [*Corrections Services Act 2006* (Qld)] itself. No cooperation declarations may only be made in respect of a no body-no parole prisoner, which, as set out above, is confined to a prisoner convicted of a homicide offence where the body or remains of the victim have not been located. Such a declaration may only then be made when the parole board is satisfied that the prisoner has failed to give satisfactory cooperation about locating a victim's body or remains. If the prisoner does give satisfactory cooperation, or the victim's body or remains are otherwise located, the declaration ceases and they may become eligible for parole.

See the Charter report. It provides that the Adult Parole Board may revoke a cancellation of parole that occurs automatically when the prisoner is sentenced for another offence **[32]**. Note the Second Reading Speech:

> The Bill… makes a minor amendment to allow the Adult Parole Board to reinstate a person's parole in appropriate circumstances if it is automatically cancelled. Currently, a person's parole is automatically cancelled if they are sentenced to a further term of imprisonment while on parole. The Bill clarifies that the Adult Parole Board can revoke an automatic cancellation of parole wherever appropriate. For example, if the sentence of imprisonment is very short, it may be appropriate for the Adult Parole Board to reinstate the person's original parole order rather than requiring the person to go through the whole parole application process again.

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12 *Alert Digest No. 1 of 2017*, p. 22. See also *Alert Digest No. 2 of 2017*, p. 16.

13 *Cherry v Queensland* [2025] HCA 14, [48]-[49].

Comments under the PCA

Unduly authorises acts that may have an adverse effect on personal privacy – (s. 17(a)(iv), PCA) – Unduly authorises acts that may have an adverse effect on the privacy of health information – (s. 17(a)(v), PCA)

Clause 14 inserts a new section 284A into the *Serious Offenders Act 2018*. It provides that an authorised person[14] is authorised to disclose information obtained when exercising a function to:

- an authorised person, when authorised by the person to whom the information relates; or authorised by an Act; or when necessary to perform a function under a relevant Act[15]: sub-section 284A(1)
- any person, when authorised by the person to whom the information relates; or when necessary to reduce the risk of certain offending or to threatening anyone's safety, or to lessen or prevent threats to life, health, safety or welfare: sub-section 284A(2)

It provides that an authorised person may disclose information given to the Post Sentence Authority if necessary to administer the Act or for any court or tribunal proceeding or inquest or to reduce the risk of certain offending, threats to anyone's safety or to lessen or prevent threats to life, health, safety or welfare: sub-section 284A(4).

The Committee notes the Explanatory Memorandum:[16]

> New section 284A is intended to operate as an authorisation to disclose information by or under law for the purposes of—
>
> - Information Privacy Principle 2.1(f) in Schedule 1 to the *Privacy and Data Protection Act 2014*;
> - Health Privacy Principle 2.2(c) in Schedule 1 to the *Health Records Act 2001*; and
> - Australian Privacy Principle 6.2(b) in Schedule 1 to the *Privacy Act 1988* of the Commonwealth.

The Committee notes the Statement of Compatibility:

> Effective information sharing under the SOA is critical to ensure the effective operation of the post sentence scheme. In some instances, this can include medical information – as access to details about medical diagnoses, medications and other information held by health service providers and hospitals can be critical to identifying changes in risk, ensuring people on supervision orders have access to appropriate rehabilitation and treatment services and in turn, protecting community safety.
>
> I acknowledge that it is also important that the personal information of offenders and victims, which can contain extremely sensitive information, is adequately protected from misuse. In my view, the existing protections under the SOA strike an appropriate balance. The SOA provides that information can only be shared with a prescribed list of persons and for a defined list of purposes, which are consistent with whole of government standards on disclosure of information as provided for in the Information Privacy Principles in the *Data and Privacy Protection Act 2014*. The SOA also includes safeguards against misuse, such as penalties for any unauthorised use or disclosure of information and the requirement that relevant persons operate guidelines in relation to accessing of information to

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14 Sub-clause 3(2), amending section 3(1) of the SO Act, defines 'authorised person' as one of 40 categories of person.

15 Sub-clause 3(2), amending section 3(1) of the SO Act, defines 'relevant Act' to mean one of 21 statutes.

16 *Privacy and Data Protection Act 2014*, sch. 1, item 2.1(f): 'An organisation must not use or disclose personal information about an individual for a purpose (the secondary purpose) other than the primary purpose of collection unless—… the use or disclosure is required or authorised by or under law.'; *Health Records Act 2001*, sch 1, item 2.2(c): 'An organisation must not use or disclose health information about an individual for a purpose (the *secondary purpose*) other than the primary purpose for which the information was collected unless at least one of the following paragraphs applies… the use or disclosure is required, authorised or permitted, whether expressly or impliedly, by or under law (other than a prescribed law)'; *Privacy Act 1988* (Cth), sch. 1, item 6.2(b): 'This subclause applies in relation to the use or disclosure of personal information about an individual if… the use or disclosure of the information is required or authorised by or under an Australian law or a court/tribunal order' (and see Item 6.1.)

> ensure that access is restricted to the greatest extent that is possible without interfering with the purpose of the legislation. As a further safeguard, public health services and hospitals are public authorities under the Charter, and will be required to give proper consideration to, and act compatibly with, the right to privacy under the Charter, as well as the *Privacy and Data Protection Act 2014* and the *Health Records Act 2001* when making decisions regarding the nature and extent of any information shared.

The Committee notes the comments in the Statement of Compatibility.

Trespasses unduly on rights and freedoms – Retrospectivity – (s. 17(a)(i), PCA)

Clause 36 amends the *Corrections Act 1986* to insert a validation provision for certain parole orders. It provides that a 'validated parole order' 'has, and is taken to always have had, the same force and effect as it would have had if section 74AABA, as amended by' clause 31 'had been in operation at the time at which the order was made.'

The Committee notes the Explanatory Memorandum:

> The provision operates retrospectively and provides certainty about the validity of parole orders described in the definition in new section 112E(1).

The Committee notes that clause 36's effect may be beneficial, to the extent that the invalidity of a parole order may otherwise have disadvantaged a prisoner purportedly released under that order (e.g. by exposing that person to the risk of arrest and return to detention.) However, the Committee also notes that clause 36's effect may be detrimental, to the extent that a parole order's invalidity may have advantaged a prisoner (e.g. because a prisoner would otherwise face punishment after purportedly being found guilty, or will face prosecution, for the offence of breaching conditions of the purported parole) or another person (e.g. a person suing the Adult Parole Board in respect of the alleged wrongful release of a prisoner.)

The Committee will write to the Minister seeking information as to any detrimental effects of clause 36's retrospective operation.

Charter Issues

Security of the person – Humane treatment – Prison offences – Causing injury

Summary: *The effect of sub-clause 30(2) may be that a prisoner who is sentenced for intentionally or recklessly injuring a custodial worker on duty must ordinarily serve that sentence after the completion of any other sentence. The Committee will write to the Minister seeking further information.*

Relevant provision

The Committee notes that sub-clause 30(2), amending existing s. 48 of the *Corrections Act 1986*, replaces the existing definition of 'prison offence' ('a contravention of this Act or the regulations') with the following definition:

> *prison offence* means—
>
> (a) an offence against any of the following provisions of the *Crimes Act 1958* that is committed against a custodial worker on duty—
>
> (i) section 15A (causing serious injury intentionally in circumstances of gross violence);
>
> (ii) section 15B (causing serious injury recklessly in circumstances of gross violence);
>
> (iii) section 16 (causing serious injury intentionally);

(iv) section 17 (causing serious injury recklessly);

(v) section 18 (causing injury intentionally or recklessly); or

(b) a contravention of this Act or the regulations

The Explanatory Memorandum explains:

> This amendment clarifies Parliament's intention for the operation of section 16(3) of the *Sentencing Act 1991*, which provides that every term of imprisonment imposed on a prisoner by a court in respect of a prison offence, as defined by the *Corrections Act 1986*, must, unless otherwise directed by the court because of the existence of exceptional circumstances, be served cumulatively on any uncompleted sentence or sentences of imprisonment or detention in a youth justice centre or youth residential centre imposed on that prisoner, whether before or at the same time as that term.

Existing sub-s. 16(3) of the *Sentencing Act 1991* provides:

> Every term of imprisonment imposed on a prisoner by a court in respect of a prison offence or an escape offence must, unless otherwise directed by the court because of the existence of exceptional circumstances, be served cumulatively on any uncompleted sentence or sentences of imprisonment or detention in a youth justice centre or youth residential centre imposed on that prisoner, whether before or at the same time as that term.

The Committee observes that the effect of sub-clause 30(2) may be that a prisoner who is sentenced for intentionally or recklessly injuring a custodial worker on duty must ordinarily serve that sentence after the completion of any other sentence.

Charter analysis

The Statement of Compatibility remarks:

> I consider that any limitation imposed by the Bill on the rights under section 10(b), 21(1)-(3) or 22(1) of the Charter to be reasonable, proportionate and justified in accordance with section 7(2) of the Charter for the following reasons.
>
> Firstly, the reforms are necessary to ensure effective denouncement and deterrence of assaults on custodial officers and preserve their right to security of person. The existing presumption of sentence cumulation for prison offences in the Sentencing Act recognises that sentences for offences committed in the prison environment may not provide effective denouncement or deterrence if further time is not added on to the person's existing sentence (particularly if they are nearing the end of their custodial sentence). The reforms also recognise that a safe workplace and workforce are fundamental to a safe, secure, humane and rehabilitative prison system, and alongside broader reforms being rolled out across the Corrections system, will help make prisons safer for both staff and people in custody.
>
> The reforms are also carefully tailored to achieve the important purpose of protecting custodial officers' safety and the overall safety and security of the prison environment while minimising any impact on human rights of offenders. That is, the reforms do not constitute an unreasonable expansion or change to the existing law, but seek to clarify the intended application of an existing presumption of sentence cumulation that already applies to prison offences and that some courts are already applying to causing injury offences committed in prisons against custodial workers. The relevant offences are also narrow and well-defined, and target particularly serious and violent crimes against exposed custodial officers. The reforms therefore seek to impose the minimum limitation necessary to achieve the policy purpose. Courts will also retain some discretion to determine sentence length (within the constraints of emergency worker harm laws), and to impose a concurrent sentence in exceptional circumstances. This will help protect against the imposition of a sentence of imprisonment that is inappropriate, unjust or disproportionate to the offending.
>
> Any deprivation of liberty as a result of the reforms will therefore serve a just and legitimate purpose in accordance with the law that is non-arbitrary, and is unlikely to amount to cruel, inhumane or degrading treatment, or inhumane treatment when deprived of liberty. It is therefore my view that, in the event these rights are limited, the limitation is reasonable and capable of being justified under section 7(2) of the Charter.

