



# Scrutiny of Acts and Regulations Committee

## Alert Digest No. 6 of 2025

May 2025

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### On the following Acts and Bills

Family Violence Protection Amendment Act 2025

Gambling Legislation Amendment Bill 2025

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

Justice Legislation Amendment (Miscellaneous) Bill 2025

Wage Theft Amendment Bill 2025

Wrongs Amendment (Vicarious Liability) Bill 2025

### And Subordinate Legislation

SR No 90 – Credit Regulations 2024

SR No 92 – Local Government (Infringement Notices) Regulations 2024

SR No 102 – Road Safety (General) Amendment (Electric Scooters) Regulations 2024

SR No 113 – Plant Biosecurity Amendment Regulations 2024

SR No 124 – Supreme Court (Fees) Amendment Regulations 2024

Australian Computer Society Incorporated Professional Standards Scheme

Notice of Declaration of the Kind of Insurance that is Excluded from the  
Definition of Business Insurance under Section 3(2A)

Practitioner Remuneration Order 2025

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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

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## **Alert Digest No. 6 of 2025**

|                                                         |    |
|---------------------------------------------------------|----|
| Gambling Legislation Amendment Bill 2025                | 1  |
| Justice Legislation Amendment (Miscellaneous) Bill 2025 | 5  |
| Wage Theft Amendment Bill 2025                          | 17 |
| Wrongs Amendment (Vicarious Liability) Bill 2025        | 24 |

## **House Amendments** 33

|                                                                                |  |
|--------------------------------------------------------------------------------|--|
| Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025 |  |
|--------------------------------------------------------------------------------|--|

## **Ministerial Correspondence** 39

|                                                                                                   |  |
|---------------------------------------------------------------------------------------------------|--|
| Family Violence Protection Amendment Act 2025                                                     |  |
| Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025 [House Amendments] |  |

## **Report on Subordinate Legislation** 45

|                                                                                                                               |  |
|-------------------------------------------------------------------------------------------------------------------------------|--|
| SR No 90 – Credit Regulations 2024                                                                                            |  |
| SR No 92 – Local Government (Infringement Notices) Regulations 2024                                                           |  |
| SR No 102 – Road Safety (General) Amendment (Electric Scooters) Regulations 2024                                              |  |
| SR No 113 – Plant Biosecurity Amendment Regulations 2024                                                                      |  |
| SR No 124 – Supreme Court (Fees) Amendment Regulations 2024                                                                   |  |
| Australian Computer Society Incorporated Professional Standards Scheme                                                        |  |
| Notice of Declaration of the Kind of Insurance that is Excluded from the Definition of Business Insurance under Section 3(2A) |  |
| Practitioner Remuneration Order 2025                                                                                          |  |

## **Appendices**

|                                                            |    |
|------------------------------------------------------------|----|
| 1 – Index of Bills and Subordinate Legislation in 2025     | 83 |
| 2 – Committee Comments classified by Terms of Reference    | 85 |
| 3 – Table of Ministerial Correspondence                    | 87 |
| 4 – Statutory Rules and Legislative Instruments considered | 89 |

|                                                                                                                                                                            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
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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

# Alert Digest No. 6 of 2025

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## Gambling Legislation Amendment Bill 2025

|                  |                                      |                            |              |
|------------------|--------------------------------------|----------------------------|--------------|
| <b>Member</b>    | Hon Enver Erdogan MP                 | <b>Introduction Date</b>   | 1 April 2025 |
| <b>Portfolio</b> | Casino, Gaming and Liquor Regulation | <b>Second Reading Date</b> | 2 April 2025 |

### Summary

The Bill amends the *Gambling Regulation Act 2003* (GR Act) and the *Casino Control Act 1991* (CC Act.)  
The Bill—

- alters provisions on monitoring licences relating to conditions, duration, premium payments and prohibitions
- alters provisions on public lottery licences relating to licensing, duration, exclusivity, extension, premium payments, publication, transfer, surrender, discipline, information gathering and reporting
- provides for the collection of pre-commitment information for use during downtime periods
- provides for certain payments to be made by electronic funds transfer
- alters Review Panel processes, functions and referrals
- provides for exclusion orders on written request

### Preliminary

Clause 2 is the commencement provision. All of the Bill except sections 71 and 72 commences on the day after royal assent. Sections 71 and 72, which require the casino operator to give a person an exclusion order at that person's written request, commence on 1 March 2026 unless proclaimed earlier.

### Monitoring licences

Division 1 of Part 2 alters provisions on monitoring licences.<sup>1</sup> It authorises [3], and permits the Minister to include a licence condition [4] and to direct [5], a monitoring licensee to provide systems and mechanisms that implement regulatory compliance measures, including anti-money laundering and counter-terrorism financing obligations. It provides that a monitoring licence is valid for a term specified by the Minister [6]. Note the Second Reading Speech:

The Bill makes changes to the monitoring licensing framework to provide options that will maximise the state's ability to extract value for Victorians from monitoring services after the expiry of the current licence in 2027. The Bill amends the requirements for the term of the monitoring licence to replace the current fixed term of 15 years with provisions that enable the licence term to be specified in the licence.

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<sup>1</sup> A monitoring licence authorises a licence holder to operate and maintain an electronic monitoring system; conduct monitoring using that system to detect significant events in a gaming system; continuously record, monitor and control significant game play transactions; record revenue from gaming machines; facilitate linked jackpot arrangements; sell, supply or possess monitoring equipment for these purposes; and provide jackpot financial administration services: s. 3.3.4(1) of the GR Act.

This will enable the government to determine the most appropriate licence term at a point in time, having regard to best available evidence and an understanding of the value to the State.

It permits the Minister to require a monitoring licensee to pay a premium payment, in an amount or amounts fixed by the Minister, as consideration for the monitoring licence or its extension. It provides that the premium payment is a tax, recoverable as a debt to the state court and payable (with any penalty interest) to consolidated revenue, from which an equivalent amount is payable to the Hospital and Charities Fund at times determined by the Treasurer [7]. Division 3 additionally permits contractors who install or maintain gaming equipment to hold monitoring licences or be associated with licence holders [58].

Clause 68 inserts a transitional provision. Note the Explanatory Memorandum:

It is intended that changes to empower the Minister to direct a monitoring licensee to provide systems and mechanisms that implement regulatory compliance measures and the power to require a premium payment as consideration for a monitoring licence will not apply to the current monitoring licence. The changes to the matters that the Minister can include in licence conditions and the term of a monitoring licence will also not apply to the current monitoring licence.

It is intended that the current monitoring licence will continue to be valid for a term of 15 years, subject to section 3.4.51 providing for an extension of the monitoring licence for a period not exceeding 2 years.

### Public lottery licences

Division 2 of Part 2 alters provisions on public lottery licences. It alters the licensing process [20]. Note the Explanatory Memorandum:

These amendments replicate the licensing process in the *Gambling Regulation Act 2003* for a keno licence. The current framework for awarding a public lottery licence provides for a registration of interest process, the outcomes of which must be considered by the Minister in deciding whether to invite any registrants to apply for a public lottery licence. This amendment removes the requirement to conduct the registration of interest process and replaces it with a power for the Minister to take into account any matters in deciding whether to invite a person to apply for a public lottery licence.

It substitutes procedures for applications, reports by the Secretary to the Minister and determinations by the Minister to grant or refuse a licence [21]; and permits the Minister to require or direct licence holders (including temporary licence holders) to enter into agreements and bars compensation for agreements [28, 46]. Note the Explanatory Memorandum, which states that these provisions 'replicate the licensing processes' and 'provisions... for other major gambling licences'. It provides that the licence is valid for a term specified in the licence [29]. Note the Second Reading Speech:

The Bill will give the state the power to issue a long-term extension of a public lottery licence and will modernise the licensing process to make it consistent with the licensing processes for the other major gambling licences. These changes will maximise the state's ability to extract value for Victorians from public lotteries after the expiry of the licence in 2028.

It permits the Minister to specify an exclusivity period for a public lottery licence and, on application by the licence holder, to extend the licence (but only once) [31] and permits the Minister to require a premium payment (see notes for [7] above) in consideration for an extension [32-33]. Note the Explanatory Memorandum:

These amendments will provide government with greater flexibility in responding to market conditions when a public lottery licence is coming to the end of its term.

It provides for mandatory publication of copies of a licence to omit information that (in the Minister's opinion) is commercial information that 'would likely expose any person unreasonably to disadvantage' [35]. It provides for the transfer of licences [39]. It requires at least 12 months' notice for surrender of a licence [40]. It provides for disciplinary action by the Commission or the Minister [41]. Note the Explanatory Memorandum, which states that this provision is 'consistent with

other major gambling licences'. It separates a current offence (requiring former licensees to make assets and staff available to transferees) into two offences, each punishable by the previous penalty [45]. It authorises the Commission to require applicants and associates to provide information, records and consents to financial institutions and obliges the provision of updates [47]. It permits the Review Panel to report on extensions of ten years or more [48].

Clause 68 inserts a transitional provision. Note the Explanatory Memorandum:

It is intended that the Minister be empowered to grant an extension to the current public lottery licence for a period determined by the Minister. The Minister will also be empowered to require the current licensee to pay a premium payment as consideration for an extension of a term of the current public lottery licence.

... the amendment to section 5.3.20(1) to require a public lottery licensee to give at least 12 months' notice prior to surrender of the licence applies to the current public lottery licensee.

... the changes to the procedure for taking disciplinary action applies to a current public lottery licence and any future public lottery licence.

### General amendments

Division 3 of Part 2 and Part 3 set out the Bill's miscellaneous amendments. It allows for the disclosure of pre-commitment information to casino operators for use during downtime periods [60]. Note the Explanatory Memorandum:

A downtime period is a period approved by the Commission under section 62C(2A) of the *Casino Control Act 1991*. In the event of a downtime period, new section 3.8A.32 enables pre-commitment information to be disclosed and stored by the casino operator during the downtime period and later communicated to the pre-commitment system.

It obliges certain payments by either electronic funds transfer or (if available) cheque and, for some payments bars cheques payable in cash and requires 24-hour delays for electronic funds transfers [59, 65, 70]. It amends definitions relating to the Review Panel [61]. Note the Explanatory Memorandum:

The functions of the Review Panel under Part 2A of Chapter 10 differ for the **regulatory review** phase of a licensing process and the **authorisation and licensing process**. The definitions of **authorisation and licensing process** and **regulatory review** are amended to clarify the situation where decisions on key policy parameters of the licensing framework, such as the licence term or the number of licences, may be determined during the authorisation and licensing process. The definition of **authorisation and licensing process** is amended to provide that such a process includes any decisions made by the Minister during the processes referred to in that definition. The definition for **regulatory review** is amended to provide that it does not include anything that is part of the authorisation and licensing process.

It provides that the Review Panel's conflict of interest function applies during a regulatory review and permits the Minister to refer matters to the Panel without an Order in Council [67]. It requires casino operators to order the exclusion of a person on a written application by that person [71]. Note the Second Reading Speech:

The Bill will reduce barriers to voluntary exclusion at the Melbourne casino by ensuring the Melbourne casino operator is required to issue an exclusion order on request by a person and removing unnecessary administrative requirements for an application to be signed by a person who is authorised to witness a statutory declaration.

### 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*.

# Justice Legislation Amendment (Miscellaneous) Bill 2025

|                  |                        |                            |              |
|------------------|------------------------|----------------------------|--------------|
| <b>Member</b>    | Hon Sonya Kilkenney MP | <b>Introduction Date</b>   | 1 April 2025 |
| <b>Portfolio</b> | Attorney-General       | <b>Second Reading Date</b> | 2 April 2025 |

## Summary

The Bill amends the *Crimes Act 1958* (C Act), the *Criminal Procedure Act 2009* (CP Act), the *Sentencing Act 1991* (S Act), the *Justice Legislation Amendment (Criminal Appeals) Act 2019* (the JLA(CA) Act) and the *Social Services Regulation Act 2021* (the SSR Act) and makes other miscellaneous amendments. The Bill—

- replaces an offence concerning replacement of trustees
- alters provisions relating to criminal procedure in the Magistrates' Court to permit electronic filing and forwarding
- alters the forced commencement date for alterations to criminal appeals from the Children's and Magistrates' Courts
- alters transitional arrangements for decisions concerning out-of-home care workers
- rectifies referencing errors in the *Worker Screening Act 2020*
- removes an obsolete regulation-making power in the *Magistrates' Court Act 1989*

## Preliminary

Clause 2 is the commencement provision. The Bill commences on the day after Royal Assent.

## Corrupt inducement or reward of a trustee

Part 2 replaces the offence in section 180 of the C Act of 'secret commission to trustee in return for substituted appointment' with offence provisions for 'corrupt inducement or reward for replacement of trustee'.

## *Background*

Section 180 of the C Act currently states:

Every person who offers or gives any valuable consideration to a trustee and every trustee who receives or solicits any valuable consideration for himself or for any other person without the assent of the persons beneficially entitled to the estate or of the Supreme Court as an inducement or reward for appointing or having appointed or for joining or having joined with another in appointing or for authorizing or having authorized or for joining or having joined with another in authorizing any person to be appointed in his stead or instead of him and any other person as trustee shall be guilty of an indictable offence, and shall—

- (a) be liable if a corporation to a level 5 fine and if any other person to level 5 imprisonment (10 years maximum) or a level 5 fine or both.

Note the Second Reading Speech:

This offence was introduced in 1905 after the Royal Commission on the Butter Industry found widespread bribery and corruption involving agents, including the receipt and payment of secret commissions. It was later consolidated in the Crimes Act.

The Committee notes that section 180 is the successor to section 6 of the *Secret Commissions Prohibition Act 1905*. During debate on the Bill for that Act, a provision for a separate offence of

receiving, soliciting, giving or offering secret commission to agents (now section 176 of the C Act) was amended to require proof that the conduct was done ‘corruptly’; however, the remaining provisions were not similarly amended. The Act and its successors prohibited prosecutions more than two years after the alleged offending and allowed a court to withdraw a charge from the jury (with the same effect as a not guilty verdict) ‘if it appears to the court that the offence charged is in the particular case of a trifling or merely technical nature’; however, these provisions were repealed without replacement in 1967 and 1992.<sup>2</sup>

Almost identical provisions were enacted in every Australian state,<sup>3</sup> and provisions similar to section 180 currently exist in Queensland, Western Australia and, until recently, New South Wales.<sup>4</sup> The New South Wales Supreme Court observed in 2022:<sup>5</sup>

there appear to be no decided cases dealing with any of the Provisions, and little secondary material explaining their legislative purpose. In particular, there is nothing which explains why the legislatures chose to frame the Provisions broadly (so that their application was not, for example, dependent on proof of “corrupt” conduct, as is the case of other provisions directed at secret commissions received by agents) and to ameliorate their broad effect through a mechanism of approval by the Supreme Court.