The Committee notes that Victoria's Court of Appeal has previously proceeded on the basis (in 2005) or observed that there is 'obvious force in the proposition' (in 2020) that a prisoner injuring another prisoner commits a 'prison offence' under existing s. 48 of the *Corrections Act 1986*.[17] The Committee also notes that several Victorian courts have since held that a prisoner injuring a custodial worker commits a 'prison offence' under existing s. 48 of the *Corrections Act 1986*.[18]

The Committee observes that the effect of sub-clause 30(2) may be to implicitly exclude offences against existing ss. 15A-18 of the *Crimes Act 1958* that are not committed against a custodial officer on duty (e.g. offences committed against other prisoners) from the definition of 'prison offence' The Committee notes that, to the extent that the presumption of cumulation in existing sub-s. 16(3) does not apply to intentionally or recklessly causing injuries to other prisoners, it may not preserve prisoners' Charter rights to security of the person and to humane treatment when deprived of liberty.[19]

Relevant comparisons

The Committee notes that other Australian provisions that require that certain sentences imposed on prisoners ordinarily (or always) be served after other sentences:

- in the Australian Capital Territory and New South Wales, are limited to sentences for offences against correctional officers.[20]
- in Queensland, South Australia and Tasmania, apply to sentences for injuries to anyone.[21]

Conclusion

The Committee will write to the Minister seeking further information as to:

- **whether or not offences by prisoners against ss. 15A to 18 of the *Crimes Act 1958*, when committed against other prisoners, are 'prison offences' under s. 48 of the *Corrections Act 1986* as amended by sub-clause 30(2); and**
- **if not, whether or not sub-clause 30(2) is compatible with prisoners' Charter rights to security of the person and human treatment when deprived of liberty.**

Arbitrary detention – Humane treatment – No body, no parole

Summary: *The effect of clauses 31 and 36 may be to permit and validate the parole of certain prisoners serving sentences for homicide in circumstances in which the body or remains of the deceased victim have been located. The Committee will write to the Minister seeking further information.*

Relevant provision

The Committee notes that clause 31 amends existing sub-s. 74AABA(1) of the *Corrections Act 1986* as follows:

> The Board must not make a parole order under section 74 or 78 in respect of a prisoner serving a sentence of imprisonment for an offence of murder, conspiracy to murder, accessory to murder or manslaughter, in circumstances in which the body or remains of the deceased victim have not been

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17 *R v Devries* [2005] VSCA 95, [8], [14]; *Roach v The Queen* [2020] VSCA 205, [67]. But compare *Dimech v Brooks* [2020] VMC 28, [58].

18 E.g. *DPP v Sportan* [2024] VCC 1156, [72]-[80].

19 Charter ss. 21(1) & 22(1).

20 *Crimes (Sentencing) Act 2005* (ACT), s. 72(4); *Crimes (Sentencing Procedure) Act 1999* (NSW), s. 56(3A).

21 *Penalties and Sentences Act 1992* (Qld), s. 156A (and see sch. 1, items 20, 25 & 33); *Sentencing Act 2017* (SA), s. 45(2); *Sentencing Act 1997 (*Tas), s. 15(3) (and see *Corrections Act 1997* (Tas), sch. 1, pt. 2, items 3 & 4).

> located, unless the Board is satisfied that the prisoner has cooperated satisfactorily in the investigation of the offence to identify—
>
> (a) the location, or the last known location, of the body or remains of the victim of the offence; and
>
> (b) the place where the body or remains of the victim of the offence may be found.

The Committee also notes that clause 36, inserting a new sub-section 112E(2) into the *Corrections Act 1986*, provides that a parole order made between the commencement of existing s. 74AABA and the commencement of clause 31 in respect of a prisoner serving a homicide sentence 'in circumstances in which the body or remains of the deceased victim have been located… has, and is taken to always have had, the same force and effect as it would have' had clause 31 been in operation at the time of the order.

The Committee observes that the effect of clauses 31 and 36 may be to permit and validate the parole of certain prisoners serving sentences for homicide in circumstances in which the body or remains of the deceased victim have been located.

Charter analysis

The Statement of Compatibility remarks:

> [T]he Bill will amend the 'No Body, No Parole' provision to correct the unintentionally broad application of the provision. The amendment will make it clear that the presumption against parole in section 74AABA of the Corrections Act does not apply if the victim's body or remains have been located and there is no longer a need to incentivise the offender to cooperate with police to locate it. This will reduce the risk that the provision will prevent a person receiving parole even after their victim's body has been located and the Adult Parole Board has assessed that they are suitable – which could otherwise limit the right to protection from cruel, inhumane or degrading treatment, the right to be free from arbitrary detention, and the right to humane treatment when deprived of liberty (sections 10(b), 21(2) and 22(1) of the Charter).

The Committee notes that the Queensland's Court of Appeal has held that a provision that is in similar terms to section 74AABA of the *Corrections Act 1986* (as amended by clause 31) does not prevent parole in circumstances where the deceased's victims' body or remains no longer exist.[22] The Court of Appeal remarked:[23]

> It should be observed that if this interpretation is not applied, then the purpose of the "no body, no parole" scheme is largely defeated because no amount of cooperation from a prisoner such as the appellant can ever alter the fact that the remains no longer exist and are incapable of being located.

The Committee observes that it may be unclear whether or not section 74AABA of the *Corrections Act 1986* (as amended by clause 31) and clause 36 apply to a prisoner serving a sentence for homicide in circumstances where the deceased victim's body or remains no longer exist. The Committee notes that, to the extent that a prisoner is barred from parole or invalidly paroled because he or she has not cooperated in locating a body or remains that no longer exist, section 74AABA may limit such a prisoner's Charter rights against arbitrary detention and inhumane punishment.[24]

Relevant comparisons

The Committee notes that 'no body, no parole' laws elsewhere in Australia:

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22 *Armitage v Parole Board Queensland* [2023] QCA 239, [44]. See also *Parole Board Queensland v Armitage* [2024] HCASL 101: 'In circumstances where the respondent's sentence expired on 31 March 2024, the proposed appeal is an unsuitable vehicle for the point of principle it seeks to raise.'

23 *Armitage v Parole Board Queensland* [2023] QCA 239, [43].

24 Charter ss. 10(b), 21(2) & 22(1).

- in New South Wales, Queensland and Western Australia, are in similar terms to section 74AABA of the *Corrections Act 1986* as amended by clause 31.[25]
- in the Northern Territory, is in similar terms to existing s. 74AABA of the *Corrections Act 1986*.[26]
- in South Australia, bars parole for prisoners serving life imprisonment for murder unless the parole board 'is satisfied that the prisoner has satisfactorily cooperated in the investigation of the offence'.[27]

The Committee observes that only Queensland's courts have expressly considered whether or not their provisions apply in circumstances where the deceased victim's body or remains no longer exists.[28]

Conclusion

The Committee will write to the Minister seeking further information as to:

- **whether or not section 74AABA of the *Corrections Act 1986* (as amended by clause 31) and clause 36 apply to a prisoner in circumstances where the deceased victim's body or remains no longer exist; and**
- **to the extent that a prisoner is barred from parole or was invalidly paroled due to lack of cooperation in locating a deceased victim's body or remains that no longer exist, clauses 31 and 36 are compatible with such a prisoner's Charter rights against arbitrary detention and inhumane punishment.**

25 *Crimes (Administration of Sentences) Act 1999* (NSW), s. 135A; *Corrective Services Act 2006* (Qld), ss. 175A & 175B ('cooperation') (and see Division 2 of Part 1AB & s. 193A); *Sentence Administration Act 2003* (WA), s. 66B.

26 *Parole Act 1971* (NT), s. 4B(4).

27 *Correctional Services Act 1982* (SA), s. 67(6).

28 The Committee notes that this issue was not expressly considered in NSW State Parole Authority, 'Authority determines it must not make a parole order for Keli Lane', 22 March 2024. Note also *Byers v Parole Board of South Australia* [2021] SASC 53; *Gavare v R* [2025] SASC 51, [55]-[56].

Roads and Ports Legislation Amendment (Road Safety and Other Matters) Bill 2025

Member	Hon Melissa Horne MP	**Introduction Date**	13 May 2025
Portfolio	Ports and Freight Roads and Road Safety	**Second Reading Date**	14 May 2025

Summary

The Bill amends the *Road Safety Act 1986* (RS Act), the *Road Management Act 2004* (RM Act), the *Port Management Act 1995* (PM Act), the *Marine Safety Act 2010* (MS Act), the *Marine (Drug, Alcohol and Pollution Control) Act 1988* (M(DA&PC) Act), the *Transport (Compliance and Miscellaneous) Act 1983* (T(C&M) Act), the *Transport (Safety Schemes Compliance and Enforcement) Act 2014* (T(SSC&E) Act), and the *Transport Integration Act 2010* (TI Act), and makes other miscellaneous amendments.

The Bill—

- expands who can collect blood and urine samples in relation to road, marine and rail safety offences
- alters provisions on enforcement of certain road safety offences
- permits the prescribing of responsible road authorities for certain road infrastructure and alters provisions on consent for work applications
- alters provisions on port and waterway management
- alters provisions on unattended things at ports and waters and uncollected vessels and items
- establishes a scheme for licensing of mooring services providers
- alters provisions on marine pollution incidents
- relocates provisions on investigations by the Chief Inspector, Transport Safety and provides for a freedom of information exemption
- provides for part-time and acting appointments of transport CEOs
- makes miscellaneous amendments to various Acts.

<u>Preliminary</u>

Clause 2 is the commencement provision. The Bill commences on the day after Royal Assent, except for provisions on enforcement of certain road safety offences; consent for works applications; port managers and harbour masters; licensing of mooring service providers; unattended things at ports and waters; marine pollution incidents; relocated provisions on investigations by the Chief Investigator, Transport Safety; and various statute law revisions, which commence on 1 May 2026 unless proclaimed earlier.

<u>Blood and urine sampling</u>

Clauses 3, 61 and 104 amend definitions of 'approved health professional' in the RS Act, M(DA&PC) Act and the *Rail Safety National Law Application Act 2013* to include 'a person or member of a class of person prescribed by regulations'. Note the Explanatory Memorandum:

> This will enable, for example, professionals who are employed to collect pathology specimens, to be prescribed to be approved health professionals. This amendment will help to ensure that there is a

> broader class of persons that can collect blood and urine samples… which will help to ensure that samples can be collected in an efficient and timely manner.

Road safety offence enforcement

Part 2 amends the RS Act. It provides that 'a Victoria Police employee or a member of a class of Victoria Police employee who is authorised in writing to do so either generally or in any particular case by the Chief Commissioner of Police' may prosecute or conduct a prosecution of **[9]**, or issue a traffic infringement for **[14]**, a prescribed road safety camera offence that is not an excessive speed infringement.[29] Note the Second Reading Speech:

> A range of other offences in the *Road Safety Act 1986* also seek to reduce injuries and fatalities on Victoria's roads. Some of these offences are detected by way of prescribed road safety cameras, and include speeding, red light, seatbelt and distracted driving offences. The range of offences detected via these cameras has expanded in recent years and sworn police officers are required to issue infringements for these offences. This Bill will amend the *Road Safety Act 1986* to allow for specifically authorised Victoria Police employees to be able to issue infringements for these offences, freeing up sworn police officers for other duties. Victoria Police employees would need to be authorised in writing by the Chief Commissioner of Police before they can issue these types of infringements

It allows summary prosecutions for offences concerning duties of drivers after accidents to be commenced within 2 years after the commission of the alleged offence **[10]**. Note the Second Reading Speech:

> Under the *Road Safety Act 1986*, it is an offence for a driver to fail to stop and render assistance after a traffic accident where someone is injured or property is damaged. These offences are commonly known as 'hit and run' offences. There are two categories of penalties for these offences. If a person is killed or seriously injured, the act of failing to stop and render assistance is an indictable offence with significant penalties including up to 10 years imprisonment. The second category of offences cover incidents that have resulted in minor injuries. These are summary offences and have lesser penalties. Summary offences also come with a 12-month period (after the incident) in which Victoria Police can commence proceedings. This limitation has been proven to be insufficient in some cases, because it takes time to investigate and identify who was driving the vehicle at the time of the alleged offence. This Bill will extend the time that Victoria Police have to bring a proceeding for this summary offence from 12 up to 24 months to increase the likelihood that the alleged offender can be identified, located and prosecuted.

It extends provisions concerning appeals against licence suspensions to include suspensions of permits **[11-13]**. Note the Explanatory Memorandum, which states that this 'clarifies' that these provisions apply to the 'suspension of either a driver licence or a learner permit'. It provides that a court order extending time on the basis that a person was not aware of a traffic infringement notice has the effect (or, for operator onus offences, the making of a nomination statement following such an order has the effect) of refunding any fines and additional fees or costs paid (and appropriating the Consolidated Fund accordingly) **[15-16]**.

Road management

Part 3 amends the RM Act. It extends a provision for prescribing responsible road authorities for road-related infrastructure[30] to include road infrastructure.[31] Note the Second Reading Speech:

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29 "excessive speed infringement" means an offence of driving a motor vehicle at a speed of 130 kilometres per hour or more; or 25 kilometres per hour in excess of the speed limit. See RS Act, s. 28(1).

30 '"road-related infrastructure" means infrastructure which is constructed or installed by or on behalf of a road authority, the State or a relevant State body for road-related purposes to— (a) facilitate the operation or use of the roadway or pathway; or (b) support or protect the roadway or pathway.': RM Act, s. 3(1).

31 '"road infrastructure" means— (a) the infrastructure which forms part of a roadway, pathway or shoulder, including— (i) structures forming part of the roadway, pathway or shoulder; (ii) materials from which a roadway, pathway or shoulder is made; … but does not include— (c) if the irrigation channel, sewer or drain is works within the meaning of the *Water Act 1989*, any bridge or culvert over an irrigation channel, sewer or drain, other than a bridge or culvert

> Section 37 of the *Road Management Act 2004* specifies which public body is the responsible road authority for road and its road infrastructure (e.g. roadway, pathway, structures forming part of roadway or pathway) and road-related infrastructure (e.g. traffic signs and streetlights). This Bill expands the regulation-making power in that section so that regulations will be able to specify the responsible road authority for particular types of road infrastructure (infrastructure that forms part of the roadway). This increased flexibility will allow for regulations to specify a different responsible road authority (other than the default authority under the Act) to address circumstances such as municipal road over rail bridges which by default are the responsibility of the relevant local council, but where ongoing maintenance responsibilities more appropriately sit with the Head, Transport for Victoria or VicTrack.

It requires a road authority prescribed as the responsible road authority for certain infrastructure to include information to this effect in its register of public roads **[20]**. It amends provisions for applications for consent to works **[21-22]**. Note the Second Reading Speech:

> The *Road Management Act 2004* requires that the approval of the coordinating road authority for a road must be obtained before works on that road can be undertaken, unless an exemption applies. The requirement to obtain consent is there to ensure that the works are conducted in a way that is safe, minimises traffic impacts, and doesn't negatively impact the integrity of the road. There are recurring issues with applications for approval, including that many are submitted with insufficient information for the coordinating road authority to properly assess them. Further, some applications are receiving deemed consent, that is consent is automatically granted after the expiry of the relevant period which is between three and 20 business days after an application is submitted. Deemed consent, in some cases, is not appropriate particularly when the coordinating road authority doesn't have enough information about the proposed works or how safety risks are to be managed.
>
> This Bill will reform the consent for works process to limit who can apply for consent for works, so that only those entities with responsibility for the proposed works are able to apply. It will introduce a "stop the clock" mechanism to allow for the coordinating road authority to request additional information and to have sufficient time to assess the additional information once it is received. The Bill will remove the availability of deemed consent for higher risk applications. These include applications for works within freeways, and applications from entities that are not road authorities, providers of public transport, or utilities. The reforms in this Bill will also allow for regulations to specify what information must be included with an application, to ensure that it is clear to applicants what information a coordinating road authority must receive to make a timely and informed decision.

<u>Port and waterway management</u>

Division 1 of Part 4 amends the PM Act. It provides for the Minister to direct or permit a port manager to provide certain services to owners of infrastructure or marine assets in the port **[26]**, and to charge fees for services **[25-27]**. Note the Second Reading Speech:

> Local port assets and infrastructure such as piers, jetties, navigation aids, vessel equipment and storage sheds all require regular inspection and maintenance. Under the *Port Management Act 1995*, local port managers may provide services to maintain and develop these types of assets outside their local port area. The Bill will clarify that they may also provide services within their own local port area to other bodies such as municipal councils. The Bill specifies that the types of services local port managers may provide include technical, advisory, maintenance and related services. These services will enable local port managers to better assist other bodies both within and outside the local port, who have responsibilities for marine assets and other infrastructure.
>
> The cost of providing these services is also addressed in the Bill. The Bill will enable the Minister to permit a local port manager to charge a fee for the use of a facility or the provision of a service. The Minister may specify that fees be charged to recover costs, on a commercial basis, or calculated on another basis. While the Minister may permit commercial rates to be charged, this will not be mandated unless the Minister explicitly states fees must be set on a commercial basis. This means there will still

constructed by or on behalf of a road authority, the State or a relevant State body; or (d) a bridge or culvert over a sewer or drain constructed under section 132 of the *Melbourne and Metropolitan Board of Works Act 1958*.': RM Act, s. 3(1).

> be some flexibility for local port managers to exercise discretion to set different charges in different circumstances, for example, in emergency situations.

Division 2 of Part 5 amends miscellaneous MS Act provisions. It alters a provision (that provides that good faith actions of a harbour master done or reasonably believed to be done under Chapter 6 of the MS Act ('Harbour masters') instead attach to the port management body, local port manager or waterway manager that engaged the harbour master) to specify that the liability does not attach to a body that did not directly engage the harbour master and received the harbour master's services from a different body **[59]**. It alters a definition of 'law enforcement body' (for the purposes of a provision permitting Safe Transport Victoria to disclose certain information for the purposes of certain functions by such a body) to include Ports Victoria, a local port manager and a waterway manager **[60]**. Note the Explanatory Memorandum, which states an example: 'the registration details of a vessel'.

Unattended things at ports and in waters and uncollected vessels and items

Division 1 of Part 4 and Part 5 amend provisions in the PM Act and MS Act relating to unattended things at ports and in waters. Note the Second Reading Speech:

> The Bill will also improve processes to remove abandoned vessels and other things from ports and waterways. Abandoned vessels and other items can cause environmental and safety risks in ports and negatively impact the aesthetic value of the area. The Bill will amend the *Port Management Act 1995* to improve the processes related to the removal of abandoned vessels and other things. The Bill will clarify the steps a port manager must follow to determine a vessel or thing as abandoned. The Bill will also outline certain requirements to move an abandoned vessel or thing, and to identify, locate and notify the owner. These amendments will enable port managers to act more efficiently while providing greater consistency and transparency in the management of abandoned vessels and other things in ports. Similar changes will be made to the equivalent provisions in the *Marine Safety Act 2010* with respect to the disposal of abandoned things by waterway managers.

They alter the definition of 'abandoned things' and insert a new definition of 'unattended things' in the PM Act **[23]**. Note the Explanatory Memorandum:

> The new definition of unattended thing is essentially the same as the current definition of abandoned thing… The new definition of abandoned thing has a narrower meaning and is defined to mean a thing that has been determined… to be an abandoned thing…

They provide:

- that a port or waterway manager may determine that a thing (including a vessel) is abandoned if it has been left at a port or in waters for one month and either: the owner's identity and location cannot be established; it is reasonably believed that the owner will not move the thing; or the owner has not moved the thing 14 days after being notified in certain ways (or 21 days if the notice is returned undelivered) **[30, 49]**. Note the Explanatory Memorandum:

  > This new provision contains similar elements to current [provisions]. The main difference is that there is a new process [to] serve a written notice on the owner of the thing and a failure to comply with that notice will mean that the thing will be determined to be an abandoned thing.