Note the Second Reading Speech:

Recent Supreme Court of Victoria decisions on the application of section 180 have held that a corrupt purpose is not an element of the offence. This has left trustees and other persons engaged in routine, good faith transactions relating to the replacement of an outgoing trustee at risk of serious criminal liability. It follows that the offence is no longer fit for purpose.

The Committee notes that, during a 2022 non-criminal proceeding involving an application for a court to consent to the provision of indemnities to a transferee in relation to a transfer between two superannuation funds, a New South Wales Supreme Court justice stated:<sup>6</sup>

my conclusion is that a corrupt purpose is not an element of this statutory offence. Consequently, the requisite *mens rea* for the offence is a specific intent to offer, give, receive or solicit a benefit without consent as an inducement or reward for the appointment of any person to be a person entrusted with trust property.

In a similar 2023 matter, a Victorian Supreme Court justice ‘proceed[ed] on the same basis’, stating:<sup>7</sup>

the *mens rea* in s 180 of the Victorian Crimes Act is the specific intent to offer, give, receive or solicit any valuable consideration as an inducement or reward for appointing or authorising any person to be appointed as trustee. It is not part of s 180 to establish a corrupt purpose. If a corrupt purpose were required to be established it would be very difficult to contemplate any circumstance in which it would be appropriate for the Court to give the assent for which the section provides. The heading to this part of the Victorian Crimes Act does not include any reference to corruption. Where the Parliament intended that corruption be proved in order to make out a contravention within this part of the Victorian Crimes Act, it unambiguously said so. Section 176 of the Victorian Crimes Act, like s 249B of the NSW Crimes Act, provides that it is an offence for an agent to ‘corruptly’ receive or solicit any valuable consideration.

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<sup>2</sup> *Secret Commissions Prohibitions Act 1905*, ss. 10 & 15; *Crimes Act 1967*, s. 5; *Sentencing Act 1991*, s. 118(1) (and see *Penalties and Sentences Act 1985*, s. 102).

<sup>3</sup> *Secret Commissions Prohibition Act 1919* (NSW), s. 7; *Criminal Code (Prohibition of Secret Commissions) and Further Amendment Act 1931* (Qld), s. 7; *Secret Commissions Prohibition Act 1920* (SA), s. 9; *Secret Commissions Prohibition Act 1906* (Tas), s. 8; *Secret Commissions Act 1905* (WA), s. 8.

<sup>4</sup> *Criminal Code* (Qld), s. 442F (but see s. 442J); *Criminal Code* (WA), s. 535 (but see s. 539); *Crimes Act 1900* (NSW), s. 249E (but see *Crimes Amendment (Corrupt Benefits for Trustees) Act 2023* (NSW), sch. 1, cl. 1.)

<sup>5</sup> *BT Funds Management Limited (ACN 002 916 458) as trustee for the Retirement Wrap Superannuation Fund* [2022] NSWSC 401, [12].

<sup>6</sup> *Application of MLC Investments Limited (ACN 002 641 661)* [2022] NSWSC 1541, [34]-[35].

<sup>7</sup> *Diversa Trustees Limited in its capacity as Trustee for the Future Super Fund* [2023] VSC 279, [39].

In a later matter that year, a Victorian Supreme Court justice stated:<sup>8</sup>

I agree that this is the correct interpretation of s 180. The consequence of this interpretation in combination with the broad language of s 180 is that the provisions may capture a relatively broad range of conduct or proposed conduct.

### *The replacement offences*

The substituted section 180 sets out five offences [3]. Note the Second Reading Speech:

The Bill will break section 180 down into five offences. This does not expand the ambit of section 180, but rather will clarify, through the use of modern drafting techniques, the elements the prosecution must prove in each scenario currently prohibited by section 180, with the additional threshold of requiring a ‘dishonest or otherwise corrupt purpose’ and either intent or knowledge.

The first four offences concern:

- a person who offers or gives valuable consideration to a trustee ‘intending to induce the trustee to appoint a person in the trustee’s place’: sub-section 180(1)
- a person who offers or gives valuable consideration to a former trustee ‘intending to reward the former trustee for having appointed a person in the former trustee’s place’: sub-section 180(2)
- a trustee who solicits or receives valuable consideration for themselves or another ‘intending to appoint a person in the trustee’s place in return for that consideration’: sub-section 180(3)
- a former trustee who has appointed a person in the former trustee’s place and solicits valuable consideration for themselves or another ‘intending the consideration be a reward for that appointment’: sub-section 180(4)

Each of these offences applies only if the offender’s conduct was done ‘for a dishonest or otherwise corrupt purpose’. Note the Explanatory Memorandum:

The phrase “a dishonest or otherwise corrupt purpose” is intended to capture only dishonest conduct or conduct done with a wrongful or improper purpose. It is not intended to capture conduct done in good faith, for example, a routine reimbursement of a trustee’s reasonable costs following their replacement.

See the comments under the PCA.

The fifth offence (sub-section 180(5)) applies where a former trustee has appointed a person in the former trustee’s place and receives valuable consideration for themselves or another if:

- the consideration is given for a dishonest or otherwise corrupt purpose as a reward for that appointment; and
- the former trustee knows or believes that the consideration is given for a dishonest or otherwise corrupt purpose.

Note the Explanatory Memorandum:

As an example, a former trustee who receives valuable consideration after the appointment of a new trustee in their place, and who does not know or believe that the consideration is given for a dishonest or otherwise corrupt purpose, would not have the requisite *mens rea* for the offence to be made out.

The Committee notes that sub-section 180(5) may not require proof that the offender’s conduct (i.e. receiving the consideration) was done for a dishonest or otherwise corrupt purpose. Rather, it suffices

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<sup>8</sup> *Re Guild Trustee Services Pty Ltd (in its capacity as trustee for the Guild Retirement Fund)* [2023] VSC 629, [79]-[80].

that the giver of the consideration had a dishonest or corrupt purpose and that the offender knew or believed that. See the Charter report.

The Committee notes that all five offences omit the requirement in the current offence that the conduct be done 'without the assent of the persons beneficially entitled to the estate or of the Supreme Court'. See the comments under the PCA and the Charter report.

#### *Transitional provision*

New section 640 is the transitional provision [4]. The substituted section 180 is taken to have been in force from 1 April 1959 until the commencement of Part 2, including for offences under section 181 (aiding or abetting within or outside Victoria), 182 (liability of directors, etc acting without authority), 321 (conspiracy to commit an offence) and 321M (attempt) that relate to an offence against section 180. Note the Second Reading Speech:

The revised section 180 offences will be retrospective in operation, except in specific instances. This will mean that trustees and other persons who have in the past engaged in good faith, routine trust transactions that may have inadvertently breached section 180 as currently in force, can be assured that they will not be held criminally liable. Retrospectivity also extends to circumstances in which a person may be criminally liable under certain ancillary offences in the Crimes Act that relate to the primary section 180 offence as currently in force.

#### **Note the Explanatory Memorandum:**

New section 640(1) provides that new section 180 is taken to have been in force during the period beginning on and including 1 April 1959, which is the date that section 180 originally commenced, up until immediately before the commencement of Part 2 of the Bill, instead of section 180 as in force before the commencement of that Part.

For conduct engaged in before the commencement of new section 180, it is intended that only conduct done "for a dishonest or otherwise corrupt purpose", and with the requisite intent or knowledge, would come within the scope of the offence under section 180, and that no criminal liability should arise from prior conduct done in good faith, such as routine transactions that facilitate the replacement of a trustee. Section 180 as in force before the commencement of Part 2 of the Bill will no longer apply to conduct engaged in before commencement.

See the comments under the PCA and the Charter report.

Section 180 is not contravened by 'conduct that was given assent pursuant to' the current section 180.

#### **Note the Explanatory Memorandum:**

New section 640(3) provides that, despite new section 640(1), conduct engaged in before the commencement of Part 2 of the Bill does not contravene new section 180 if the conduct was assented to by the beneficiaries of the trust or the Supreme Court, pursuant to section 180 as in force before the commencement of that Part. This will uphold the validity of prior decisions by beneficiaries or the Supreme Court.

See the comments under the PCA and the Charter report.

Section 180 does not affect a finding of guilt under the current section 180 or a related offence. Note the Explanatory Memorandum:

New section 640(4) provides that, despite new section 640(1), if a person was found guilty of an offence specified in new section 640(5) before the commencement of Part 2 of the Bill, the retrospective application of new section 180 under new section 640(1) does not affect that finding of guilt or anything arising from that finding of guilt. This will uphold the validity of prior convictions.

## Electronic document transfers in the Magistrates' Court

Part 3 amends the CP Act and the S Act. Note the Second Reading Speech:

The Bill makes technical amendments to the Criminal Procedure Act and Sentencing Act to allow the Magistrates' Court of Victoria to extend the use of its Case Management System in its criminal jurisdiction. These reforms will modernise registry services and improve the efficiency of court operations by enabling certain documents to be filed electronically.

It replaces various references to the registrar of the Magistrates' Court (or its 'proper officer') with references to the Court itself **[5, 7, 8, 9, 10, 11, 12 & 13]** to (according to the Explanatory Memorandum) allow various documents (charge sheets, summons, materials in support of notices, case direction notices, depositions, exhibits, recordings, process documents, bail undertakings, appeal notices and applications to vary fines) to be received or sent by a court electronically. It permits an application for an issue of a summons or arrest warrant to be made 'by electronic communication or otherwise in accordance with the manner prescribed by the rules of court' **[6]**. Existing wording concerning the transfer of such documents in person or by post are not altered by these amendments.

## Statute law revisions

Part 4 and Division 1 of Part 5 are statute law revisions. They correct referencing errors in the *Worker Screening Act 2020* **[14]** and repeal an obsolete provision in the *Magistrates' Court Act 1989* **[17]**.

## Delayed commencement of summary criminal appeal reforms

Division 2 of Part 5 amends the commencement provision of the *JLA(CA) Act*. It provides for Divisions 1 (appeals against final order made by the Family Divisions of the Children's Court) and 2 (Appeal from summary hearing) of Part 2 (Amendment of the *Children, Youth and Families Act 2005*) and Division 1 (appeal from summary hearing) of Part 3 (Amendment of the *Criminal Procedure Act 2009*) to commence no later than 1 July 2028 **[18]**.

Note the Explanatory Memorandum:

The amendments in Division 1 of Part 2 commenced by proclamation on 4 December 2021, abolishing *de novo* appeals from the Family Division of the Children's Court. The reforms in Division 2 of Part 2 and Division 1 of Part 3 will amend summary appeal processes in the criminal jurisdiction. Changing the forced commencement date supports the implementation of these reforms by providing additional time to prepare for commencement.

See the comments under the PCA.

## Deemed exclusion of out of home care workers

Division 3 of Part 5 amends the SSR Act. It repeals a transitional provision providing that a finding of misconduct by the Suitability Panel under section 105(5) of the *Children, Youth and Families Act 2005* in the three-year period after the commencement of the SSR Act is an exclusion decision for the purposes of the SSR Act **[19]**.

The Committee notes that:

- the *Children, Youth and Families Act 2005* previously provided that:
  - if the Suitability Panel determines that an allegation that a person has physically or sexually abused a child is proved on the balance of probabilities, it must make a finding of misconduct against a person: section 105(5)
  - the Panel must 'then' determine on the balance of probabilities whether or not the person poses an unacceptable risk of harm to children: section 106(1)

- if the Panel determines that the person poses an unacceptable risk, then the Panel must find that the person should be disqualified from registration: section 106(3)
- the SSR Act now provides that a Panel must exclude a person from providing a service to which the worker and carer exclusion scheme applies if it finds on the balance of probabilities that the person has engaged in conduct that may lead to exclusion and it is reasonably satisfied that the person poses an unacceptable risk to a scheme user or someone with the same characteristics: section 79(2)
- transitional provisions in Division 3 of Part 11 of the SRA Act provide that:
  - a determination made before the commencement of the SSR Act under section 106(1) of the *Children, Youth and Families Act 2005* of unacceptable risk is taken to be an exclusion decision under the SSR Act: section 320
  - findings of misconduct under section 105(5) or of disqualification under 106(3) in the three year period after the commencement of the SSR Act are taken to be exclusion decisions under the SSR Act: section 330G(2)(a)-(b).

Note the Explanatory Memorandum:

The repeal of section 330G(2)(a) of the *Social Services Regulation Act 2021* is intended to ensure consistency with arrangements for the out of home care sector before commencement of section 330G(2)(a) and under Part 5 of the *Social Services Regulation Act 2021*.

Note the Statement of Compatibility

Section 17 of the Charter provides that families are entitled to be protected by society and the State, and 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.

...

The amendment to the SSRA promotes the section 17 right as it is expected to result in fewer out of home carers being deemed as excluded. This is intended to ensure the availability of out of home carers will not be unnecessarily impacted, minimising disruption for children in care where a carer may be excluded, who has not been found to pose an unacceptable risk of harm.

The amendment also limits the section 17 right, because it will mean that a carer who has engaged in misconduct may still be able to work with children in out of home care. This limitation is reasonable and justified, however, on the basis that the Suitability Panel must still perform a risk assessment of the carer and must determine, on the balance of probabilities, that the carer does not pose an unacceptable risk to children. The amendment is consistent with the arrangements for excluding out of home care workers and carers for the worker and carer exclusion scheme under the SSRA.

### **Comments under the PCA**

***Delegation of legislative power – Delayed commencement (s.17(a)(vi), PCA)***

While all provisions of the Bill commence on the day after Royal Assent, clause 18 provides that divisions of the *Justice Legislation Amendment (Criminal Appeals) Act 2019* that concern criminal appeals from the Children's and Magistrates' Courts will commence on 1 July 2028, i.e. more than eight years after the introduction of the Bill for that Act and more than three years after the current Bill's introduction.

The Committee notes that these divisions previously had forced commencement dates of:

- 3 July 2021 (*Justice Legislation Amendment (Criminal Appeals) Act 2019*, as enacted), i.e. 21 months after the Bill for that Act was introduced.<sup>9</sup>
- 1 January 2023 (as amended by the *Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021*); i.e. nearly two years after the Bill for that Act was introduced.<sup>10</sup>
- 5 July 2025 (as amended by the *Justice Legislation Amendment (Trial by Judge Alone and Other Matters) Act 2022*), i.e. over three years after the Bill for that Act was introduced.<sup>11</sup>

**Note the Second Reading Speech:**

The Bill extends the forced commencement date of summary appeal reforms in the *Justice Legislation Amendment (Criminal Appeals) Act 2019* for 3 years, to 1 July 2028. This allows additional time for implementation planning and for affected justice agencies to prepare for commencement of these significant changes to criminal procedure.

In 2019, Parliament passed laws to modernise Victoria's summary criminal appeal system. These laws, currently set to commence on 5 July 2025, will abolish summary appeals of criminal cases to the County Court and replace them with new processes that seek to enhance efficiency and reduce trauma for witnesses and victims who will no longer have to re-attend court and give evidence a second time on appeal.