- that an unattended thing may be moved to the nearest safe and convenient place if it is either: determined to be abandoned; or if it is causing an impediment, an environmental hazard, a risk to safety or security or a danger to public health and the owner isn't identified or will not move the thing **[31, 50]**.
- that reasonable force may be used to move the thing or to facilitate its sale or disposal **[32, 51]**. Note the Explanatory Memorandum:

  > The amendments… clarify that the exercise of reasonable force may additionally be applied for the purpose of facilitating the sale or disposal of the vehicle or vessel…

- that a thing may be disposed of by gift, sale or destruction if: it has been determined to be abandoned or has been moved in accordance with above provisions; and either: the identity and location of the owner has not been established after reasonable inquiries; notice is given; or the thing is perishable **[34, 53]**.
- for recovery of costs **[35, 54]**; for the application of proceeds of sale and that the owner is not entitled to any proceeds if there are no net proceeds or the thing has been disposed of other than by sale, and for the owner to apply for compensation in the Magistrates' Court **[36, 55]**; and, for things in ports, for the proceeds to be paid to the State if no claim is made within 12 months **[37]**.[32]

Note the Statement of Compatibility:

> The ability of a port or waterway manager to deal with a person's property in this manner will engage their property rights under s 20. However, in my view the right is not limited, as the circumstances in which property can be treated as abandoned and how it can then be dealt with by port or waterway managers will be under a clearly formulated, publicly accessible law and confined to specific circumstances necessary, for example only after reasonable enquiries as to the owner of the item are made or notice has been given, to meet the legitimate purposes of ensuring ports and waterways are kept clear of abandoned property that may be detrimental to the operation of ports, the use of waterways or be environmentally or otherwise harmful.

They provide that a person to whom an unattended thing is sold or given in accordance with these provisions, or to whom the Commissioner of Police gives or sells a vessel or item on it that is subject to an impoundment, immobilisation, forfeiture or disposal order, acquires a good title **[34, 53, 56-58]**.

<u>Mooring services</u>

Division 2 of Part 4 establishes a licensing scheme for mooring services providers. Note the Second Reading Speech:

> The Government is committed to addressing safety and improving reliability in Victoria's commercial ports. Recently, port stakeholders have raised concerns about the safety of mooring services provided at Victoria's commercial ports. Mooring, and unmooring, of vessels is an inherently high-risk activity where a vessel's mooring lines come under high tension as a vessel is secured to berth and is performed at ports in an industrial-like environment and is subject to sudden and unpredictable changes in mooring line tension. These activities are currently unregulated under the *Port Management Act 1995*.
>
> Mooring operations are vital to a port's operations. Poor mooring practices have the potential to injure or kill personnel operating in the port and the potential to damage wharf infrastructure or vessels. Poor mooring practices can also increase the likelihood of a vessel breaking away and causing considerable damage, both to itself and to other vessels in the vicinity. In addition, inadequate mooring practices can serve as a critical vulnerability in a bustling port environment like the Port of Melbourne, and in the event of the mooring service being significantly compromised, shipping movements could stop, potentially closing the port. For these reasons, the Government is taking action to regulate mooring services to ensure that the providers of such services adhere to minimum standards and conduct their operations in a safe manner.
>
> To manage these risks to personnel and to ensure port operations are run efficiently, the Bill will introduce both a licensing scheme for mooring services and new powers to make a determination setting standards and requirements for mooring services at commercial ports. The new regulatory requirements will be administered by Ports Victoria. The new scheme is substantially similar to the existing scheme that applies to towage services under the *Port Management Act 1995*.

[32] See also existing s. 219G, MS Act.

It inserts a new Part 4C into the PM Act **[43]**, providing:

- a definition of 'mooring service' ('the service of mooring[33] and unmooring vessels') and related definitions: Division 1
- that Ports Victoria may determine requirements and standards that apply to the provision of a mooring service at a prescribed commercial trading port, and for notice, consultation and submissions in relation to determinations: Division 2. Note the Second Reading Speech:

  > Ports Victoria will have powers to make a mooring services determination to establish the different standards and requirements that will apply to the provision of mooring services in a prescribed commercial port. The determination is expected to include various requirements, standards and obligations related to the training of staff engaged or employed by the provider, the equipment, vehicles and vessels used by the provider, as well as procedures for the reporting of incidents and damage.

- that a licence authorises mooring services (subject to the Act and conditions in the licence), and for an offence of providing mooring services in a commercial trading port without authorisation by a licence that is in force: Division 3. See the comments on the PCA
- for applications to Ports Victoria for a licence, determinations by Ports Victoria in accordance with the mooring services determination, licence conditions that Ports Victoria thinks fit and specifies in the licence, an offence of not complying with those conditions, and for the licence to be in effect for 5 years unless suspended, cancelled or surrendered: Division 4. See the comments in the PCA
- for renewals of a licence, amendments of licence conditions and surrender of licences: Divisions 5 to 7
- for disciplinary processes for licence contraventions, contraventions of new Part 4C or false or misleading information in relation to an application, and for suspensions or cancellations of licences: Division 8
- for internal and VCAT review of decisions by Ports Victoria to refuse an application, impose or amend conditions, or disciplinary action: Division 9
- for Ports Victoria to keep and maintain a register of holders of mooring service licences, including names and addresses, dates of issue and any other information Ports Victoria determines should be included: Division 10.

<u>Marine pollution incidents</u>

Part 6 amends the M(DA&PC) Act. Note the Second Reading Speech:

> The Bill will clarify arrangements for responding to marine pollution incidents by amending the *Marine (Drug, Alcohol and Pollution Control) Act 1988* to clarify that the Secretary, DTP's functions in relation to marine pollution incidents is to take action to deal with marine pollution incidents where the pollution is from a maritime source, while supporting other agencies in responding to marine pollution incidents that result from inland sources. The Bill will also ensure that Victoria is not left to bear a higher cost of any pollution response resulting from the escape of oil from an oil tanker, by removing the outdated liability limit for such indents from the *Marine (Drug, Alcohol and Pollution Control) Act 1988*, and relying instead on the internationally agreed liability limit given effect under Commonwealth legislation.

It alters a provision concerning Ministerial actions and owners' liability 'if oil escapes from a tanker' to include 'circumstances where oil enters State waters after escaping from a tanker inside or outside

[33] '*mooring* means the process of securing a vessel to a berth by attaching the mooring lines of the vessel to the mooring infrastructure of the berth'. '*berth* means any dock, pier, jetty, quay, wharf, marine terminal or similar structure (whether floating or not) at which a vessel may tie up using mooring lines, and includes any plant or premises, other than a vessel, used for purposes ancillary or incidental to the loading or unloading of cargoes'.

State waters'; and to remove provisions on the maximum liability applicable to a tanker in relation to incidents[34] **[62]**. Note the Explanatory Memorandum:[35]

> Repealing this provision enables the Commonwealth legislation that applies the internationally agreed maximum liability limits, the *Protection of the Sea (Civil Liability) Act 1981*, to apply in State waters.

It extends a function of the Secretary 'to take action to deal with marine pollution incidents occurring in State waters that are not port waters' to include incidents 'originating from a maritime source, where the incident is in' such waters; and adds further functions relating to other marine pollution incidents ('if requested, to take action to support other entities to deal with' such incidents) and 'prohibited discharges from any place on land' ('to prevent and deal with' such discharges) **[63]**.Note the Explanatory Memorandum:

> This reflects the Secretary's agreed role under the State Emergency Management Plan, where the Department is the control agency for certain maritime-sourced pollution incidents but not for incidents arising from other sources… New paragraph 71A(1)(cb) provides that an additional function of the Secretary is to take action to prevent and deal with prohibited discharges from any place on land. This paragraph reflects the role that the Secretary, with the assistance of the Department, currently plays in supporting other agencies when responding to a marine pollution incident resulting from prohibited discharges on land.

<u>Investigations by the Chief investigator, Transport Safety</u>

Parts 7, 8 and Division 3 of Part 9 amend the T(SSC&E) Act, the T(C&M) Act and the TI Act. Note the Second Reading Speech:

> The Bill reforms the current legislation that establishes the investigative powers of the Chief Investigator Transport Safety by consolidating those powers into *the Transport (Safety Schemes Compliance and Enforcement) Act 2014* and repealing Part V of *the Transport (Compliance and Miscellaneous) Act 1983*. The Chief Investigator conducts an important public function of 'no-blame' investigations of transport incidents. The results and outcomes of investigations are an important input into public policy development relating to the safety of transport services and infrastructure. Accordingly, it is vital the Chief Investigator has clear and appropriate powers to conduct these investigations. The consolidation of the powers will improve clarity for the public and also deliver fixes to known deficiencies in the investigative powers of the Chief Investigator. Additionally, the Bill amends the *Transport Integration Act 2010* to provide that the *Freedom of Information Act 1982* does not apply to documents obtained by CITS in the course of investigations. Such a restriction is appropriate having regard to the nature of the investigations that the Chief Investigator conducts and the types of confidential information that the Chief Investigator is able to obtain using their powers.

They rename existing Part 2 ('Compliance and investigatory powers') of the T(SSC&E) Act as 'General compliance and investigatory powers') **[67],** insert a new Part 2A ('Investigatory powers – Chief

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[34] Existing sub-s. 47(6) of the M(DA&PC) Act provides: 'the maximum liability applicable to a tanker in relation to an incident that resulted in the escape of oil from a tanker without the fault or privity of the owner is— (a) an amount calculated by multiplying the amount of $220 by the tonnage factor applicable to the tanker; or (b) the amount of $23 240 000— whichever amount is the less.'