These are important objectives, but they can only be achieved if courts and justice agencies have sufficient time to prepare for this change in practice. The commencement date for these reforms was postponed on previous occasions to allow affected agencies to prepare, while also recovering from the impacts of the pandemic on courts. Since the Criminal Appeals Act passed, Parliament has passed several other pieces of legislation which have made, or will make, significant changes to other aspects of criminal procedure. These include enabling judge alone trials to address the impacts of the pandemic on jury trials which, though temporary, required significant effort for courts to implement, the *Youth Justice Act 2024*, and, more recently, the *Justice Legislation Amendment (Committals) Act 2025*.

This changed environment has required Government to turn its focus to supporting implementation of these critical reforms to the justice system. In light of the significant time and resources required to implement the summary appeal reforms on top of these other reforms, it is necessary to further delay their commencement. This will ensure that implementation activities can be undertaken in a careful, staged manner, minimising significant disruptions to the court system.

The Committee notes that the balance of provisions of the *Justice Legislation Amendment (Committals) Act 2025* have a forced commencement of 28 December 2025 and that the balance of provisions of the *Youth Justice Act 2024* have a forced commencement of 30 September 2026. The latter date is 21 months before the proposed forced commencement of the remaining divisions of the *Justice Legislation Amendment (Criminal Appeals) Act 2019*, i.e. a similar period to the period between the introduction of the original Bill and the original forced commencement date.

**The Committee's view is that the delay between the Bill's introduction and the proposed forced commencement date of the remaining divisions of the *Justice Legislation Amendment (Criminal Appeals) Act 2019* is justified.**

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<sup>9</sup> See Alert Digest No 13 of 2019, p. 9.

<sup>10</sup> See Alert Digest No 3 of 2021, pp. 9-10.

<sup>11</sup> See Alert Digest No 3 of 2022, pp. 10-11.

***Trespasses unduly on rights and freedoms – Onus of proof – Strict liability – Defences – (s. 17(a)(i), PCA)***

The Committee notes that section 186 of the *Crimes Act 1958* provides:

- (1) In any prosecution under this subdivision it shall not amount to a defence to show that any such valuable consideration as is mentioned in this subdivision is customary in any trade or calling.
- (2) For the purposes of this subdivision where it is proved that any valuable consideration has been received or solicited by an agent from or given or offered to an agent by any person having business relations with the principal without the assent of the principal the burden of proving that such valuable consideration was not received solicited given or offered in contravention of any of the provisions of this subdivision shall be on the accused.

The Committee notes that these provisions may operate to limit defences available to criminal defendants under substituted section 180 (and other provisions that apply in relation to section 180), including by excluding some defences (i.e. where a valuable consideration is customary in any trade or calling) or placing an onus of proof on the accused. Note the Explanatory Memorandum:

The phrase “a dishonest or otherwise corrupt purpose” ... is not intended to capture conduct done in good faith, for example, a routine reimbursement of a trustee’s reasonable costs following their replacement.

**The Committee will write to the Attorney-General seeking further information as to the application of section 186 of the *Crimes Act 1958* in relation to new section 180.**

Clause 4 is a transitional provision for the criminal offence in new section 180. It inserts section 640 into the *Crimes Act 1958*, including sub-section 640(3), which provides that:

conduct that was engaged in before the commencement of Part 2 of the *Justice Legislation Amendment (Miscellaneous) Act 2025* does not contravene section 180 as substituted by that Part if the conduct was given assent pursuant to section 180 as in force before the commencement of that Part.

The Committee notes it may be unclear whether, in a criminal proceeding under new section 180, the prosecution or the defence bears the onus of proof in relation to sub-section 640(3) (and to what standard of proof) and whether the section applies if an accused mistakenly believed that such assent was given.

The Committee notes that, by contrast, the current section 180 criminalises certain conduct that occurs ‘without the assent of the persons beneficially entitled to the estate or of the Supreme Court’ and that, ordinarily, the prosecution would be required to prove the element of lack of assent beyond reasonable doubt and may also be required to prove beyond reasonable doubt a *mens rea* element or the absence of a mistake defence corresponding to that lack of assent: see *He Kaw Teh v R* (1985) 157 CLR 523.

**The Committee will write to the Attorney-General seeking information as to sub-section 640(3) of the *Crimes Act 1958*’s application in criminal proceedings and, in particular, as to the onus of proof and the relevance of a mistake by the accused.**

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

Clause 4 is a transitional provision for the criminal offence in new section 180. It inserts section 640 into the *Crimes Act 1958*, including a new sub-section 640(1), which provides:

Section 180 as substituted by Part 2 of the *Justice Legislation Amendment (Miscellaneous) Act 2025* is taken to have been in force, instead of section 180 as in force before the commencement of that Part, during the period—

- (a) beginning on and including 1 April 1959; and
- (b) ending immediately before the commencement of that Part.

Sub-section 640(2) provides that this includes various other offences in so far as they relate to section 180. Sub-sections 640(3) and (4) provide for exceptions.

The Committee notes that sub-section 640(1) may apply a criminal offence provision retrospectively for a period of approximately 66 years. Note the Explanatory Memorandum:

New section 180 breaks down the conduct captured by section 180, as in force before the commencement of Part 2 of the Bill, into five separate offences. This is intended to clarify the elements that the prosecution must prove to make out each offence. It is not intended to expand the ambit of section 180 as in force before the commencement of Part 2 of the Bill.

The Committee notes that new section 180 omits the current section 180's requirement that the alleged conduct occur 'without the assent of the persons beneficially entitled to the estate or of the Supreme Court'. (See the previous comment.) The Committee also notes that new section 180 has been substantially redrafted, including renaming the current offence, reframing it as five separate offences (as opposed to the single offence provision in the current section 180) and specifying mental elements for the reframed offences (a matter not expressly addressed in the current section 180.) See the Charter report.

The Committee notes the Second Reading Speech:

The revised section 180 offences will be retrospective in operation, except in specific instances. This will mean that trustees and other persons who have in the past engaged in good faith, routine trust transactions that may have inadvertently breached section 180 as currently in force, can be assured that they will not be held criminally liable. Retrospectivity also extends to circumstances in which a person may be criminally liable under certain ancillary offences in the Crimes Act that relate to the primary section 180 offence as currently in force.

**The Committee will write to the Attorney-General seeking information as to whether this purpose may be achieved without making new section 180 apply retrospectively, for example by instead expressly providing that a person may not be found guilty under the previous section 180 (and related provisions as they apply to the previous section 180) unless the prosecution also proves beyond reasonable doubt that the accused's conduct was committed for a dishonest or otherwise corrupt purpose.**

The Committee notes that each of the five offence provisions in the substituted section 180 of the *Crimes Act 1958* specifies the following penalty:

In the case of an individual, level 5 imprisonment (10 years maximum) or a level 5 fine (1200 penalty units maximum) or both;

In the case of a body corporate, a level 5 fine (1200 penalty units maximum).

The Committee notes that, although these penalties are identical to the current section 180, they differ from the maximum penalties that applied at some earlier periods during the retrospective operation of section 180 provided for by sub-section 640(1). See the Charter report.

The Committee notes that sub-section 114(1) of the *Sentencing Act 1991* provides:

If an Act (including this Act) or subordinate instrument increases the penalty or the maximum or minimum penalty for an offence, the increase applies only to offences committed after the commencement of the provision effecting the increase

**The Committee will write to the Attorney-General seeking further information as to the interaction between clause 4 and sub-section 114(1) of the *Sentencing Act 1991*.**

## **Charter Issues**

### ***Retrospective criminal law – Corrupt inducement or reward for replacement of trustee***

Summary: *The effect of clause 4 may be to generally apply a rewritten version of an existing criminal offence provision retrospectively for a period of approximately 66 years. The Committee will write to the Attorney-General seeking further information.*

#### Relevant provision

The Committee notes that clause 4, inserting a new sub-section 640(1), provides:

Section 180 as substituted by Part 2 of the *Justice Legislation Amendment (Miscellaneous) Act 2025* is taken to have been in force, instead of section 180 as in force before the commencement of that Part, during the period—

- (a) beginning on and including 1 April 1959; and
- (b) ending immediately before the commencement of that Part.

New section 180 provides for five offences of ‘corrupt inducement or reward for replacement of trustee’, replacing the existing offence of ‘secret commission to trustee in return for substituted appointment’.

The Explanatory Memorandum explains:

New section 640(1) provides that new section 180 is taken to have been in force during the period beginning on and including 1 April 1959, which is the date that section 180 originally commenced, up until immediately before the commencement of Part 2 of the Bill, instead of section 180 as in force before the commencement of that Part.

For conduct engaged in before the commencement of new section 180, it is intended that only conduct done “for a dishonest or otherwise corrupt purpose”, and with the requisite intent or knowledge, would come within the scope of the offence under section 180, and that no criminal liability should arise from prior conduct done in good faith, such as routine transactions that facilitate the replacement of a trustee. Section 180 as in force before the commencement of Part 2 of the Bill will no longer apply to conduct engaged in before commencement.

The offences of aiding or abetting, liability of directors for, involvement in, or attempting to commit an offence against new section 180 also apply from 1 April 1959. However, new section 180 will not apply if the past ‘conduct was given assent pursuant to’ existing s. 180; and does not affect a finding of guilt (or anything arising from it) made under existing s. 180 (or related offences.)

**The Committee observes that the effect of clause 4 may be to generally apply a rewritten version of an existing criminal offence provision retrospectively for a period of approximately 66 years.**

#### Charter analysis

The Statement of Compatibility remarks:

These amendments engage, but do not limit, retrospective criminal law rights under section 27 of the Charter. Section 27(1) provides that a person must not be found guilty of a criminal offence based on conduct that was not an offence at the time the conduct was engaged in.

The Bill includes a transitional provision for the amendments to section 180, which provides that the revised trustee secret commission offences:

- will apply retrospectively to conduct engaged in prior to commencement, instead of section 180 as currently in force, including for the purposes of any ancillary offence relating to section 180 (thereby only capturing past conduct engaged in dishonestly or otherwise corruptly), and

- uphold the legality of any prior convictions and decisions by beneficiaries of a trust or the SCV to consent to conduct under section 180 as in force prior to commencement of these reforms.

Charter s. 27 provides:

- (1) A person must not be found guilty of a criminal offence because of conduct that was not a criminal offence when it was engaged in.
- (2) A penalty must not be imposed on any person for a criminal offence that is greater than the penalty that applied to the offence when it was committed.

The Committee notes that the Statement of Compatibility may not explain ‘how’ clause 4 does ‘not limit’ Charter s. 27 and may not expressly address Charter s. 27(2).<sup>12</sup>

The Committee observes that, while clause 4 may have a beneficial effect for some people who engaged in conduct in breach of existing s. 180 in the past 66 years, who are yet to be prosecuted and where the prosecution cannot prove dishonesty or corruption, it may have a detrimental effect on others who engaged in such conduct during that period, who are yet to be prosecuted and where the prosecution can prove dishonesty or corruption. Such a person may:

- if they incorrectly believed that the beneficiaries or a court had assented to the conduct, be found guilty under new section 180,<sup>13</sup> a finding that may not have been made under existing s. 180.<sup>14</sup>
- for a former trustee who received valuable consideration that was given as a reward for appointing a person in the former trustee’s place, be found guilty under new sub-section 180(5) if the prosecution proves that the offender ‘knows or believes’ the consideration was a dishonest or otherwise corrupt reward for that appointment, without proof of the offender’s ‘specific intent’ to receive any valuable consideration as a reward (which may be required under existing s. 180.<sup>15</sup>) For example, a former trustee who received money believing that the other person intended it as a corrupt reward, but did so intending to disclose and hand it over to officials, may be criminally responsible under new section 180, but may not have been criminally responsible under existing s. 180.
- for conduct from 1 April 1959 to 31 May 1988, expose an individual to the maximum penalty of 10 years imprisonment specified in new section 180, rather than the maximum of 2 years imprisonment that applied at the time under existing s. 180;<sup>16</sup> and expose those people to statutory or other detriments that apply to someone convicted of an offence punishable by a specified term greater than 2 years.<sup>17</sup>

<sup>12</sup> Charter s. 28(3)(a) provides: ‘A statement of compatibility must state—... whether, in the member’s opinion, the Bill is compatible with human rights and, if so, how it is compatible’.

<sup>13</sup> The Committee notes that new sub-section 640(3) provides an exception to new section 180 for ‘conduct [that] was given assent pursuant to section 180 as in force before the commencement of that Part’, but that sub-section may not apply to conduct done under an incorrect belief in such assent.

<sup>14</sup> The Committee notes that existing s. 180 required proof that the conduct was ‘without the assent of the persons beneficially entitled to the estate or of the Supreme Court’ and that the common law may imply a requirement that the prosecution either prove the defendant’s awareness of that lack of assent or provide a defence of honest and reasonable mistake of fact in relation to that lack of assent: see *He Kaw Teh v R* (1985) 157 CLR 523, and compare *R v Turner* (2001) 25 WAR 258: ‘the sections... will not apply where the principal is known or believe to have assented’ (concerning Western Australia’s equivalent to s. 176.)

<sup>15</sup> See *Diversa Trustees Limited in its capacity as Trustee for the Future Super Fund* [2023] VSC 279, [39]: ‘I proceed on the... basis... that the *mens rea* in s 180 of the Victorian Crimes Act is the specific intent to offer, give, receive or solicit any valuable consideration as an inducement or reward for appointing or authorising any person to be appointed as trustee’, but compare *R v Gallagher* [1986] VR 219, holding that knowledge (rather than intent) suffices for the offence of ‘receipt or solicitation of secret commission by an agent’ for the similar offence in s. 176.

<sup>16</sup> See *Crimes Act 1958*, s. 180 (as enacted); *Crimes (Computers) Act 1988*, s. 8(d)(ii).

<sup>17</sup> E.g. *Constitution Act 1975*, s. 44(3).

- for conduct from 1 April 1959 to 21 April 1992, expose the person to the maximum fine of 1200 penalty units specified in new section 180, rather than the maximums of \$1000 (from 1 April 1959 to 30 August 1981), 100 penalty units (from 1 September 1981 to 31 May 1988) and 1000 penalty units (from 1 June 1988 to 21 April 1992) that applied at the time under existing s. 180.<sup>18</sup>
- become subject to statutory or other detriments that apply to someone found guilty of an offence that involves dishonesty,<sup>19</sup> detriments that may not have applied to someone found guilty of an offence under existing s. 180.<sup>20</sup>

### Relevant comparisons

The Committee notes that a 2023 New South Wales law that added the word ‘corruptly’ to a similar offence provided, similarly to clause 4, that the new offence provision ‘applies and extends to conduct engaged in before the commencement in the same way as if the conduct occurred after the commencement’.<sup>21</sup>

The Committee observes that, unlike clause 3, the New South Wales law did not specify the new offence’s mental element (aside from inserting the word ‘corruptly’) and, unlike clause 4, did not apply that offence to periods when the conduct carried a different maximum penalty.<sup>22</sup>

### Conclusion

**The Committee will write to the Attorney-General seeking further information as to how clause 4 is compatible with Charter s. 27, including:**

- **Charter s. 27(1), in relation to any differences in mental elements between the new section 180 and the current section 180; and**
- **Charter s. 27(2), in relation to any differences in penalties between the new section 180 and earlier versions of the current section 180, as well as any detriments that follow from a finding of guilt for an offence involving dishonesty under new section 180 that do not follow under the current section 180.**

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<sup>18</sup> See *Crimes Act 1958*, s. 180 (as enacted, and note *Decimal Currency Act 1965*, s. 5); *Penalties and Sentences Act 1981*, s. 2(2) & sch. 2, item 54; *Crimes (Computers) Act 1988*, s. 8(d)(i); *Sentencing Act 1991*, s. 119(1) & sch. 2, item 48.