[35] The Committee notes that section 8 of the *Protection of the Sea (Civil Liability) Act 1981* (Cth) gives force of law to various articles (including Article V) of the *International Convention on Civil Liability for Oil Pollution*. Article V (as amended) states: '1. The owner of a ship shall be entitled to limit his liability under this Convention in respect of any one incident to an aggregate amount calculated as follows: (a) 4,510,000 units of account for a ship not exceeding 5,000 units of tonnage; (b) for a ship with a tonnage in excess thereof, for each additional unit of tonnage, 631 units of account in addition to the amount mentioned in subparagraph (a); provided, however, that this aggregate amount shall not in any event exceed 89,770,000 units of account. 2. The owner shall not be entitled to limit his liability under this Convention if it is proved that the pollution damage resulted from his personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result… 9 (a). The "unit of account" referred to in paragraph 1 of this Article is the Special Drawing Right as defined by the International Monetary Fund'. See <https://www.imf.org/en/Topics/special-drawing-right>.

Investigator, Transport Safety') **[70]** and repeal Part V ('Chief Investigator, Transport Safety') of the T(C&M) Act **[83]**. Note the Explanatory Memorandum:

> The existing powers in Part V of the *Transport (Compliance and Miscellaneous) Act 1983* are very similar to those granted to transport safety officers in the *Transport (Safety Schemes Compliance and Enforcement) Act 2014* but were modified in a number of instances by section 84 of the *Transport (Compliance and Miscellaneous) Act 1983* to apply to the Chief Investigator who undertakes independent no-fault investigations into public transport safety and marine safety matters.

New Part 2A provides for the Chief Investigator, Transport Safety:

- to enter into public transport, marine premises, rolling stock or a bus, and boarding of vessels: Division 2 (compare Division 1 of Part 2 of the T(SSC&E) Act)
- to exercise powers after entry and boarding: Division 3 (compare Division 2 of Part 2 of the T(SSC&E) Act)
- to obtain search warrants: Division 4 (compare Division 3 of Part 2 of the T(SSC&E) Act)
- to order the production of documents and exercise powers relating to seized things: Division 5 (compare Division 4 of Part 2 of the T(SSC&E) Act). It is an offence to fail to comply with a requirement without a reasonable excuse, and a person is not excused from compliance on the grounds of self-incrimination or exposure to a penalty. See the comments on the PCA
- to minimise damage and for claims for compensation: Division 6 (compare Division 5 of Part 2 of the T(SSC&E) Act)
- to request certain names and addresses: Division 7 (compare Division 6 of Part 2 of the T(SSC&E) Act)[36]
- to carry and produce photo ID and identity cards, for limits on exercising powers in residential premises and using force, to minimise inconvenience and time, and for obtaining information voluntarily: Division 8 (compare Division 7 of Part 2 of the T(SSC&E) Act)[37]
- to give the Minister reports on investigations and publish information; for restrictions on disclosure of information and on admissibility of reports; and for requesting the Australian Transport Safety Bureau to investigate accidents: Division 9 (compare Division 4 of Part 5 of the T(C&M) Act).

Part 7 provides for reviews of decisions by the Chief Investigator, Transport Safety **[71-74]**, officer liability for body corporate offences **[76]**, evidentiary certificates **[77]**, adverse publicity orders **[78]**, service of documents **[79]** and transitional provisions **[81]**. Note the Explanatory Memorandum:[38]

> New section 133 provides that if the Chief Investigator has not completed an investigation into a transport safety matter (an ***active investigation***) immediately before the commencement of this Bill, then new Part 2A applies to that active investigation. In addition, and without limiting section 16 of the *Interpretation of Legislation Act 1984*, anything done under Part V of the *Transport (Compliance and Miscellaneous) Act 1983* before the commencement of this Bill for the purposes of, or in relation to, an active investigation is, on that day, taken to have been done under Part 2A.

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36 There is no equivalent in Division 7 to section 42 ('Master or person operating vessel must stop vessel and provide licence or certificates when directed') in Division 6 of Part 2: compare para 84(4)(v) of the T(C&M) Act However, see new sub-section 49F(2) in Division 3, which is equivalent to sub-section 10(2) in Division 2 of Part 2.

37 The equivalent to new section 49ZX ('Information given voluntarily') is in sub-section 24(3) in Division 2 of Part 2.

38 Section 16 of the *Interpretation of Legislation Act 1984* provides: 'Where an Act or a provision of an Act is repealed and re-enacted (with or without modification) then, unless the contrary intention expressly appears— (a) any reference in any Act or subordinate instrument to the repealed Act or provision shall be construed as a reference to the re-enacted Act or provision; and (b) insofar as any subordinate instrument made or other thing done under the repealed Act or provision, or having effect as if so made or done, could have been made or done under the re-enacted Act or provision, it shall have effect as if made or done under the re-enacted Act or provision.'

Division 3 of Part 9 provides that the *Freedom of Information Act 1982* does not apply to a document possessed by the Chief Investigator, Transport Safety that was obtained under Part 2A (or was an incident report, or acquired as part of an investigation, into a public safety matter or marine safety matter) **[90]**. Note the Statement of Compatibility:

> The object of the Chief Investigator is primarily to seek to improve transport and marine safety by providing for the independent, no-blame, investigation of transport safety matters. The purpose of excluding these documents from possible disclosure under the Freedom of Information regime is to ensure that individuals are not discouraged from candidly providing information and disclosing all possible relevant documents. This may hamper the investigation of transport safety matters and impair the ability of the Chief Investigator to make meaningful findings and recommendations for improvements. Reports and safety advice and recommendations are still able to be published publicly where it is considered necessary or desirable for the purposes of transport safety (new s 49ZY inserted into the TSSCE Act by this Bill).

Transport CEO employment

Divisions 1 and 2 of Part 9 and Division 6 of Part 10 amend the TI Act and the *North East Link Act 2020*. They permit employment of the Chief Executive Officers of Safe Transport Victoria **[85]**, a transport corporation[39] **[86]**, V/Line Corporation **[87]** and the North East Link State Tolling Corporation **[103]** 'on a… part-time basis'. The Committee notes its report on the North East Link Bill 2020:[40]

> The Committee observes that the effect of clause 27 may be to prevent a person being appointed as chief executive officer of the North East Link State Tolling Corporation on a part-time basis or from sharing that appointment with another person (e.g. on return from parental or caring leave.)… The Committee observes that, if clause 27 prevents part-time or shared appointments or retentions as chief executive officer of the North East Link State Tolling Corporation and such a requirement or condition indirectly discriminates on the basis of parental or carer status because it: has, or is likely to have, the effect of disadvantaging parents or carers in relation to being appointed or continuing as chief executive officer of the North East Link State Tolling Corporation; and is not reasonable; then clause 27 may engage the Charter right of parents and carers to equal protection of the law without discrimination.

Division 2 of Part 9 provides for acting appointments of the CEO of V/Line Corporation 'for a period not exceeding 4 weeks' **[88]**.

Miscellaneous amendments

Part 10 amends various Acts. It extends a provision in the *Fines Reform Act 2014* that applies to infringement notices relating to EastLink and CityLink to infringement notices relating to the West Gate Tunnel and North East Link **[101]**.

Comments under the PCA

Rights and freedoms – Strict liability – (section 17(a)(i), PCA)

Clause 43 inserts a new Part 4C into the *Port Management Act 1995*, including section 73ZW, which provides:

> A person must not provide a mooring service in a commercial trading port in respect of which there is a mooring service determination in effect unless the person holds a mooring service licence that—
>
> (a) authorises them to provide the mooring service specified in the licence in that commercial trading port; and
>
> (b) is in force.

[39] "*Transport Corporation*" means— (b) the Victorian Rail Track; or (c) the V/Line Corporation; or (d) Ports Victoria; or (f) the Port of Hastings Corporation.

[40] *Alert Digest No 4 of 2020*, p. 7. See also *Alert Digest No 2 of 2021*, pp. 33-34; *Alert Digest No 13 of 2023*, pp. 23-24.

and section 73ZZA, which provides:

> A licence holder must comply with the conditions to which the mooring service licence is subject.

Note the Statement of Compatibility:

> The Bill introduces two new offences into the Port Management Act that do not require proof of fault, for example, being that the relevant party acted 'knowingly or recklessly'. … It is noted that new Part 2A inserted into the TSSCE Act by clause 67 of the Bill includes a number of strict liability offences. However, these offences are already in force and are only being re-enacted subject to minor and technical amendments under this Bill, none of which result in an altered impact on Charter rights and so will not be discussed further in this Statement.
>
> …
>
> These strict liability offences are directed to the legitimate objective of ensuring that people undertaking mooring services in commercial ports have the requisite expertise and are subject to requirements necessary to encourage the provision of mooring services in a safe and effective manner. As identified above, this ultimately reduces the significant risks to personnel, property and port operations that can arise as a result of poor mooring practices.
>
> It is reasonable and necessary that the offences do not require proof of fault given significant consequences and loss that can arise regardless of whether a licence holder acts knowingly or recklessly. The penalties provide a sufficient and proportionate deterrent of non-compliance with the licencing regime in response to identified risks of poor mooring practices. Further, the offences are reasonable in that they do not exclude the common law defence of honest and reasonable mistake of fact, and they do not attract penalties of imprisonment.

The Committee notes the comments in the Statement of Compatibility.

Rights and freedoms – Reverse onus – (section 17(a)(i), PCA)

Clause 70 inserts a new Part 2A (concerning investigations by the Chief Inspector, Transport Safety) into the *Transport (Safety Systems Compliance and Enforcement) Act 2014*, including sub-section 49R(5), which provides:

> A person must not, without reasonable excuse, fail to comply with a requirement under this section.

The Committee notes that this provision is identical to sub-section 22(6) in Part 2 of the same Act, which is currently applied to investigations by the Chief Investigator, Transport Safety by section 84 of the *Transport (Compliance and Miscellaneous) Act 1983*.

Note the Statement of Compatibility:

> [N]ew s 49R expands the scope of the existing offence such that a person must not, without reasonable excuse, fail to comply with a direction to provide any document the Chief Investigator believes on reasonable grounds may contain information that is relevant for the purposes of the investigation into the transport or marine safety matter.
>
> This offence contains an excuse (also known as an exception) which places an evidential burden on the accused. In other words, the accused is required to present or point to evidence that suggests a reasonable possibility of the existence of facts that would establish the exception or excuse. The Supreme Court has held that evidential onus provisions on an accused to establish an exception do not transfer the legal burden of proof and do not limit the right to the presumption of innocence. Once the accused has pointed to evidence of a reasonable excuse, the burden shifts back to the prosecution who must prove the essential elements of the offence to a legal standard. Further, the exception relates to matters which are peculiarly within an accused's knowledge, being why particular documents cannot or should not be provided, and would be unduly onerous for a prosecution to disprove at first instance.