<sup>19</sup> E.g. *Corporations Act 2001* (Cth), s. 206B(1)(b)(ii), and see *Clark v Johnston* [1967] SASR 279, finding that South Australia’s then equivalent to Victoria’s s. 176 (a related offence that included the word ‘corruptly’) is an offence involving dishonesty for the purposes of a regulatory regime.

<sup>20</sup> The Committee notes that a person who is found guilty under new section 180 for pre-commencement conduct will be found guilty of an offence with the new title of ‘corrupt inducement or reward for replacement of trustee’, rather than then title of ‘secret commission to trustee in return for substituted appointment’. The Committee also notes that such a person’s sentence may be aggravated on the basis that the offender’s conduct was dishonest or otherwise corrupt, an aggravation that may generally have been prohibited under existing s. 180: see *R v De Simoni* (1981) 147 CLR 383, 389 concerning ‘the principle that circumstances of aggravation not alleged in the indictment could not be relied upon for purposes of sentence if those circumstances could have been made the subject of a distinct charge’.

<sup>21</sup> *Crimes Amendment (Corrupt Benefits for Trustees) Act 2023* (NSW), sch. 1, cl. 2, inserting *Crimes Act 1900* (NSW), sch. 11, cl. 93.

<sup>22</sup> *Crimes Amendment (Corrupt Benefits for Trustees) Act 2023* (NSW), sch. 1, cl. 1, substituting *Crimes Act 1900* (NSW), s. 249E. See *Crimes (Secret Commissions) Amendment Act 1987* (NSW), sch. 1, cl. 2. Prior to 1987, the offence carried a maximum penalty of 6 months: see *Secret Commissions Prohibition Act 1919* (NSW), s.10.

# Wage Theft Amendment Bill 2025

|                  |                      |                            |              |
|------------------|----------------------|----------------------------|--------------|
| <b>Member</b>    | Hon Jaclyn Symes MP  | <b>Introduction Date</b>   | 1 April 2025 |
| <b>Portfolio</b> | Industrial Relations | <b>Second Reading Date</b> | 2 April 2025 |

## Summary

The Bill amends the *Wage Theft Act 2020* (the WT Act) and makes consequential amendments to various Acts. The Bill—

- repeals the wage theft offences
- renames the *Wage Theft Act 2020* and the Wage Inspectorate Victoria
- confers new referral functions on the renamed agency
- makes consequential amendments and provides for savings and transition

## Preliminary

Clause 2 is the commencement provision. The Bill commences on 2 April 2026, or an earlier day or days to be proclaimed. Note the Second Reading Speech:

The provisions that repeal the wage theft laws can commence quickly upon proclamation as they are no longer required in light of the Commonwealth's offences. The new complaints referral function will commence on a date to be proclaimed to allow time for the function to be fully embedded in the Workforce Inspectorate, including the recruitment and training of staff to appropriately navigate, assess and direct complex complaints within the Commonwealth and Victorian regulatory and integrity landscape as well as set up the necessary ICT systems.

## Repeal of wage theft offences

Part 2 repeals the wage theft offences. It amends the WT Act's purposes to remove the purposes of creating the wage theft offences and giving the Wage Inspectorate Victoria investigative and enforcement functions and powers in relation to those offences [4]. It repeals Part 2 of the WT Act ('Wage Theft Offences') [7]. Note the Second Reading Speech:

The Bill will... give effect to the Victorian Government's decision to repeal Victoria's wage theft offences, following commencement of the Commonwealth's offences in the Fair Work Act 2009 (FW Act) on 1 January 2025. The Commonwealth's offences were drafted to cover the field of criminalising the underpayment of wages and other entitlements.

The Committee notes that Part 2 of the WT Act provides for offences of 'dishonest withholding of employee entitlements', 'falsification of employee entitlement record' and 'failure to keep employee entitlement record', as well as provisions relating to complicity and criminal liability of body corporates (including maximum summary fines), unincorporated associations, partnerships, the Crown and public bodies. Section 327A of the *Fair Work Act 2009* (Cth) currently provides for an offence of 'failing to pay certain amounts as required'.<sup>23</sup>

<sup>23</sup> The Committee notes that Division 2 of Part 3-1 of the *Fair Work Act 2009* (Cth) provides for that Act's interaction with state and territory laws, and states that the 'Act is intended to apply to the exclusion of all State or Territory industrial laws' (including a State Act that applies to employment generally and has a main purpose providing for the enforcement of terms or conditions of employment or of agreements or providing rights or remedies for conduct that adversely affects an employee in his or her employment) 'so far as they would otherwise apply to a national system employee or a national system employer'. The Committee notes that, in 2023, the High Court referred a demurrer in a prosecution under the WT Act claiming that the WT Act is invalid under section 109 of the Constitution (which provides that 'When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the

It replaces 'Wage' with 'Workforce' in the provision establishing the Wage Inspectorate Victoria [10] and substitutes 'Workforce Inspectorate Victoria' for 'Wage Theft' in the title of the WT Act [34]. Note the Second Reading Speech:

The Bill allows the Workforce Inspectorate to be re-named to better reflect its revised legislative mandate, as well as re-naming the principal Act. The Wage Inspectorate Victoria will be known as the Workforce Inspectorate Victoria and the *Wage Theft Act 2020* will be re-named the *Workforce Inspectorate Act 2025*. The change of the name of the Act and the Inspectorate will not alter its formal status in any way. The Workforce Inspectorate will continue to be an independent statutory authority led by the Commissioner.

It repeals the Inspectorate's previous functions to investigate, prosecute and work with the Office of Public Prosecutions in relation to wage theft offences and inserts a new function 'to provide information, education and advice to workers, in relation to prescribed workplace entitlements matters' [11]. It repeals the Inspectorate's power to 'exercise the functions and powers of an inspector' [12]. It repeals Part 4 of the WT Act ('Investigations by the Wage Inspectorate Victoria') [20]; offences relating to inspectors [22, 23], inspectors' powers [24, 25] and discrimination [30]; and provisions for referrals to the Office of Public Prosecutions [27] and body corporate liability [32].

It extends the Inspectorate's permission to enter into agreements for services to assist the Inspectorate in exercising its functions under the WT Act to include its functions under 'any other Act' [14]. It amends a provision permitting the Commissioner or Inspector to disclose information acquired under the Act to complainants if the Commissioner is satisfied the disclosure is in the public interest. [31] Note the Explanatory Memorandum:

Clause 31 amends section 77(3) of the Principal Act relating to the circumstances in which the Commissioner may disclose information about an investigation where it is in the public interest to no longer refer to an inspector or the commencement, progress or outcome of an investigation

See the comments under the PCA and the Charter report. It substitutes a power to make regulations relating to inspections with a power to prescribe workplace entitlements matters in relation to the Inspectorate's education and advice functions [33].

Parts 2 and 5 provide for consequential amendments to the WT Act (Part 2) and other Acts (Part 5).

### New referral functions

Part 3 provides for referral functions for the Inspectorate. It inserts new functions of receiving complaints, matters and related information regarding public construction<sup>24</sup> from any person; referring and disclosing those to other government agencies; receiving notification and information about referred matters from those agencies; and providing advice and reporting to the Minister of Industrial Relations, as appropriate, on anything the Inspectorate referred or received [36]. Note the Second Reading Speech:

People coming forward with critical information about unlawful or intimidatory conduct on worksites deserve to have complaint processes that meet their expectations and the expectations of the Victorian people. There are multiple state and federal entities with powers to respond to various issues that may arise on any Victorian worksite including Victorian Government construction sites. For example, WorkSafe Victoria has regulatory responsibility for workplace health and safety, the Fair Work Ombudsman (FWO) is responsible for compliance with Australia's workplace laws around pay and

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extent of the inconsistency, be invalid') be heard before the full court and that that action was discontinued without a hearing or decision in 2024. See <[https://www.hcourt.gov.au/cases/case\\_m16-2023](https://www.hcourt.gov.au/cases/case_m16-2023)>.

<sup>24</sup> 'Public construction' means 'any matter relating to the construction, maintenance, rehabilitation, alteration, extension or demolition of any improvements on land by, or on behalf of, Departments or public bodies' and 'any other construction or class of construction prescribed as public construction'. Note the Second Reading Speech: 'The Wilson Report and recommendations only refer to Victorian Government construction projects, not construction more generally'.

conditions, Victoria Police are responsible for the investigation of criminal allegations, while the Independent Broad-based Anti-Corruption Commission investigates complaints about corruption in the public sector. The number of different complaint handling entities with various regulatory responsibilities can make it challenging for people to find the right place to direct their complaint. Some complaints are also multifaceted and fall under the remit of more than one agency.

The Wilson Report identified instances of complaints being passed between agencies without resolution. A central agency with relevant referral functions can provide ‘one doorway’ to receive and assess complaints and ensure they are referred to the appropriate regulatory body who can assist. A centralised complaints referral agency will assist to collect and track complaints data, that could detect emerging trends and inform future changes in laws and policies as well as facilitate appropriate referral pathways.

It provides for the Inspectorate to request notification or information from a government agency or body regarding any investigation undertaken of, or action taken in respect of, a complaint or matter the Inspectorate has referred to that agency or body, and requires the agency or body to provide the required notification or information within a reasonable time, as specified by the Inspectorate [37]. It amends a confidentiality provision for information obtained in performing functions or exercising powers under the Act to authorise disclosures in accordance with the Inspectorate’s new functions of referring complaints, matters or information regarding public construction to government bodies or agencies and reporting to the Minister of Industrial Relations on anything referred or received [38]. Note the Second Reading Speech:

The amendments in this Bill will confer on the Workforce Inspectorate the necessary legislative functions for it to undertake the complaints referral function, including receiving information relating to suspected criminal or other unlawful conduct from principal contractors on Victorian Government-funded construction projects, as well as providing appropriate information sharing arrangements with the bodies to which it will be referring complaints. The Bill also enables the Workforce Inspectorate to follow up on complaints and matters it has referred to other agencies, by facilitating a two-way flow of information. The Workforce Inspectorate will be able to set up systems to enable it to provide information back to complainants to keep them informed of any responses or updates it receives.

The complaints referral function does not require the Workforce Inspectorate to investigate or resolve complaints directly, but rather, act as a clearing house, ensuring that complaints are received and referred to the appropriate agency. The Workforce Inspectorate will be a central point of communication. It will not have powers to require referred matters to be followed up (as this would interfere with the powers of other independent law enforcement agencies), nor is it given powers to take action itself in relation to a referred matter.

See the comments under the PCA and the Charter report.

#### Savings and transitional

Part 4 provides for savings and transitional provisions. It provides for the construction of references to the ‘*Wage Theft Act 2020*’ and the ‘Wage Inspectorate Victoria’, savings provisions for the Inspectorate and the Commissioner, and a power to make regulations ‘containing provisions of a transitional nature... arising as a result of the enactment of the *Wage Theft Amendment Act 2025*’ [83]. See the comments under the PCA.

### **Comments under the PCA**

***Unduly requires or authorises acts or practices that may have an adverse effect on personal privacy – Disclosures in the public interest – Complaints, matters or related information concerning public construction – (s. 17(a)(iv), PCA)***

The Committee notes that clause 31, which amends existing section 77(3) of the *Wage Theft Act 2020* as follows:

The Commissioner ~~or an inspector~~ may disclose information acquired in carrying out a function under this Act ~~that relates to the commencement, progress or outcome of an investigation~~ if the Commissioner is satisfied that it is in the public interest to do so.

may authorise the Commissioner to publish or disclose any information it receives, including recorded information or opinions about identifiable individuals<sup>25</sup> (e.g. pursuant to its referral functions) to anyone if the Commissioner is satisfied that doing so in the public interest.

The Committee notes that clauses 37 and 38 may require or authorise the disclosure of recorded information or opinions about identifiable individuals collected under clause 36 (e.g. people who are accused of, witnesses of or victims of alleged misconduct regarding public construction, including sensitive information about details of alleged misconduct, investigations into allegations, and any actions taken by a government agency or body.)

The Committee notes that the final report of the Formal Review into Victorian Government Bodies' Engagement with Construction Companies and Construction Unions proposed a referral body whose role would include functions to:<sup>26</sup>

- ensure that the complainant, where they have opted to identify themselves, is informed of the outcome of the complaint
- record and analyse the complaints it receives, to identify trends in complaints or emerging issues
- report to the responsible Minister regularly on these trends, to provide government with visibility of the conduct that is being complained of

The Committee notes that sub-section 77(3), as amended, may not be limited to complainants or information about 'the outcome of the complaint' and that clauses 36 and 38 may not be limited to reporting 'trends in complaints or emerging issues' to the Minister of Industrial Relations.

**The Committee will write to the Minister seeking information as to the permitted use or disclosure by the Inspectorate, government bodies and agencies, the Minister and complainants of personal information obtained under clauses 31 and 36 to 38.**

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### ***Inappropriately delegates legislative power – Regulations of a transitional nature – (s. 17(a)(vi), PCA)***

Clause 40 inserts a new Part 6 into the *Wage Theft Act 2020* that is titled 'Saving and transitional provisions arising from Act title change and Wage Inspectorate Victoria name change'. The Committee notes that the balance of provisions in new Part 6 are construction and savings provisions relating to the title of the Act and the name of the Inspectorate. However, the transitional provision, new sub-section 83(1), which provides:

The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of the *Wage Theft Amendment Act 2025*, including any repeals and amendments made by that Act.

may not be expressly limited to matters arising from title or name changes and instead may permit regulations containing provisions of a transitional nature arising as a result of the repeal of wage theft offences in Part 2 or the introduction of new referral functions introduced by Part 3.

The Committee notes that, as is typical of provisions for regulations of a transitional nature, new section 83 provides that any regulations may have retrospective effect to the commencement of the

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<sup>25</sup> *Privacy and Data Protection Act 2014*, s. 3 ('personal information', 'personal privacy').

<sup>26</sup> G Wilson, *Formal Review into Victorian Government Bodies' Engagement with Construction Companies and Construction Unions: Final Report*, November 2024, p. 24.

amendment Act and may 'have effect despite anything to the contrary.... in any Act' (other than the amendment Act or the Charter) 'and... in any subordinate instrument'.

**The Committee will write to the Minister seeking information as to whether or not new sub-section 83(1) permits regulations containing provisions of a transitional nature arising as a result of the enactments of the repeal of Victoria's wage theft offences or introduction of the Inspectorate's new referral functions.**

## **Charter Issues**

### ***Privacy – Disclosure in the public interest – Reports to the Minister***

*Summary: The effect of clauses 31(2) and 38 may be to permit the Workforce Inspectorate Victoria to disclose any information received under the Act to anyone if the Commissioner is satisfied that disclosure is in the public interest and to report to the Minister for Industrial Relations, as appropriate, on any complaints, matters, notifications or information the Inspectorate receives or refers. The Committee will write to the Attorney-General seeking further information.*

#### **Relevant provision**

The Committee notes that sub-clause 31(2) amends existing s. 77(3) as follows:

The Commissioner... may disclose information acquired in carrying out a function under this Act ~~that relates to the commencement, progress or outcome of an investigation~~ if the Commissioner is satisfied that it is in the public interest to do so.

The Committee also notes that clause 38, amends non-disclosure requirements that apply to information received by a person exercising functions under the Act to permit 'the disclosure of the information... in accordance with the Workforce Inspectorate Victoria's functions under section 20(1)(ib) or (id)'.

Clause 36, amending existing s. 20, provides for the following functions of the Workforce Inspectorate Victoria:

- (ia) to receive complaints or matters, and related information, regarding public construction from any person;
- (ib) to refer complaints or matters, and disclose related information, regarding public construction to other government agencies and bodies, including agencies and bodies of the Commonwealth or another State or Territory;
- (ic) to receive notifications and information from other government agencies and bodies regarding any complaints or matters the Workforce Inspectorate Victoria has referred to those government agencies and bodies;
- (id) to provide advice and report to the Minister, as appropriate, on any complaints, matters, notifications or information the Workforce Inspectorate Victoria receives or refers;

Clause 37, inserting a new section 71, provides that a government agency or body that has received a request for notification or information regarding any investigation undertaken or action taken by the agency or body in respect of a complaint or matter the Inspectorate referred to it 'must provide the required notification or information within a reasonable time, as specified by the Workforce Inspectorate Victoria.'

**The Committee observes that the effect of clauses 31(2) and 38 may be to permit the Workforce Inspectorate Victoria to disclose or publish any information received under the Act to anyone if the Commissioner is satisfied that disclosure is in the public interest and to report to the Minister for**

**Industrial Relations, as appropriate, on any complaints, matters, notifications or information the Inspectorate receives or refers.**

Charter analysis

The Statement of Compatibility remarks:

The receipt and referral of complaints, matters and information, as well as information sharing between bodies and agencies, engages the right to privacy, given this may involve the sharing of personal information of individuals engaged to work on Victorian public construction sites.

I am of the view, however, that clauses 36 to 38 of the Bill do not limit the privacy right, as any disclosure of a person's information would be lawful, in that it would be pursuant to a properly circumscribed law, and is not arbitrary, as any disclosure may only occur in limited and clearly defined circumstances that enable Workforce Inspectorate Victoria to carry out its functions in respect of the receipt and referral of complaints regarding potentially unlawful conduct on Victorian public construction sites.

I note that the purposes of disclosure are consistent with those recognised by the Information Privacy Principles as being consistent with protection of privacy, being where disclosure is a necessary part of investigating unlawful activity or reporting concerns to a relevant authority.

A person acting on behalf of Workforce Inspectorate Victoria is also still subject to strict confidentiality requirements under s77 of the Principal Act, and any disclosure of information that is outside that the current exceptions in s77(2), and new s77(2)(ab) may amount to an offence.

The Committee notes that the Statement of Compatibility may not expressly address sub-section 77(3) (as amended by clause 31) or the disclosure of information to or by the Minister for Industrial Relations (under clauses 36 to 38).

The Second Reading Speech remarked:

The Bill specifically allows the Workforce Inspectorate to request and receive notifications and information about matters it has referred (subject to any confidentiality or privacy provisions within the referral agency). The Workforce Inspectorate will be able to set up systems to enable it to provide information back to complainants to keep them informed of any responses or updates it receives.

In respect of information from referred agencies, the Committee notes that new section 71 provides that a government agency or body 'must provide' notifications or information requested by the Workforce Inspectorate Victoria. The Committee observes that clause 37 may not expressly exempt information that is subject to confidentiality or privacy provisions within the referral agency, and may not expressly require that the Inspectorate or the Minister comply with the referral agency's confidentiality or privacy rules.

In respect of keeping complainants informed, the Committee notes that amended s. 77(3) is not limited to complainants and may also authorise disclosure of any information received under the Act to complainants (if the Commissioner is satisfied that doing so is in the public interest.) The Committee observes that the Statement of Compatibility may not address the disclosure of information obtained under the Inspectorate's referral function under this provision, including what uses complainants may make of any information disclosed.

Relevant comparisons

The Committee notes that existing s. 20 sets out the following functions of the existing Wage Inspectorate Victoria:

- (e) to work with the Office of Public Prosecutions in respect of criminal proceedings in relation to alleged employee entitlement offences;

...

- (h) to provide advice and report to the Minister on the guidelines or any other matter referred to the Wage Inspectorate Victoria by the Minister;
- (i) to engage in, promote and coordinate the sharing of information with other government agencies and bodies, including agencies and bodies of the government of the Commonwealth or another State or a Territory, for the purposes of this Act;
- ...
- (k) to refer matters, as appropriate, to other bodies;

The Committee also notes that existing sub-s. 73(2) provides:

The Wage Inspectorate Victoria, at any time, may require the Office of Public Prosecutions within a reasonable time specified by the Wage Inspectorate Victoria, to give to the Wage Inspectorate Victoria information regarding—

- (a) any investigation of the referred matter; and
- (b) any action taken in respect of the referred matter.

The Committee observes that these provisions (when read with existing ss. 77(3)) may authorise public interest disclosures of information regarding complaints, processes or outcomes of investigations into, or action taken, in respect of a referral concerning wage theft of similar matters but may not expressly authorise other disclosures (e.g. to the Minister.)

### Conclusion

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

- **whether or not clause 37 requires a government agency or body to provide information despite any confidentiality or privacy provisions of that agency or body;**
- **whether, and if so, in what circumstances, recipients of information disclosed under sub-section 77(3) (as amended by sub-clause 31(2)) or clause 38 may in turn disclose that information to others;**

**and, if so, whether or not clauses 31(2), 37 and 38 are compatible with the Charter’s right against unlawful or arbitrary interferences in privacy.**

## Wrongs Amendment (Vicarious Liability) Bill 2025

**Member** Rachel Payne MP

**Introduction Date** 19 February 2025

**Private Member's Bill**

**Second Reading Date** 2 April 2025

### Summary

The Bill amends the *Wrongs Act 1958* (the W Act) and the *Victoria Police Act 2013* (the VP Act). The Bill—

- provides that various organisations are vicariously liable for some abuse by some individuals
- consequentially alters provisions on State liability for torts committed by police officers

### Preliminary

Clause 2 is the commencement provision. The Bill commences on the day after Royal Assent.

### Organisational liability

Section 4 inserts a new Part XIII A ('Organisational liability for child abuse – vicarious liability') into the W Act.

### *Background*

In 2013, the Parliament's then Family and Community Development Committee stated the following definition of vicarious liability:<sup>27</sup>

**Vicarious liability**—The legal liability of one person for the misconduct of another, despite the first person being free from fault. It has traditionally applied to employment of service and has been applied to some similar relationships such as contractors. However, vicarious liability does not apply in all types of relationships. At present vicarious liability generally applies only in employer–employee and contractor–principal relationships.

That Committee reported:<sup>28</sup>

Non-government organisations are responsible for creating special relationships of trust between their personnel and individuals in the broader community. Organisations are aware of the vulnerability of children in their care and the fact that parents and others rely on the organisation and its personnel to look after the wellbeing of those children. The civil law in Victoria has not yet developed to recognise the liability of non-government organisations for the criminal abuse of children perpetrated by their personnel notwithstanding this development in international jurisdictions.

The Committee determined that these organisations should have a clear legal duty to take appropriate measures to minimise the risk of abuse that can arise because of the creation of relationships of trust for which they are responsible. They should be held vicariously liable for the acts of their personnel in the course of relationships they develop with individuals in the broader community.

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<sup>27</sup> Family and Community Development Committee, *Betrayal of Trust: Inquiry into the Handling of Child Abuse by Religious and other Non-Government Organisations*, Parliament of Victoria, November 2013, p. xxii. See also *Bird v DP (a pseudonym)* [2024] HCA 41, [44]–[45].

<sup>28</sup> Family and Community Development Committee, *Betrayal of Trust: Inquiry into the Handling of Child Abuse by Religious and other Non-Government Organisations*, Parliament of Victoria, November 2013, pp. xi–xii. (See also Recommendation 26.4, Part H.)

The Committee recommends that the Victorian Government undertake a review of the *Wrongs Act 1958* (Vic) to identify amendments that would ensure organisations are held accountable for their legal duty to protect children from criminal abuse.

In 2015, the Commonwealth Royal Commission into Institutional Responses to Child Sexual Abuse reported:<sup>29</sup>

We believe it would be reasonable to impose liability on any residential facility for children, any school or day care facility, any religious organisation or any other facility operated for profit that provides services for children that involve the facility having the care, supervision or control of children for a period of time...

We have come to this conclusion only after careful and detailed consideration of the issues. We have been influenced by the decisions of the courts in which strict liability has been recognised. If the law makes a solicitor liable for the criminal act of his clerk and the dry cleaner liable for the criminal act of his employee, could it be argued that it is not appropriate for institutions to be liable for the criminal abuse of a child when in their care? If the protection of an individual's property is an important priority of the common law, the protection of children should at least have the same priority. In our opinion the community would today expect that the care of children should attract the highest obligation of the law.

There may be some in the community who believe that a change of this nature should be left to the High Court to determine. We do not agree with that view. Given how the law has developed in the United Kingdom and Canada, and given the support for imposing liability that has been expressed by some Australian judges, it seems to us very likely – if not inevitable – that, in the absence of legislative action, the courts will recognise and impose this liability. If the courts do this through the development of the common law, the liability will apply retrospectively to abuse that has already occurred. This is the position in the United Kingdom. In our opinion this would not be appropriate.

If the change is made by statute, the injustices that may arise if the change is left to the common law can be avoided. In particular, the burden that retrospective change would impose on insurers or institutions that will not have insured against this liability can be avoided.

If the liability was left to the development of the common law and applied retrospectively, in combination with the removal of limitation periods we recommend, relevant institutions would face potentially large and effectively new liability for abuse that has already occurred, potentially over many previous decades. If it were even possible to obtain insurance for retrospective liability on such a scale, the insurance would be likely to be unaffordable for many institutions. No institution could now improve its practices or take steps to prevent abuse that has already occurred.

In 2017, the Parliament of Victoria inserted a new Part XIII ('Organisational liability for child abuse') into the W Act, including section 91, which provides:

- (1) This section imposes a duty of care that forms part of a cause of action in negligence.
- (2) A relevant organisation owes a duty to take the care that in all the circumstances of the case is reasonable to prevent the abuse of a child by an individual associated with the relevant organisation while the child is under the care, supervision or authority of the relevant organisation.
- (3) In a proceeding on a claim against a relevant organisation for damages in respect of the abuse of a child under its care, supervision or authority, on proof that abuse has occurred and that the abuse was committed by an individual associated with the relevant organisation, the relevant organisation is presumed to have breached the duty of care referred to in subsection (2) unless the relevant organisation proves on the balance of probabilities that it took reasonable precautions to prevent the abuse in question.

Section 93 of the W Act states: 'This Part applies to abuse of a child that occurs on or after the day on which the *Wrongs Amendment (Organisational Child Abuse) Act 2017* comes into operation.'

<sup>29</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report*, 2015, pp. 54-55. See also recommendations 91 to 93.

In 2024, in an appeal concerning a civil claim against the Roman Catholic Diocese of Ballarat concerning assaults and sexual abuse of a five-year-old in 1971 committed by an assistant parish priest appointed by that Diocese, the High Court was asked to adopt United Kingdom rulings made in similar cases that extended the common law on vicarious liability to include civil liability for non-employees whose relationship with an employer was ‘akin to employment’. A majority of the Court refused to do so, stating:<sup>30</sup>

In light of this Court having rejected, on more than one occasion over the last 25 years, both the starting point and the basis on which the Supreme Court of the United Kingdom extended the law of vicarious liability, the issue is squarely in the hands of the legislatures. This Court should not, by developing the common law, deny the centrality of the employment relationship nor abandon that requirement. As this Court stated in *Sweeney*, “[w]hatever may be the logical and doctrinal imperfections and difficulties in the origins of the law relating to vicarious liability, the two central conceptions of distinguishing between independent contractors and employees and attaching determinative significance to course of employment are now too deeply rooted to be pulled out”. Those deep roots of reliance on a threshold requirement of an employment relationship for a finding of vicarious liability extend to other Australian courts, the legislatures (including in relation to drafting employment legislation) and insurers. That list is not exhaustive.

...

In Australia, the legislature has sought to address these issues of institutional liability following on from various reports, which have explicitly called for reform by parliamentary intervention given the confined, and uncertain, scope of liability for intentional torts under the doctrine of vicarious liability at common law in Australia. The 2015 Redress and Civil Litigation Report of the Commonwealth Royal Commission into Institutional Responses to Child Sexual Abuse (“the Redress Report”) considered parliamentary reform to be the proper and appropriate vehicle for ensuring institutional accountability and redress for the harms committed by members and employees. And steps have been taken by legislatures. The difficulty is that the steps taken by the various legislatures have not been consistent and, in some important respects, amendments to civil liability, following the recommendations of Royal Commissions, are prospective.

#### Note the Second Reading Speech:

This High Court decision puts victim-survivors in limbo – with many cases indefinitely halted, unless reforms are made. In their judgement, the High Court noted that any reformulation of the law would be the responsibility of the legislature. Following this, there have been broad calls for legislative reform. In the past when making similar reforms, the government has alluded to the opportunity for common law to develop and give child abuse plaintiffs access to justice with a retrospective effect. Now that this opportunity has been shut down, we understand that the Attorney-General is leading work with the Standing Council of Attorneys-General on a national response. Many victim-survivors take decades to come forward and make a disclosure. We cannot make them wait any longer. We know that Victoria has never been afraid to lead the way when it comes to responding to institutional child abuse. Proudly, we were the first jurisdiction in Australia to remove civil limitations and create a fault-based legal duty to prevent child abuse. This work was informed by the Royal Commission into Institutional Responses to Child Sexual Abuse and the Betrayal of Trust report. Both of these emphasised the need for statutory intervention to ensure that organisations are held to account and to minimise the risk of abuse that arises due to the relationships of trust for which they are responsible. We believe these relationships of trust are not strictly confined to the employee–employer relationship. Accordingly, the Wrongs Amendment (Vicarious Liability) Bill 2025 will make certain organisations vicariously liable for the abuse of children by persons akin to employees of these organisations.