> Should the right to the presumption of innocence in fact be limited by these provisions, I am of the view that any limitation is reasonable and demonstrably justified, in that it is a proportionate measure to the legitimate purpose of the offences, which is to facilitate the effective investigation of transport or marine safety matters with the aim of making improvements to reduce the risk of future accidents or safety incidents. Courts in other jurisdictions have held that the presumption of innocence may be subject to reasonable limits in the context of regulatory compliance, particularly where the commission of regulatory offences may cause harm to the public. Finally, the offences are not punishable by a term of imprisonment.

The Committee notes the comments in the Statement of Compatibility.

Rights and freedoms – Privilege against self-incrimination – (section 17(a)(i), PCA)

Clause 70 inserts a new Part 2A (concerning investigations by the Chief Inspector, Transport Safety) into the *Transport (Safety Systems Compliance and Enforcement) Act 2014*, including sub-section 49T(1), which provides:

> A person is not excused from answering a question or providing information or a document under this Part on the ground that the answer to the question, or the information or document, may tend to incriminate the person or expose the person to a penalty.

The Committee notes that this provision is identical to section 23 in Part 2 of the same Act, which is currently applied to investigations by the Chief Investigator, Transport Safety by section 84 of the *Transport (Compliance and Miscellaneous) Act 1983*.

Note the Statement of Compatibility:

> [N]ew s 49R of the TSSCE Act expands the power of the Chief Investigator to require production of documents. This has the consequence of also expanding the class of documents to which the existing abrogation of privilege against self-incrimination (as re-enacted in new s 49T) will apply. New s 49T provides that a person is not excused from answering a question or providing information or a document on the ground that to do so would incriminate the person. However, the privilege against self-incrimination is protected by providing both a direct and indirect use immunity in clause 49T(2), which ensures that neither the person's answer nor evidence obtained as a consequence of that answer can be used against that person in a criminal proceeding, other than a proceeding arising out of the answer being false or misleading or out of a failure to attend before the Chief Investigator, a refusal to take an oath or affirmation as required by the Investigator or refusing or failing to answer a question lawfully asked by the Investigator.
>
> To the extent that the protection against self-incrimination is abrogated in circumstances where the person has provided false or misleading information or documents, or refused to co-operate with the Chief Investigator, I consider that any limitation to the right under s 25(2)(k) is justified having regard to the need of the Chief Investigator to ensure compliance with the transport and marine safety schemes in Victoria and the broader safety purposes of those schemes. To permit the provision of false information or the refusal to co-operate with lawful requests of the Chief Investigator, and to allow a person to escape sanction for doing so, would fundamentally undermine the enforcement of the scheme.

The Committee notes the comments in the Statement of Compatibility.

Charter Issues

The Bill is compatible with the rights set out in the *Charter of Human Rights and Responsibilities Act 2006*.

Energy and Land Legislation Amendment (Energy Safety) Act 2025

Member	Hon Lily D'Ambrosio MP	**Introduction Date**	4 February 2025
Portfolio	Energy and Resources	**Second Reading Date**	5 February 2025
		Royal Assent	20 May 2025

Note: The Committee reports on this Act pursuant to section 17(c)(ii) of the *Parliamentary Committees Act 2003*.

The Committee reported on the Bill as originally introduced in *Alert Digest No. 2 of 2025*[41] tabled on 18 February 2025.

The Committee now provides a further report on the amendments made by the Legislative Council. The amendments were made in the Legislative Council on 13 May 2025. The Assembly agreed to the amendments made by the Council on 14 May 2025.

Summary

The house amendments added amendments to Division 5A ('Terms and conditions for the purchase of small renewable energy generation electricity') of Part 2 ('Regulation of electricity industry') of the *Electricity Industry Act 2000* (EI Act).

Preliminary

The house amendments provided for certain licensees to set the rates at which they purchase small renewable energy generation electricity from customers.

Section 1 is the purpose section. The house amendments added a new purpose to the clause for that section **[1]**. See the Charter report.

Section 2 is the commencement section. The house amendments provided that new Part 7A commenced on the day after the Bill received Royal Assent **[2]**.

General renewable feed-in rates

New Part 7A amended the EI Act. It provided for crediting an amount determined at the rate published under the general renewable feed-in terms and conditions against charges payable to a relevant licensee[42] by a customer each financial year **[97A]**. It repealed a provision for the Essential Services Commission to determine that rate **[97B]**. Note the remarks of the Minister on the introduction of the House Amendment:

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41 See *Alert Digest No 2 of 2025*, Energy and Land Legislation Amendment (Energy Safety) Bill 2025, pp 11-14 <https://www.parliament.vic.gov.au/49a252/globalassets/committee-publication-record-documents/committee-36/publication-340/alert-digest-no-2-of-2025.pdf>.

42 "relevant licensee" means a person that– (a) holds a licence to sell electricity; and (b) sells electricity to more than 5000 customers.

> The government is introducing a house amendment to the Energy and Land Legislation Amendment (Energy Safety) Bill 2025, including additional amendments to the *Electricity Industry Act 2000* to repeal the Essential Services Commission's role in determining minimum feed-in tariffs, or FIT rates, from 1 July 2025 onwards, providing greater flexibility for electricity retailers to set their own FIT rates for amounts to be credited to their customers for their solar exports. The huge uptake of solar in Victoria has helped push daytime wholesale prices to historic lows, and this means lower power bills for everyone but also means that the minimum feed-in tariff is no longer required.

It required licence conditions that a relevant licensee publish general renewable energy feed-in terms and conditions and provided that the rate must be not less than $0.00 per kilowatt hour **[97C]**. It provided for rates for the 2024 financial year **[97D]**.

Comments under the PCA

The Committee makes no comment pursuant to its terms of reference under section 17 of the *Parliamentary Committees Act 2003*.

Charter Issues

House amendments – Supplementary statement of compatibility – Practice note

Summary: *Amendment 3 may have been unrelated to the Bill's purpose as introduced. The Committee will write to the Minister seeking further information.*

Relevant provision

The Committee notes that Amendment 1, amending clause 1, inserted a new para 1(ea) as follows:

> to amend the *Electricity Industry Act 2000* to enable licensees that sell electricity to more than 5000 customers, rather than the Essential Services Commission, to set the rate or rates at which those licensees purchase small renewable energy generation electricity from customers…

The previous purposes of the Act were to amend various safety and enforcement provisions, to require Energy Safe Victoria to provide corporate plans, to permit agreements for certain works and to make consequential amendments, and did not refer to the *Electricity Industry Act 2000*.[43]

The Committee also notes that Amendment 3, which inserted a new Part 7A, amended provisions of the *Electricity Industry Act 2000* relating to terms and conditions for the purchase of small renewable energy generation electricity.

The Committee observes that Amendment 3 may have been unrelated to the Bill's purpose as introduced.

Charter analysis

The Statement of Compatibility did not discuss new Part 7A (as new Part 7A was not part of the Bill when it was introduced in either house.)

[43] The Committee notes the President of the Legislative Council's 'instruction to committee' on 13 May 2025: 'In consideration of amendments circulated by Minister Stitt, it is my view that the amendments are not within the scope of the bill. Therefore an instruction motion pursuant to standing order 14.11 is required.' See also standing order 14.14: 'Any amendment may be moved during Committee of the whole to any part of the bill, provided it is relevant to the subject matter of the bill or pursuant to an instruction to a Committee of the whole to extend the scope of the bill.'

The Committee's *Practice Note* states:[44]

> The Committee considers that, where house amendments are proposed for a Bill that are unrelated to the Bill's purpose as introduced, supplementary information should be provided to Parliament as to the compatibility of those amendments with the Charter's rights.

Relevant comparisons

The Committee notes that when house amendments were made in the Legislative Council to the Youth Justice Bill 2024 (which added provisions concerning bail that were not within the scope of that Bill), the Minister who moved those amendments tabled a supplementary statement of compatibility.

Conclusion

The Committee will write to the Minister seeking further information as to whether, and if so how, new Part 7A is compatible with human rights.

[44] Scrutiny of Acts and Regulations Committee, *Practice Note [26 May 2014] – reissued 21 June 2016 with further amendments*, B, available at <https://www.parliament.vic.gov.au/practicenote>.

Fire Services Property Amendment (Emergency Services and Volunteers Fund) Bill 2025

Member	Hon Jaclyn Symes MP	**Introduction Date**	5 March 2025
Portfolio	Treasurer	**Second Reading Date**	6 March 2025

The Committee reported on the Bill as originally introduced in *Alert Digest No. 4 of 2025*[45] tabled on 18 March 2025.

The Committee now provides a further report on the amendments made by the Legislative Assembly. The amendments were suggested by the Legislative Council on 16 May 2025. The Assembly made the amendments suggested by the Council on 16 May 2025.

Summary

The house amendments altered provisions that will amend the *Fire Services Levy Act 2012*. The house amendments:

- alter the definition of 'funding recipients' and specify examples for that definition
- set out percentages of funding for various agencies that are to be funded by the emergency services and volunteer funding levy.

Preliminary

They alter part of the definition of 'funding recipients' (its inclusion of Secretary within the meaning of section 3(1) of the *Forests Act 1958* to the extent that the Secretary is performing functions in relation Forest Fire Management Victoria) to instead specify functions in relation to 'emergency management' and added examples to that definition **[6]**. Note the remarks of the Minister who moved the suggested amendment in the Legislative Council:

> Amendment 1 confirms that the funding to the DEECA secretary from the fund is limited in legislation to only funding their work in relation to emergency management. Further, amendment 2 is confirming that funding to the agencies listed in the bill is limited in legislation to only funding their work in relation to emergency management.

Emergency services and volunteer funding levy

They provide that 95% of the annual funding requirements of the CFA and VicSES and 90% of the annual funding requirements of Fire Rescue Victoria are to be funded by the levy in a levy year, and for the Minister to publish a notice of a determination in respect of the next levy year that estimates funding requirements and the amount of the levy and specifies that there is no duplication of funding **[13]**. Note the remarks of the Minister who moved the suggested amendment in the Legislative Council:

> This amendment is designed to fix the funding percentages for entities. I would… like to make it clear that this does not impact on FRV, CFA or VICSES's operating budgets… This amendment is designed to ensure that the government reports on how the revenue that is being collected through the levy will be spent, including a breakdown by entity and the percentage of the annual budget that the ESVF will fund.