#### *Extension of vicarious liability*

The Bill adds ‘– new duty of care’ to the title of Part XIII of the W Act [3] and inserts a new Part XIII A, which is subtitled ‘– vicarious liability’, into the W Act [4].

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<sup>30</sup> *Bird v DP (a pseudonym)* [2024] HCA 41, [63], [68].

New Part XIII A provides:

- that a relevant organisation is vicariously liable for abuse of a child by an employee of an organisation if: the organisation placed the employee in a role; the apparent performance of that role supplies the occasion for the perpetration of abuse; and the employee took advantage of that occasion to perpetrate that abuse: new sub-section 93D(1).
- that an employee of a relevant organisation generally includes an individual (described as ‘akin to an employee’) who carries out activities as part of the organisation and for the benefit of the organisation, unless the activities are carried out for a recognisably independent business of the individual or of another relevant organisation: new sub-section 93C(1) (and see new section 93A (‘employee’))
- that ‘abuse’, ‘authority’ and ‘child’ have the same meaning as in Part XIII<sup>31</sup> and a ‘relevant organisation’ means ‘an entity (other than the State) organised for some end, purpose or work that exercises care, supervision or authority over children’ that is either: ‘capable in law of being sued’; not so capable ‘but nominates an associated legal person’<sup>32</sup>; an NGO capable of being sued in accordance with the *Legal Identity of Defendants (Organisational Child Abuse) Act 2018*;<sup>33</sup> a statutory office holder, a Department or Administrative Office under the *Public Administration Act 2004*;<sup>34</sup> a body corporate established for a public purpose; or Victoria Police: new section 93A.
- that Part X of the W Act (‘Negligence’) applies to claims under new Part XIII A, Part XII of the W Act (‘Liability of Public Authorities’) does not apply to claims under new Part XIII A; and Part XII A is subject to a provision that deems schools, principals, teachers and nominated persons not to have a duty of care relating to the care or control of a student in a work experience arrangement, structured workplace learning arrangement or apprenticeship for contractual training approved by the school: new section 93B.
- that new section 93D does not affect and is in addition to the common law on vicarious liability: new sub-section 93D(3).
- a power to make regulations prescribing: circumstances in which an individual is not akin to an employee despite new sub-section 93C(1); and other circumstances than new sub-section 93C(1) in which an individual is akin to an employee, including circumstances that involve an individual carrying out activities as part of and for an organisation or that are not carried out for a recognisably independent business: new section 93G. Note the Explanatory Memorandum:

The general nature of this new section and the regulation making powers are intended to ensure that claims are not inadvertently excluded from scope due to a novel or unexpected category of relationship.

<sup>31</sup> Section 88 of the W Act provides that ‘abuse’ means ‘physical or sexual abuse’, ‘authority’ includes ‘any authority or ostensible authority... an individual... derives from the individual’s association with the relevant organisation’ and ‘child’ means ‘a person who is under the age of 18 years’.

<sup>32</sup> New sub-section 93F provides: ‘If a relevant organisation is not capable in law of being sued, it may nominate, with the consent of the nominee, a legal person that is so capable as the appropriate defendant for the purposes of a claim brought in reliance on section 93D and any liability incurred by the entity by reason of that section is incurred by the nominated legal person.’ Note the Explanatory Memorandum: ‘Unincorporated organisations have been given an opportunity to nominate a legal entity with sufficient assets for child abuse survivors to sue. Where an organisation does not comply, courts have the power to appoint the unincorporated organisation’s associated trusts to be sued on their behalf. New section 93F(1) is intended to facilitate these arrangements. If a nomination under new section 93F(1) is made, it is expected that defendants would assist plaintiffs via correspondence to identify the correct entity to sue’

<sup>33</sup> The Committee notes that that Act provides that ‘a non-government organisation that is an unincorporated association or body is an NGO’ and that such an NGO may nominate an entity capable of being sued as a proper defendant, but that if the NGO does not do so or the proper defendant has insufficient assets, a court may nominate the trustees of an associated trust of the NGO as a proper defendant.

<sup>34</sup> New sub-section 93E provides that, if a public sector body is not capable of being sued, the State is the proper defendant, and that any liability incurred by a public sector body is incurred by the State.

Notwithstanding this, there must be a direct relationship between the activities carried out by the individual and the organisation.

See the comments under the PCA.

Amendments to the VP Act provide that exemptions to State liability for certain police torts and for torts committed by a police officer that are not police torts, and Division 8 of the VP Act ('Liability for tortious conduct by police and protective service officers'), do not apply to Part XIII A [5]. Note the Explanatory Memorandum:

This is intended to ensure that the attribution of liability to the State under new section 93E(c) is not frustrated by existing immunities in Division 8 of Part 4 of the *Victoria Police Act 2013*. This is not intended to otherwise affect the operation of Division 8 of Part 4 of the *Victoria Police Act 2013*.

### *Transitional*

New section 93H is the transitional provision for new Part XIII A of the W Act [4]. It provides that the Part applies in respect of abuse of a child, 'whether the abuse occurs before, on or after the commencement' of the amending Act, and that the Part applies to a proceeding in a court on a claim in respect of that abuse that commenced before the commencement of the amendment Act 'that has not been finally settled or determined before that day'.

Note the Second Reading Speech:

Finally, and very importantly, the bill will apply to child abuse that occurs before, on or after the proposed commencement date. While there have been a number of positive legislative reforms to help victim-survivors access justice, all too often these reforms do not have a retrospective effect. While this may be appropriate in some cases, when legislating past reforms, this government has alluded to the potential for vicarious liability to offer retrospective justice pending changes in the common law. As the window for such change has been closed, we consider a retrospective legislative change necessary.

See the comments under the PCA and the Charter report.

## **Comments under the PCA**

### ***Trespasses unduly on rights and freedoms – Vicarious liability – Retrospectivity – Commenced proceedings – (s. 17(a)(i), PCA)***

The Committee notes that the Bill provides for retrospective vicarious civil liability.

The Committee notes the report of the Family and Community Development Committee:<sup>35</sup>

There are difficulties in creating rights or obligations under the civil law retrospectively. It is only in very rare circumstances that Parliament would retrospectively create enforceable rights and obligations. This approach is based on the fundamental proposition that in a democratic society behaviour that was lawful under the criminal law at the time at which it occurred should not be retrospectively declared criminal. Similarly, if there were no rights or obligations under the civil law at a point in time, if these rights or obligations were introduced today, they should not retrospectively become the subject of civil liability. The Committee accepts the legal foundation that, apart from the most exceptional circumstances, citizens should not be held liable under the criminal or civil law for conduct which was not prohibited at an earlier time.

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<sup>35</sup> Family and Community Development Committee, *Betrayal of Trust: Inquiry into the Handling of Child Abuse by Religious and other Non-Government Organisations*, Parliament of Victoria, November 2013, p. xii. (See also p. 509.)

The Committee notes that:

- vicarious liability (including under Part XIII A) may not require proof that the defendant was at fault.<sup>36</sup>
- new section 93H(2) provides that Part XIII A applies:
  - to a proceeding in a court on a claim in respect of that abuse that has been commenced before the day referred to in subsection (1) but that has not been finally settled or determined before that day.
- Division 5 of Part 2A of the *Limitation of Actions Act 1958* provides that:
  - a cause of action (including a cause of action that was previously barred by a limitation period or previously settled) founded on death or personal injury resulting from physical or sexual abuse (or psychological abuse arising from that abuse) of a minor (including abuse that occurred before that Division was enacted) may be brought at any time; and
  - a court may set aside previous judgments or settled causes of action if it is satisfied that it is just and reasonable to do so.

Accordingly, the Committee notes that Part XIII A may create civil liability retrospectively without proof of fault, without any limitation period, regardless of whether there are proceedings on foot at commencement (and not settled or determined) in respect of a claim of abuse and also (if a court considers it just and reasonable) in respect of claims that are finally settled or determined.

***The Committee refers to the Charter report.***

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***Inappropriately delegates legislative power – Vicarious liability for non-employees – ‘prescribed circumstances’ – (s. 17(a)(vi), PCA)***

The Committee notes that Part XIII A’s effect is to extend a relevant organisation’s vicarious liability for abuse of a child to abuse by a non-employee who is ‘akin to an employee’ of that organisation.

The Committee notes that new section 93B provides that:

- its definition of ‘akin to an employee’ applies ‘[e]xcept in the prescribed circumstances’
- ‘[t]he regulations may prescribe other circumstances in which an individual is akin to an employee’
- the ‘regulations... may prescribe circumstances that involve an individual carrying out activities’ referred to in the definition of ‘akin to an employee’.

The Committee notes that these provisions may authorise the expansion or contraction of a relevant organisation’s vicarious liability<sup>37</sup> for the abuse of children by non-employees<sup>38</sup> (when taking advantage of an occasion provided by a role in which the organisation placed them) via regulation and

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<sup>36</sup> *Bird v DP (a pseudonym)* [2024] HCA 41, [44]–[45].

<sup>37</sup> The Committee notes that regulations affecting the operation of new section 93B do not affect the other requirements of new section 93B, i.e. the relevant organisation placing a person in a role, the apparent performance of the role providing the occasion for abuse and the person taking advantage of that occasion, as well as the factors to be considered under new sub-section 93D(2).

<sup>38</sup> The Committee notes that regulations affecting the operation of new section 93B do not affect vicarious liability for actual employees at common law (see new section 93D(3)).

that the expansion or contraction may not be limited by the term ‘akin to an employee’ in new section 93A or by the definition of that term in new section 93B.<sup>39</sup>

The Committee notes the retrospective operation of Part XIII A and its application to ongoing proceedings (discussed above.)

**The Committee will write to the member seeking information as to whether regulations made under new section 93G altering the operation of new section 93B may apply retrospectively to claims relating to abuse that occurred before the commencement of the Part XIII A or the commencement of those regulations, including to ongoing proceedings.**

## **Charter Issues**

### ***Age discrimination – Property – Vicarious liability for abuse of a child – Retrospective liability***

*Summary: The effect of clause 4 may be that some organised entities may be vicariously liable for abuse of a person under 18, including abuse that occurred before the commencement of clause 4, by an individual who is (or is akin to) an employee of the entity apparently performing a role in which the entity placed them. The Committee will write to the member seeking further information.*

#### **Relevant provision**

The Committee notes that clause 4, inserting a new sub-section 93D, provides:

A relevant organisation is vicariously liable for abuse of a child by an employee of the organisation if—

- (a) the apparent performance by the employee of a role in which the organisation placed the employee supplies the occasion for the perpetration of the abuse by the employee; and
- (b) the employee takes advantage of that occasion to perpetrate the abuse of the child.

A ‘relevant organisation’ means ‘an entity (other than the State) organised for some end, purpose or work that exercises care, supervision or authority over children’. ‘child’ means ‘a person who is under the age of 18 years’. ‘employee’ includes ‘an individual akin to an employee’.

The Committee also notes that new sub-section 93H(1) provides that new Part XIII A, including new sub-section 93D ‘applies in respect of abuse of a child whether that abuse occurs before, on or after the day on which the... Act... comes into operation’.

**The Committee observes that the effect of clause 4 may be that an organised entity (that exercises care, supervision or authority over people under 18) may be vicariously liable for abuse of a person under 18, including abuse that occurred before the commencement of clause 4, by an individual who is (or is akin to) an employee of the entity apparently performing a role in which the entity placed them (if the employee took advantage of an occasion supplied by that role to perpetrate the abuse.)**

#### **Charter analysis**

The Statement of Compatibility remarks:

The Bill recognises that children are especially vulnerable to abuse and need to be afforded the strongest possible protection, particularly by those entrusted with their care. This Bill also recognises the need to

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<sup>39</sup> See, for example, *Civil Liability Regulation 2024* (NSW), reg 6, which provides that, despite section 6G(3)(b) of the *Civil Liability Act 2002* (NSW) (which provides that an individual is not akin to an employee if ‘the activities carried on by the individual are the activities of an authorised carer carried on in the individual’s capacity as an authorised carer’), an individual is akin to an employee if ‘the activities carried out by the individual are carried out in the individual’s capacity as an authorised residential care worker’ and ‘the individual is otherwise akin to an employee’. The Committee notes that NSW’s equivalent to new Part XIII A does not have retrospective effect.

address limitations in existing law and the difficulties plaintiffs face when recovering compensation where an organisation may be liable for child abuse perpetrated by its members. This Bill supports the right of protection of children under section 17(2) of the charter.

The Committee notes that the Statement of Compatibility may not expressly address the Charter's equality rights or property rights.

The Committee observes that, to the extent that new sub-section 93D(1)'s restriction to abuse of a child may disadvantage a person over 18 (e.g. an 18-year-old abused by an employee) compared to a person under 18 (e.g. a 17-year-old abused in similar circumstances by the same employee), clause 4 may engage the Charter's right to 'equal protection of the law without discrimination' on the ground of age.<sup>40</sup>

The Committee also observes that, to the extent that new sub-section 93D(1) may require a human employer to pay damages in respect of another's child abuse done at a time when that employer was not legally liable for the other person's actions, it may engage the employer's Charter's right 'not to be deprived of property other than in accordance with law'.

The Committee notes that, although only human beings have Charter rights,<sup>41</sup> the term 'entity' includes 'an individual'<sup>42</sup> and a 'relevant organisation' may include a group of individuals (if they are organised for some end, purpose or work and exercise care, supervision or authority over children).<sup>43</sup>

#### Relevant comparisons

The Committee notes that current Victorian law provides that relevant organisations owe a duty to take reasonable care to prevent the abuse of a child by an individual associated with the organisation while the child is under the care, supervision or authority of that organisation.<sup>44</sup>

The Committee also notes that other Australian jurisdictions provide:

- in New South Wales, the Northern Territory, South Australia and Tasmania, similarly to clause 4.<sup>45</sup>
- Queensland, similarly to current Victorian law.<sup>46</sup>

The Committee observes that each of these provisions is limited to abuse of persons under 18, none of them apply retrospectively and the New South Wales, Northern Territory and Tasmanian provisions exclude employers who are individuals.<sup>47</sup>

<sup>40</sup> Charter s. 8(3), and see Charter s. 3 ('discrimination') and *Equal Opportunity Act 2010*, s. 6(a).

<sup>41</sup> Charter s. 6(1).

<sup>42</sup> *Interpretation of Legislation Act 1984*, s. 38 ('entity', 'person').

<sup>43</sup> The Committee notes that the definition of 'relevant organisation' includes 'an entity... not capable in law of being sued but nominates an associated legal person under section 93F'.

<sup>44</sup> Existing s. 91(2).

<sup>45</sup> *Civil Liability Act 2002* (NSW), s. 6H (and see s. 6G(1) ('employee')); *Personal Injuries (Liabilities and Damages) Act 2003* (NT), s. 17G; *Civil Liability Act 1936* (SA), s. 50G; *Civil Liability Act 2002* (Tas), s. 49J (and see s. 49I(1) ('employee')).

<sup>46</sup> *Civil Liability Act 2003* (Qld), s. 33D (and see s. 33C.)

<sup>47</sup> *Civil Liability Act 2002* (NSW), s. 6A ('child', 'organisation'), sch. 2, cl. 44; *Personal Liability (Injuries and Damages) Act 2003* (NT), ss. 3 ('child'), 17B(2) & (5); *Civil Liability Act 2003* (Qld), s. 86 (and see *Acts Interpretation Act 1954*, sch 2 ('child')); *Civil Liability Act 1936* (SA), s. 50A ('child', 'child abuse') & 50D(1); *Civil Liability Act 2002* (Tas), ss. 4(8) & 49C ('child', 'organisation'); *Wrongs Act 1958*, ss. 88 ('child') & 93.

Conclusion

**The Committee will write to the member seeking further information as to the compatibility of clause 4 with the Charter rights:**

- **of abuse victims to equal protection of the law without discrimination on the ground of age and**
- **in relation to new sub-section 93H(1), of employers (who are individuals or groups of individuals) to not be deprived of property other than in accordance with law.**

# House Amendments

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## Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025

|                  |                     |                            |                  |
|------------------|---------------------|----------------------------|------------------|
| <b>Member</b>    | Hon Jaclyn Symes MP | <b>Introduction Date</b>   | 26 November 2024 |
| <b>Portfolio</b> | Attorney-General    | <b>Second Reading Date</b> | 27 November 2024 |
|                  |                     | <b>Royal Assent</b>        | 8 April 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. 1 of 2025*<sup>48</sup> tabled on 4 February 2025. The Committee provided a subsequent report on the amendments made to the bill by the Legislative Assembly in *Alert Digest No 3 of 2025*.<sup>49</sup>

The Committee now provides a further report on the amendments made by the Legislative Council. The amendments were passed in the Legislative Council on 2 April 2025. The Assembly agreed to the amendments made by the Council on 2 April 2025.

### Summary

The house amendments altered the Bill for the amending Act, including clauses that amended the *Crimes Act 1958* (C Act) and the *Equal Opportunity Act 2010* (EO Act). The house amendments—

- added a statement to the amending Act
- altered the amending Act's purpose provision
- altered the amending Act's commencement provision
- altered a provision on the prosecution of the serious vilification offences
- altered an exception to the civil prohibition of vilification

### Preliminary

The house amendments added section 1A, which sets out a 'statement for this Act'.

The Committee notes that this statement will be repealed on 30 June 2027.<sup>50</sup>

The Committee notes that the 'statement for this Act' in section 1A is the same as the 'statement for this Part' that the amending Act inserted into the EO Act at the start of that Act's new Part 6A

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<sup>48</sup> See *Alert Digest No 1 of 2025*, Justice Legislation Amendment (Anti-Vilification and Social Cohesion) Bill 2024, pp 18-23 <<https://www.parliament.vic.gov.au/494feb/globalassets/committee-publication-record-documents/committee-36/publication-339/alert-digest-no-1-of-2025.pdf>>.

<sup>49</sup> *Alert Digest No 3 of 2025*, Justice Legislation Amendment (Anti-Vilification and Social Cohesion) Bill 2024 (House Amendments) pp 9-15 <<https://www.parliament.vic.gov.au/495a6f/globalassets/committee-publication-record-documents/committee-36/publication-341/alert-digest-no-3-of-2025---final.pdf>>

<sup>50</sup> See section 44 (which was altered by a house amendment to provide for repeal on 30 June 2027, rather than 18 September 2027), consequentially on the alteration to the commencement provision.

(‘Prohibition of vilification’) [9], except that section 1A omits a paragraph in the statement for Part 6 of the EO Act concerning freedom of expression.<sup>51</sup>

Section 1 is the amending Act’s purpose clause. The house amendments added two additional purposes to: protect Aboriginal and Torres Strait Islanders and others experiencing systemic injustice and structural oppression; and promote full and equal participation in an open and inclusive society, without impeding robust discussion ‘that does not vilify or marginalise others based on a protected attribute’.

Section 2 is the amending Act’s commencement clause. The house amendments altered the commencement of Part 3 (‘amendments to the *Equal Opportunity Act 2010*’) and consequential amendments (including the repeal of the *Religious and Racial Tolerance Act 2001*) so those provisions will commence on 30 June 2026 (rather than 18 September 2027), unless proclaimed earlier.

#### Prosecution of serious vilification offences

The house amendments altered new section 195Q of the C Act (‘prosecution of offences’) to:

- require the consent of the Director of Public Prosecutions for all prosecutions of the serious vilification offences (rather than to permit police officers to prosecute such offences without the Director of Public Prosecution’s consent and to prohibit such prosecutions by others even with the Director of Public Prosecution’s consent).
- require the Director of Public Prosecutions, when determining whether a serious vilification offence is to be prosecuted, to ‘take into account all the circumstances surrounding the conduct’ alleged. See the comments under the PCA and the Charter report.

#### Exceptions to the prohibition of vilification

The house amendments altered new section 102G of the EO Act (‘exceptions’), which includes an exception to the civil prohibition of vilification for reasonable, good faith conduct engaged in for a genuine religious purpose, by altering new sub-section 102G(2) – which provides that a religious purpose ‘includes but is not limited to worship, observance, practice, teaching, preaching and proselytising’ – to add the words ‘that is in conformity with the doctrines, beliefs or principles of that religion’.

### **Comments under the PCA**

***Makes rights, freedoms or obligations dependent on non-reviewable administrative decisions – Director of Public Prosecutions must take account of all the circumstances – (s. 17(a)(iii), PCA)***

New sub-section 195Q(2) of the *Crimes Act 1958* provides:

In determining whether an offence against section 195N(1) or 195O(1) is to be prosecuted, the Director of Public Prosecutions must take into account all the circumstances (including the social, cultural and historical circumstances) surrounding the conduct that is alleged to constitute the offence.

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<sup>51</sup> New section 102A of the EO Act includes the following paragraph: ‘The right to freedom of expression is an essential component of our society and this right should be limited only to the extent that can be justified in an open and democratic society based on human dignity, equality and freedom. The Parliament acknowledges the importance of maintaining the ability to engage in robust discussion reasonably and in good faith on any matter for a genuine academic, artistic, public interest, religious or scientific purpose.’

The Committee notes that a prosecution for a serious vilification offence may adversely affect free speech and that a decision not to prosecute a serious vilification offence may adversely affect public participation.

The Committee notes that two justices of the High Court have stated:<sup>52</sup>

It ought now be accepted, in our view, that certain decisions involved in the prosecution process are, of their nature, insusceptible of judicial review. They include decisions whether or not to prosecute, to enter a nolle prosequi, to proceed ex officio, whether or not to present evidence and, which is usually an aspect of one or other of those decisions, decisions as to the particular charge to be laid or prosecuted. The integrity of the judicial process - particularly, its independence and impartiality and the public perception thereof - would be compromised if the courts were to decide or were to be in any way concerned with decisions as to who is to be prosecuted and for what.

**The Committee will write to the Attorney-General seeking information as to whether or not a court (e.g. on the application of an alleged victim, or a person accused, of a serious vilification offence) could review a decision by the Director of Public Prosecutions under section 195Q of the *Crimes Act 1958* on the ground that the Director did not take all of the circumstances surrounding the alleged conduct into account.**

## Charter Issues

***Equality before the law – Incitements and threats on the ground of a protected attribute – Director of Public Prosecutions must take all circumstances into account***

Summary: *The effect of new sub-section 195Q(2) may be to require the Director of Public Prosecutions to take all circumstances into account when deciding if an offence of incitement or threatening on the ground of a protected attribute is to be prosecuted. The Committee will write to the Attorney-General seeking further information.*

### Relevant provision

The Committee notes that section 4 inserted a new sub-section 195Q(2) into the *Crimes Act 1958* as follows:

In determining whether an offence against section 195N(1) or 195O(1) is to be prosecuted, the Director of Public Prosecutions must take into account all the circumstances (including the social, cultural and historical circumstances) surrounding the conduct that is alleged to constitute the offence.

New sections 195N(1) and 195O(1) set out offences of incitement on the ground of a protected attribute and threatening physical harm or property damage on the ground of a protected attribute. New subsection 195Q(1) provides that a prosecution for these offences may only be commenced by or with the consent of the Director of Public Prosecutions.

The member who introduced the amendment that added new-sub-section 195Q(2) to the Bill for the Act remarked:

For this bill to operate as intended power dynamics and context must be taken into account as they exist in the community – the context of those who are empowered with a platform and those who are most vulnerable in our communities to the targeted hate that we have been seeing. To this end we are seeking to include via amendment the need for decision-makers to consider the circumstances of the conduct, including the social, cultural and historical circumstances. This consideration would extend to all relevant people – both the victim and the alleged offender in criminal cases and the plaintiff and defendant in civil cases – and would necessarily include the consideration of any power imbalances between the relevant people. In addition, we are seeking to amend the purposes of the bill to explicitly

<sup>52</sup> *Maxwell v R* (1996) 184 CLR 501, 534. See also *Likiardopoulos v The Queen* [2012] HCA 37 [37], but compare [4].

state that the intent of the bill must be to protect people that experience systemic injustice and structural oppression, including Aboriginal and Torres Strait Islander people. This tells courts, tribunals, the Victorian Equal Opportunity and Human Rights Commission, the police and the Director of Public Prosecutions that the intention of the bill is to safeguard individuals who face widespread entrenched patterns of unfair treatment that are built into the systems, into the institutions and into the laws of our society and that this should be taken into account when protecting those at risk of vilification but also that we should ensure that those who are marginalised and those who are vulnerable or disadvantaged are shielded from these laws being weaponised against them or applied to them in a discriminatory or an unjust way.

**The Committee observes that the effect of new sub-section 195Q(2) may be to require the Director of Public Prosecutions to take all circumstances (including social, cultural and historical circumstances) into account when deciding if an offence of incitement or threatening on the ground of a protected attribute is to be prosecuted.**

#### Charter analysis

The Statement of Compatibility did not address new sub-section 195Q(2), as that sub-section was not in the bill as introduced.

Clause 6 of the current policy of the Director of Public Prosecutions of Victoria provides:<sup>53</sup>

A decision whether to prosecute must not be influenced by:

- political pressure or interference
- the race, religion, sex, national origin, political associations, activities or beliefs of the offender or any other person involved
- personal feelings concerning the offence, the offender or the victim
- possible political advantage or disadvantage to the Government or any political group or party
- the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution decision

The Committee notes that the social, cultural or historical circumstances surrounding conduct alleged to constitute a serious vilification offence may include the race, religion, sex, national origin or politics of the alleged offender or alleged victim of the offence.

The Committee observes that, to the extent that new sub-section 195Q(2) may require or permit the Director of Public Prosecutions to be influenced by the race, religion, sex, national origin or politics of an alleged offender or victim when deciding if an offence of inciting or threatening on the ground of a protected attribute is to be prosecuted, it may engage the Charter's right to equality before the law.<sup>54</sup>

#### Relevant comparisons

The Committee notes that existing s. 24 of the *Public Prosecutions Act 1994* provides:

In the performance of his or her functions the Director must have regard to—

- (a) considerations of justice and fairness; and
- (b) the need to conduct prosecutions in an effective, economic and efficient manner; and

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<sup>53</sup> K Judd, *Policy of the Director of Public Prosecutions for Victoria*, Director of Public Prosecutions Victoria, 21 September 2023, s. 6.

<sup>54</sup> Charter s. 8(3), which provides that 'Every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.'

- (c) the need to ensure that the prosecutorial system gives appropriate consideration to the concerns of the victims of crime.

The Committee also notes while all Australian prosecution policies have similar provisions to the second dot point of existing 6 of Victoria's prosecution policy<sup>55</sup>, there are exceptions in:

- the Australian Capital Territory, for considerations that 'have special significance to the commission of the particular offence or should otherwise be taken into account as a matter of fairness to the accused – see, for example, subparagraphs 3.26-3.27'<sup>56</sup>
- New South Wales, where 'the accused's political associations, activities or beliefs are directly related to an offence'
- the Northern Territory, for considerations that 'have special significance to the commission of the particular offence or should otherwise be taken into account objectively'
- Western Australia, for evaluation of the public interest by considering matters 'relevant to the elements of the offence'

### Conclusion

**The Committee will write to the Attorney-General seeking further information as to whether or not new sub-section 195Q(2), to the extent that it requires or permits the Director of Public Prosecutions be influenced by the race, religion, sex, national origin or politics of an alleged offender or alleged victim, is compatible with the Charter's right to equality before the law.**

<sup>55</sup> S McNaughton, *Prosecution Policy of the Commonwealth*, Commonwealth Director of Public Prosecutions, 24 February 2021, s. 2.13(a) (and see also Annexure A); S Drumgold, *The Prosecution Policy of the Australian Capital Territory*, 1 April 2021, 2.10(a); Office of the Director of Public Prosecutions (NSW), *Prosecution Guidelines*, March 2021, s. 1.5.1; Director of Public Prosecutions (NT), *Guidelines of the Director of Public Prosecutions*, 2016, s. 2.7(1); Department of Justice and Attorney-General (Qld), *Director's Guidelines*, 27 September 2022, s. 4(iii) (but see s. 25(1)(b)); Director of Public Prosecutions South Australia, *Statement of Prosecution Policy & Guidelines*, October 2014, p. 7 (but see Annexure B, s. 6(b)(i)); Director of Public Prosecutions (Tas), *Prosecution Policy and Guidelines*, 26 March 2025, s. 2.5 (first dot point); Office of the Director of Public Prosecutions for Western Australia, *Statement of Prosecution Policy and Guidelines 2022*, 1 July 2022, s. 33(a) (only for 'the evaluation of the public interest').

<sup>56</sup> Sub-paras 3.26-3.27 concern Australia's current law and practice on sentencing Indigenous offenders.



## **Ministerial Correspondence**

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The Committee received responses from Attorney-General in relation to the Acts listed below.

The Committee thanks the Attorney-General for the attached information.

The responses are reproduced. Please refer to Appendix 3 for additional information.

### **Family Violence Protection Amendment Act 2025**

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



## The Hon. Sonya Kilkenny MP

Attorney-General

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Melbourne Victoria 3000  
Telephone: +61 3 8684 1111

Our ref: 25040168

Mr Gary Maas MP  
Chair  
Scrutiny of Acts and Regulations Committee  
Parliament House  
EAST MELBOURNE VIC 3002

By email: [helen.mason@parliament.vic.gov.au](mailto:helen.mason@parliament.vic.gov.au)

Dear Mr Maas

Thank you for your letter of 1 April 2025 regarding the *Family Violence Protection Amendment Act 2025* (the Amendment Act). I write to provide further information in response to your queries about the Amendment Act.