[45] See *Alert Digest No 4 of 2025*, Fire Services Property Amendment (Emergency Services and Volunteers Fund) Bill 2025, pp 10-14 <https://www.parliament.vic.gov.au/49a252/globalassets/committee-publication-record-documents/committee-36/publication-342/alert-digest-no-4-of-2025.pdf>.

They provide that the proceeds of the levy must not exceed the amounts provided to the funding recipients and administrative costs **[17A]**. Note the remarks of the Minister who moved the suggested amendment in the Legislative Council:

> This suggested amendment makes clear that all the revenue raised through the fund will be spent on emergency services, and that is the intention of this suggested amendment: to ensure that clarity.

Comments under the PCA

The Committee makes no comment pursuant to its terms of reference under section 17 of the *Parliamentary Committees Act 2003*.

Charter Issues

The house amendments were compatible with the rights set out in the *Charter of Human Rights and Responsibilities Act 2006*.

Ministerial Correspondence

The Committee received a response from a Minister in relation to the Act listed below.

The Committee thanks the Minister for the attached information.

The response is reproduced. Please refer to Appendix 3 for additional information.

Terrorism (Community Protection) and Control of Weapons Amendment Act 2025

Hon Anthony Carbines MP

Minister for Police
Minister for Community Safety
Minister for Victims
Minister for Racing

121 Exhibition Street
Melbourne Victoria 3000
Telephone:(03) 9136 2888

Our ref: EBC 25040194

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
East Melbourne VIC 2002
By email: sarc@parliament.vic.gov.au

Dear Mr Maas Gary,

TERRORISM (COMMUNITY PROTECTION) AND CONTROL OF WEAPONS AMENDMENT ACT 2025

I refer to your letter of 1 April 2025, enclosing an extract from Alert Digest No. 5 of 2025, which contains queries raised by the Scrutiny of Acts and Regulations Committee (the Committee) regarding the compatibility of the *Terrorism (Community Protection) and Control of Weapons Amendment Act 2025* (the Amending Act) with the human rights set out in the *Charter of Human Rights and Responsibilities Act 2006* (the Charter).

I thank the Committee for welcoming the supplementary statement of compatibility tabled in respect of the Government's house amendments included in the Amending Act regarding both machetes and planned designations of an area.

As the Minister responsible for the Amending Act, I am pleased to provide the following further information in response to the Committee's queries.

Property – Prohibited Weapons – Machetes

The Committee has sought further information as to the definition of 'machete' in section 3 of the *Control of Weapons Act 1990* and whether or not including an express definition of 'machete' in that Act would have been a less restrictive means reasonably available to achieve the purpose of section 54A of the Amending Act.

Section 54A of the Amending Act has the effect of reclassifying machetes from their current status as controlled weapons to the more strictly regulated category of prohibited weapons. It does this by repealing the example at the foot of the definition of ***controlled weapon*** in section 3 of the *Control of Weapons Act 1990* (the Act), which states that a machete is a type of knife, and inserts a reference to a machete in the definition of ***prohibited weapon*** in that section so that a prohibited weapon will be defined as meaning an imitation firearm, a machete or an article that is prescribed by the regulations to be a prohibited weapon.

In accordance with section 2 of the Amending Act, section 54A will come into operation on a day to be proclaimed with a default commencement date of 31 December 2025. It is my intention to commence this change on 1 September 2025 by proclamation following community consultation to ensure that Governor in Council exemptions and Chief Commissioner approvals will be put in place enabling some ongoing access to machetes for legitimate and necessary purposes. The 1 September proclamation will also provide sufficient time to establish a 3-month amnesty to coincide with commencement so that as many people as possible have a reasonable opportunity to safely dispose of machetes in their possession.

As the Committee has identified, the Amending Act does not provide a definition of the term 'machete' and to the extent that Australian jurisdictions refer to a machete in their principal legislation and regulations, only Western Australia has defined the term (*Weapons Regulations 1999* (WA), sch. 2, item 10A). The Western Australian definition of 'machete' as 'a broad, heavy chopping knife (e.g. the single edged, cutlass-like knife traditionally used as both a weapon and an implement in Latin American countries, also known as a 'matchet' or a 'panga')' is consistent with all authoritative dictionary definitions of word 'machete'.

The new Victorian laws are intended to apply to all machetes and so should not deviate from the ordinarily understood meaning of what a machete is. I am not aware of any issues having arisen while the type of knife that is a machete has been included as a controlled weapon; either prior to or following the express inclusion of the example stating that a machete is a type of knife in the definition of ***controlled weapon*** in section 3 of the Act.

I also note that the 2024 United Kingdom laws which the Committee refers to in its report apply to 'zombie knives' (which necessarily includes zombie styled machetes, as machetes are a type of knife). The detailed definition applicable to machetes and other knives captured under the term 'zombie' in the United Kingdom would appear necessary to differentiate them from more ordinary and commonplace machetes and other knives that are not styled in an ornate manner inspired by zombie films and television series. The new Victorian laws are not intended to capture only those featuring one or more of the specified features identified in the United Kingdom laws that denote 'zombie' styling.

Therefore, I am satisfied that to capture all machetes, it is neither necessary nor helpful to define the term, as it will, and should, attract its ordinary meaning with reference to the context and purpose of the statutory provisions.

Privacy – Children – Warrantless weapon searches – Length of authorisation – Supplementary statement of compatibility

The Committee has sought further information on two matters with respect to house amendments to planned designations of an area. Firstly, the Committee has asked whether, in my opinion, sub-section 55(3) of the Amending Act was compatible with the Charter's rights against arbitrary or unlawful interferences in privacy and to protection of children (and, if so, how was it compatible, or, if not, the nature and extent of any incompatibility). Secondly, the Committee sought further information about whether new Part 14C of the *Summary Offences Act 1953* (SA) would have been a less restrictive means reasonably available to achieve the purpose of sub-section 55(3). I will address these matters in turn.

The first matter raised by the Committee is whether, in my opinion, section 55(3) of the Amending Act is compatible with the right to privacy under section 13 and the protection of children under section 17 of the Charter. Section 55(3) of the Amending Act provides that planned declarations of designated areas under section 10D(1)(a) must not exceed 24 hours duration and planned declarations of designated areas under section 10D(1)(b) must not exceed 6 months.

Right to privacy (section 13)

Section 10D(1)(a) is the longstanding ground enabling the Chief Commissioner to declare an area to be a designated area if the Chief Commissioner is satisfied that more than one incident of violence or disorder has occurred in that area in the previous 12 months that involved the use of weapons and there is a likelihood that the violence or disorder will recur. The Amending Act has extended the maximum duration of a declaration made under this ground to a period that must not exceed 24 hours from a period that must not exceed 12 hours.

In respect of this ground for making a declaration and the new maximum period of 24 hours, I concluded in my original statement of compatibility that I considered the amendments compatible with the right to privacy under section 13(a) of the Charter. In doing so I had regard to more recent international authorities that considered the right to privacy and police stop and search powers and I was satisfied that there are sufficient limits and safeguards in the Act to curtail any arbitrary interference with the right to privacy, including that the maximum duration is limited to 24 hours and notice of every designation is publicly available. I also noted the important factor that the conduct of any search by a police officer or protective services officer is subject to section 38(1) of the Charter and the requirement to act in a way that is compatible with human rights.

Section 10D(1)(b) is the new ground inserted into the Act by the Amending Act which now enables the Chief Commissioner to declare an area to be a designated area if the Chief Commissioner is satisfied that more than one incidence of violence or disorder has occurred in that area in the previous 12 months that involved the use of weapons and it is necessary to designate the area for the purpose of enabling police officers and protective services officers to exercise search powers to prevent or deter the occurrence of any violence or disorder that the Chief Commissioner is satisfied is likely to occur. A declaration made under this new ground must not exceed 6 months in accordance with amended section 10D(3)(b)(ii).

The supplementary statement of compatibility considered the new ground in section 10D(1)(b) and the new maximum duration of 6 months, and stated the expanded grounds and extended duration raise questions as to whether such an expansion of the scheme is compatible with the right to privacy.

For the reasons outlined in the supplementary statement, in my opinion the amendments are, on balance, compatible with the right to privacy. However, as noted in the supplementary statement, I acknowledge that the amendments may be considered to be incompatible. This is ultimately a matter for judicial consideration and determination.

I also note, as stated in the supplementary statement, that questions of compatibility on implementation will depend upon the specific circumstances under which the powers are exercised, as well as the evidence regarding the reasonableness and necessity of a particular declaration including the size of the area declared and the duration of the declaration made.

Protection of families and children (section 17)

Section 17 of the Charter provides that families are the fundamental group unit of society and are entitled to be protected by society and the State and section 17(2) provides that every child has the right, without discrimination, to such protection as is in the child's best interests and is needed by the child by reason of being a child.

In his statement of compatibility for the *Summary Offences and Control of Weapons Acts Amendment Act 2009*, which first introduced the designated area weapons search scheme in Victoria, the responsible Minister concluded that the designated area legislation was incompatible with both section 13(a) and section 17(2) of the Charter in providing powers for police to randomly search persons (including children) and vehicles in public places within designated areas, even if police have not formed a reasonable suspicion that the person or vehicle is carrying a weapon.

In my original statement of compatibility for the Amending Act, I concluded that when these search powers are exercised in relation to children in the expanded ways that the then Bill would allow (before the house amendments were introduced), the existing incompatibility with section 17 is compounded because of the particular vulnerability of children. It follows that the house amendments which allow for the making of a declaration of a designated area for up to 6 months must further exacerbate the existing incompatibility.

Despite this, for all of the reasons set out in the original and the supplementary statements of compatibility for the Amending Act, I considered the amendments, including those contained in the house amendments, necessary and pressing in light of their significant public safety objectives.

Part 14C of the Summary Offences Act 1953 (SA)

The second matter raised by the Committee in relation to the declaration of a designated area provisions of the Amending Act is whether new Part 14C of South Australia's *Summary Offences Act 1953* (SA) would have been a less restrictive means reasonably available to achieve the purpose of sub-section 55(3) of the Amending Act.

I note that Victoria's Amending Act and South Australia's *Summary Offences (Knives and Other Weapons) Amendment Act 2025* (which inserted Part 14C of the *Summary Offences Act 1953* (SA)) received Royal Assent within a week of each other, with consideration of the two sets of legislation by the respective Parliaments occurring at a similar time. The South Australian amendments only took effect on 12 March 2025, and it will take some time before the full results of these changes become apparent.

It is also important to appreciate that the legislative schemes providing police with powers to search for weapons in Victoria and in South Australia are not directly comparable. New Part 14C of the *Summary Offences Act 1953* (SA) contains the substance of previous provisions regarding metal detector weapons searches as well as several new metal detector search powers. In effect, new Part 14C reenacts powers that had already been available to South Australian police for a number of years while considerably expanding the scope of these powers. For example, Part 14C extends weapons search powers to declared shopping precincts, public transport hubs and their car parks as well as public transport vehicles. These declarations operate until revoked and therefore could well exceed 6 months duration.

While Part 14C of the *Summary Offences Act 1953* (SA) is subject to a requirement that the Commissioner of Police must establish procedures to be followed by police officers in the exercise of powers under that Part and there are some constraints that specifically apply to the exercise of these powers, I note that sections 10C to 10L and Schedule 1 to the Victorian Act contain express and detailed requirements and safeguards applicable to the exercise of police weapons search powers by Victorian police officers. These express provisions are further augmented by Chief Commissioner instructions in the Victoria Police Manual and through the obligation on all Victoria Police officers to act compatibly with the Charter when exercising their weapons search powers.

The South Australian legislation additionally allows for the making of Declared Public Precincts (DPPs) to address broad public order matters, including weapons offending through empowering police to search people in the precinct without warrant or suspicion, initially with metal detector devices. DPPs may be declared by the Attorney-General for a period or periods specified in the declaration if satisfied that during the period/s there is a reasonable likelihood of conduct occurring in the area posing a risk to public order and safety and including each public place in the area is reasonable having regard to the risk. An area may not be declared a public precinct for more than 12 hours in any 24-hour period unless the Attorney-General is satisfied that special circumstances exist in the particular case. DPPs must be published in the South Australian Government Gazette.

In practice, some DPPs have been declared to operate for 6 months, such as the DPP that was applicable in the Adelaide CBD commencing 10 July 2024 and ending on 8 January 2025. That DPP authorised the use of various police powers, including metal detector weapons searches, each Monday to Saturday for 12 hours each day and every Sunday for 4 hours. A 6-month long DPP in Port Augusta, which ended on 27 April 2025, operated for a period of 12 hours from 10.00 am to 10.00 pm every day. The current North Terrace and Riverbank DPP commenced on 9 January 2025, will end on 9 July 2025 and operates for a period of 12 hours from 6:00 pm to 6:00 am on each Friday and Saturday; 12 hours from 10:00 am to 10:00 pm on each Monday, Tuesday, Wednesday and Thursday and a period of 4 hours from 6:00 pm to 10:00 pm each Sunday.

South Australia has a suite of legislation enabling its police officers to conduct weapons searches with metal detector devices without warrant or suspicion in a variety of places and circumstances. These laws appear to have been developed and amended over time and customised in accordance with local conditions and that jurisdiction's specific community safety needs. Many Australian jurisdictions have established legislative schemes empowering their police forces to conduct metal detector or 'wanding' searches for weapons

in public places and some are still evolving but they all differ from each other to a greater or lesser degree.

I am satisfied that Victoria's planned and unplanned designated area scheme as amended by the Amending Act, including the house amendments, provide Victoria Police with an appropriate and balanced level of flexibility to make area-based or event-based designations in response to the likelihood of violence or disorder that is informed by offending data and intelligence. The Victorian scheme will allow police to target areas that are, or are emerging as, high risk areas for weapons related violence or disorder and to concentrate effort in those areas for a suitable period of time, up to 6 months where necessary, so that police can provide an effective and dynamic response to a changing risk profile.

Further, as Victoria's planned and unplanned designated area scheme has been in operation for 15 years, the designated area provisions of the Amending Act build on a well-established and operationally successful scheme that has been proven to deter and detect weapons related offending.

As I stated in my previous response to the Committee regarding the Amending Act, section 7(2) of the Charter recognises that Charter rights may be subject to reasonable and justified limits under law. The conclusion that a limit is reasonable and justified must be reached after weighing up all the relevant factors, including 'any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve' (section 7(2)(e)).

The available measures must be considered with regard to the purpose of the limit, and in my view, the purpose of the dynamic and responsive Victorian scheme would not be achieved by the measures adopted under the South Australian schemes or that of other Australian jurisdictions.

Should you wish to discuss this matter further, please contact Vivienne Clare, Executive Director, Police and Community Safety, Department of Justice and Community Safety on 0418 586 929 or by email vivienne.clare@justice.vic.gov.au.

I trust this information has been of assistance.

Yours sincerely

Hon Anthony Carbines MP
Minister for Police
Minister for Community Safety
Minister for Victims
Minister for Racing

25/05/25

VICTORIA State Government

Appendix 1
Index of Bills and Subordinate Legislation in 2025

SUBORDINATE LEGISLATION

Appendix 2
Committee Comments classified by Terms of Reference

This Appendix lists Bills under the relevant Committee terms of reference where the Committee has raised issues requiring clarification from the appropriate Minister or Member.

Alert Digest Nos.

Section 17(a)

(i) trespasses unduly upon rights or freedoms

Agriculture and Food Safety Legislation Amendment Bill 2024	13 of 2024, 1
Constitution Amendment (Abortion) Bill 2024	2, 4
Consumer and Planning Legislation Amendment (Housing Statement Reform) Bill 2024	1, 4
Corrections Legislation Amendment Bill 2025	7
Justice Legislation Amendment (Anti-vilification and Social Cohesion) Bill 2024 [House Amendments]	3, 6
Justice Legislation Amendment (Committals) Bill 2024	15 of 2024, 1
Justice Legislation Amendment (Miscellaneous) Bill 2025	6
Tobacco Amendment (Tobacco Retailer and Wholesaler Licensing Scheme) Bill 2024	16 of 2024, 1
Voluntary Assisted Dying Amendment (Equity and Access) Bill 2024	4

(iii) makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions

Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025 [House Amendments]	6

(iv) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the *Privacy and Data Protection Act 2014*

Wage Theft Amendment Bill 2025	6

(vi) inappropriately delegates legislative power

Wage Theft Amendment Bill 2025	6
Wrongs Amendment (Vicarious Liability) Bill 2025	6

(viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities

Agriculture and Food Safety Legislation Amendment Bill 2024	13 of 2024, 1
Constitution Amendment (Abortion) Bill 2024	2, 4
Consumer and Planning Legislation Amendment (Housing Statement Reform) Bill 2024	1, 4
Corrections Legislation Amendment Bill 2025	7

(viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities (continued)

Appendix 3
Table of Ministerial Correspondence

Table of correspondence between the Committee and Ministers or Members

This Appendix lists the Bills where the Committee has written to the Minister or Member seeking further advice, and the receipt of the response to that request.

Bill Title	**Minister/ Member**	**Date of Committee Letter / *Minister's Response***	**Alert Digest No. Issue raised / *Response Published***
Agriculture and Food Safety Legislation Amendment Bill 2024	Agriculture	15-10-24 *04-12-24*	13 of 2024 *1 of 2025*
Protecting Public Assets and Services Bill 2024	Samantha Ratnam MP	15-10-24	13 of 2024
Justice Legislation Amendment (Committals) Bill 2024	Attorney-General	12-11-24 *27-11-24*	15 of 2024 *1 of 2025*
Roads and Road Safety Legislation Amendment Bill 2024 [House Amendments]	Roads and Road Safety	12-11-24 *04-12-24*	15 of 2024 *1 of 2025*
State Taxation Further Amendment Bill 2024	Treasurer	12-11-24	15 of 2024
Tobacco Amendment (Tobacco Retailer and Wholesaler Licensing Scheme) Bill 2024	Casino, Gaming and Liquor Regulation	02-12-24 *21-01-25*	16 of 2024 *1 of 2025*
Consumer and Planning Legislation Amendment (Housing Statement Reform) Bill 2024	Consumer Affairs	05-02-25 *04-03-25*	1 of 2025 *4 of 2025*
Terrorism (Community Protection) and Control of Weapons Amendment Bill 2024	Police	05-02-25 *27-02-25*	1 of 2025 *3 of 2025*
Constitution Amendment (Abortion) Bill 2024	Sarah Mansfield MP	18-02-25 *07-03-25*	2 of 2025 *4 of 2025*
Justice Legislation Amendment (Anti-vilification and Social Cohesion) Bill 2024 [House Amendments]	Attorney-General	05-03-25 *15-04-25*	3 of 2025 *6 of 2025*
Voluntary Assisted Dying Amendment (Equity and Access) Bill 2024	Sarah Mansfield MP	19-03-25	4 of 2025
Family Violence Protection Amendment Act 2025	Attorney-General	01-04-25 *15-04-25*	5 of 2025 *6 of 2025*

Bill Title	**Minister/ Member**	**Date of Committee Letter / *Minister's Response***	**Alert Digest No. Issue raised / *Response Published***
Terrorism (Community Protection) and Control of Weapons Amendment Act 2025	Police	01-04-25 *25-05-25*	5 of 2025 *7 of 2025*
Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025 [House Amendments]	Attorney-General	13-05-25	6 of 2025
Justice Legislation Amendment (Miscellaneous) Bill 2025	Attorney-General	13-05-25	6 of 2025
Wage Theft Amendment Bill 2025	Industrial Relations	13-05-25	6 of 2025
Wrongs Amendment (Vicarious Liability) Bill 2025	Rachel Payne MP	13-05-25	6 of 2025
Corrections Legislation Amendment Bill 2025	Corrections		7 of 2025
Energy and Land Legislation Amendment (Energy Safety) Act 2025 [House Amendments]	Energy and Resources		7 of 2025