I note that the Committee sought further information about whether a person who unintentionally contravenes an order to which new section 235 of the *Family Violence Protection Act 2008* (the Act) applies (because the copy of the order served on them was not a true copy), may be prosecuted and convicted for that contravention. I note that the Committee queried whether this is the case where the copy purportedly served omitted or mis-stated the contravened condition and the person was not otherwise aware of that condition.

I confirm that new section 235 applies so that a person who was served with a copy of an order made between 15 November 2024 and 18 March 2025, which was not a true copy due to the technical issue which resulted in the omission of a phrase that was included in the original order, can be prosecuted and convicted for any contravention of the order. New section 235 of the Act provides that any copies of orders made between 15 November 2024 and 18 March 2025 and served on respondents at any time are taken to have always been true copies of the orders made. The objective of the Amendment Act is to ensure that a mere defect in a copy of an order does not prevent enforcement action being taken against a person who breaches the conditions of a family violence intervention order.

The Statement of Compatibility for the Amendment Act confirms that the phrase missing from the copies of the relevant orders when they were printed and served was 'the Court orders that the respondent must not.' This phrase should have been printed before the list

of conduct that the respondent must not engage in. I have made inquiries and been advised that no copies of orders served have been identified which omitted or mis-stated conditions the respondent is required to comply with. While the preceding phrase was omitted from the printed copy of the order, the description of the conduct prohibited was not affected by the error and still appeared on the copy of the order. Further, sections 57, 57A, 96 and 96A of the Act require the service of a written explanation of the order alongside the copy of the order when it is served. As I outlined in the Statement of Compatibility, I consider that the majority of respondents would have inferred the missing wording from the surrounding context and the accompanying explanation provided.

I note that the Committee sought further information about whether the approach of limiting new section 235 to a purported copy of an order, that is not a true copy because of the omission of the words 'the Court orders that the respondent must not', would have been less restrictive means reasonably available of achieving the policy intent. Section 235 is not expressly directed to copies of orders which omitted the words 'the Court orders that the respondent must not'. I confirm that the provision therefore operates to remedy any other defects in copies of the orders. Although no other defects were identified, the legislative intent was to capture any orders that might have been affected by a similar defect. I consider that this approach achieves the policy intent of ensuring the capacity to take enforcement action against a person who breaches the conditions of the order is not limited by a technical error.

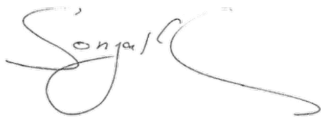
I note that the Committee sought further information about whether limiting new section 235 to respondents who have been given an explanation of the order would have been less restrictive means reasonably available of achieving the policy intent. Limiting the application of section 235 in this way would not have achieved the policy intent. The defect only affected orders where the respondent was not present in Court to receive an explanation of the order. I note the Committee's observation that there is no legislative requirement for police officers to provide a verbal explanation when serving an order. As outlined above, the Act requires the service of a written explanation of the order alongside the copy of the order when it is served. In this context, I consider that the majority of respondents would have inferred the missing wording from the surrounding context and the accompanying explanation provided. I further note that under sections 57, 57A, 96 and 96A of the Act, a failure to provide an explanation of the order does not affect the validity of the order. To limit the application of section 235 to situations where an explanation was given would therefore be inconsistent with the Act.

I note that the Committee sought further information about whether excluding findings made, proceedings concluded and/or prosecutions commenced before the commencement of the Amendment Act, from the operation of new section 235, would have been a less restrictive means reasonably available to achieve the policy intent. I confirm that it was intended that new section 235 apply to any findings made, proceedings concluded and/or prosecutions commenced before the commencement of the Amendment Act. As the

Statement of Compatibility indicates, this approach ensures that any person who has breached the conditions of a family violence intervention order can be prosecuted for that breach and held accountable for their behaviour. As I am of the view that the majority of respondents inferred the missing wording from the surrounding context and the accompanying explanation provided, I do not consider that otherwise successful prosecutions which protect survivors of family violence should be impacted by a technical printing error.

Thank you for taking the time to write to me about the Amendment Act.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sonya Kilkenny', with a long, sweeping flourish extending to the right.

**Sonya Kilkenny**  
Attorney-General

Date: 15/4/2025



The Hon. Sonya Kilkeny MP

Attorney-General  
Minister for Planning

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Mr Gary Maas MP  
Chair  
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Parliament House  
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By email: [sarc@parliament.vic.gov.au](mailto:sarc@parliament.vic.gov.au)

Dear Mr Maas

I refer to your letter of 5 March 2025, enclosing an extract from Alert Digest No. 3 of 2025, which contains issues raised by the Scrutiny of Acts and Regulations Committee (Committee) on the Justice Legislation Amendment (Anti-vilification and Social Cohesion) Bill 2025 (Bill). As the Minister responsible for the Bill, I am pleased to provide the following information in response to the Committee's queries.

I note that the Bill passed Parliament on 2 April 2025 and has received Royal Assent. However, for simplicity I will refer to it as the Bill below.

### **Removal of the statutory defence of genuine political purpose defence**

The Committee seeks further information as to whether new section 195N (the incitement offence), as amended by the house amendment to remove the statutory defence for conduct that is engaged in for a genuine political purpose, is compatible with the Constitutional implied freedom of political communication.

Stakeholders raised concerns throughout consultation that the defence may be used to excuse vilifying conduct that is intended to be captured by the offence, and that it could be misused to legitimise serious vilification under the guise of political communication. This was never the intention of the Bill, or the proposed statutory defence.

The proposed incitement offence maintains appropriately high thresholds and is intended to capture only extremely serious conduct that urges or promotes the strongest form of dislike towards a person or group. As such, it is unlikely that the offence as amended would impose any burden on the implied freedom as most, if not all, communications protected by the implied freedom would likely be permitted. My understanding is that the overall risk of Constitutional invalidity remains low.

Additionally, removing the defence furthers the legitimate purpose sought to be achieved by the provision. The purpose of the offence is to protect individuals and groups from the harms caused by serious vilifying conduct, specifically to protect the dignity of people and groups with protected attributes and to prevent their marginalisation.

The amended offence remains reasonably and appropriately adapted to achieve this purpose, by prohibiting conduct whereby the accused intends to incite, or is reckless as to inciting, hatred (etc) against people or groups with protected attributes. Including the defence risks the offence not being as effective in achieving its purpose, because it may result in the unintended consequence of excusing conduct that is intended to be captured.

For these reasons I consider that the Bill is compatible with the Constitutional implied freedom of political communication.

**Including an exception may be a less restrictive means to achieve the purpose of clause 4**

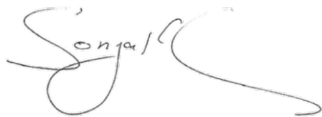
The Committee seeks information as to whether including an exception to the incitement offence in similar terms to 'conduct engaged in reasonably and in good faith in the public interest' may be a less restrictive means to achieve the legislative purpose of clause 4.

I note that throughout consultation on the proposed Bill, the majority of stakeholders did not support including any exceptions or defences to the incitement offence.

An exception of this nature may increase the risk of unintended consequences by legitimising vilifying conduct under the guise of communications made in good faith or public interest (or similar). This would not be as effective in achieving the purpose of clause 4, which includes to prohibit incitement based serious vilification conduct, because the exception could be used to excuse conduct that is intended to be captured by the offence. This could have a significant impact as serious vilifying conduct impairs the dignity of its targets and undermines social cohesion, and can silence or marginalise people from participating in public life.

Accordingly, while inserting a 'good faith' exception into the incitement offence may be a less restrictive means of achieving the purpose of clause 4, it would not achieve the legitimate legislative purpose of clause 4 or the Bill more broadly.

Yours sincerely



**Sonya Kilkenny**  
Attorney-General  
Minister for Planning

Date: 15/4/2025

# **Report on Subordinate Legislation**

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**SR No 90 – Credit Regulations 2024**

**SR No 92 – Local Government (Infringement Notices) Regulations 2024**

**SR No 102 – Road Safety (General) Amendment (Electric Scooters) Regulations 2024**

**SR No 113 – Plant Biosecurity Amendment Regulations 2024**

**SR No 124 – Supreme Court (Fees) Amendment Regulations 2024**

**Australian Computer Society Incorporated Professional Standards Scheme**

**Notice of Declaration of the Kind of Insurance that is Excluded from the Definition of  
Business Insurance under Section 3(2A)**

**Practitioner Remuneration Order 2025**

The Committee received correspondence from Ministers in relation to the above subordinate legislation.

The Committee thanks Ministers for the attached information.

The correspondence is reproduced.



# Scrutiny of Acts and Regulations Committee

17 February 2025

The Hon. Nick Staikos  
Minister for Consumer Affairs  
2 Treasury Place  
East Melbourne  
Victoria, 3002

By email: [minister.staikos@dgs.vic.gov.au](mailto:minister.staikos@dgs.vic.gov.au)

Dear Minister

## SR No. 90 – Credit Regulations 2024

The Regulations Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee (Committee) considered SR No. 90 – Credit Regulations 2024 (Regulations) at a meeting on 12 February 2025.

The Regulations prescribe matters which support the operation of the *Credit Act 1984* (Act). The Act regulates credit contracts entered into prior to 1 November 1996.

The Subcommittee approved the Regulations.

However, the Subcommittee draws your attention to two matters.

### (1) Matters appropriate for primary legislation

Section 21(1)(e) of the *Subordinate Legislation Act 1994* (SLA) authorises the Subcommittee to consider whether a statutory rule ‘contains any matter or embodies any principles which should properly be dealt with by an Act and not by subordinate legislation.’ Pursuant to section 21(1)(e) the Subcommittee requests additional information about the operation of regulation 9 of the Regulations.

Section 11 of the Act makes general provision for credit charges including the calculation of accrued credit charges. Pursuant to section 11(2)(c) the Regulations prescribe applicable methods for calculating *accrued credit charges*.

Section 11(2) of the Act assists with the interpretation of the definition of **accrued credit charge**. It sets out for those purposes how to calculate the amount of the credit charge accrued at a particular time.

Section 11(2) sets out three methods to calculate this amount:-

- (a) by adding together the amounts ascertained by applying the daily percentage rate to the unpaid daily balances (being daily balances before that time)—
  - (i) in the case of a credit sale contract—of the amount financed; or
  - (ii) in the case of a loan contract—of the amount financed other than any part of the amount agreed under the contract to be lent that has not been lent at that time;
- (b) where Schedule 1 applies to the credit sale contract or loan contract—in accordance with the formula set out in that Schedule; or
- (c) where an applicable method is prescribed for the purposes of this subsection—in accordance with that method.

Regulation 9 prescribes two methods of calculating an accrued charge. One method set out in subregulation (2) provides:-

- (2) For the purposes of section 11(2) of the Act, an applicable method for calculating the amount of the credit charge which has accrued at a particular time is to apply the formula set out in Schedule 1 to the Act, and for the purpose of that application that Schedule is to be read and construed as if it had been amended by inserting the following at the end of item 3(c)—
  - “; and
  - (d) intervals shall be deemed to be equal if all intervals except the first are monthly intervals, the amount financed is provided on the 28<sup>th</sup>, 29<sup>th</sup>, 30<sup>th</sup> or 31<sup>st</sup> day of a month and the first instalment is payable on the first day of the month that immediately follows the end of the month that next succeeds the month in which the amount financed is provided.”

The effect of regulation 9 is to prescribe under section 11(2)(c) an applicable method of calculating an accrued charge by adding a paragraph to Schedule 1 of the Act.

Item 3 of Schedule 1 of the Act as amended by regulation 9 (underlined), states:-

- 3. For the purposes of this Schedule—
  - (a) instalments shall be deemed to be equal if all the instalments except one are of the same amount and the difference between the amount of that one instalment and the amount of each of the other instalments is not more than \$5 or 5 per centum of the amount of each of the other instalments, whichever is the greater;
  - (b) monthly intervals shall be deemed to be equal intervals; and
  - (c) intervals shall be deemed to be equal if all the intervals except one are of the same length and the difference between the length of that one

interval and the length of each of the other intervals is not more than 5 per centum of the length of each of the other intervals; and

- (d) intervals shall be deemed to be equal if all intervals except the first are monthly intervals, the amount financed is provided on the 28<sup>th</sup>, 29<sup>th</sup>, 30<sup>th</sup> or 31<sup>st</sup> day of a month and the first instalment is payable on the first day of the month that immediately follows the end of the month that next succeeds the month in which the amount financed is provided.”

Regulation 9 appears to modify the operation of a provision of the Act. It modifies the wording of a provision in Schedule 1 in the primary legislation. The provision has been in place for 30 years. It was incorporated in the Credit Regulations 2014, Credit Regulations 2004, and Credit Regulations 1995.

The Subcommittee notes the Act enables regulations to prescribe methods for calculating accrued credit charges. The Subcommittee also notes the section 13 certificate issued by the Chief Parliamentary Counsel states the statutory rule appears to be within the powers conferred by the authorising Act.

Regulation 9 clarifies the operation of the Act. However, the Subcommittee notes there does not appear to be a provision in the Act which authorises subordinate legislation to modify the wording or operation of the Act.

The approach of the Senate Committee for the Scrutiny of Delegated Legislation (Senate Committee) is of assistance when considering the matter. The Senate Committee has produced guidelines (Senate Guidelines).<sup>1</sup> Provisions in subordinate legislation which modify the operation of primary legislation may limit parliamentary oversight and subvert the relationship between Parliament and the Executive.<sup>2</sup>

The Senate Committee expects if provisions modifying primary legislation are included in subordinate legislation, the explanatory memorandum for the subordinate legislation explain the following matters:-

- the specific legislative authority relied upon to create the modification to primary legislation in delegated legislation;
- the nature and scope of the modification;
- why it is considered necessary and appropriate to create the modification to primary legislation in delegated legislation (rather than directly amending the relevant primary legislation);
- the duration of the modification and, if the instrument is not time limited, the reason for why this is necessary;

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<sup>1</sup> Senate Standing Committee for the Scrutiny of Delegated Legislation, *Guidelines*, 3<sup>rd</sup> ed, <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Committee\\_guidelines](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Committee_guidelines)> accessed 13 February 2025, p. 39.

<sup>2</sup> Ibid.

- whether there is any intention to conduct a review of the relevant provisions to determine if they remain necessary and appropriate (including to determine whether it is appropriate to continue to include the provisions in delegated legislation or to include them in primary legislation such as the enabling Act).

The Committee notes the Regulations may modify the operation of primary legislation by amending Schedule 1. It may be the provisions ought be more properly dealt with by an Act rather than the Regulations.

**The Subcommittee requests additional information in relation to the following matters:-**

- **the effect of regulation 9 of the Regulations and whether it modifies the operation of the Act;**
- **section 11(2) and the authorisation to make regulations which amend Schedule 1 of the Act;**
- **the nature and scope of any amendments to the Act by the Regulations with reference to the Senate Guidelines.**

## **(2) Incorrect exemption category**

Section 7 of the SLA requires Ministers to ensure a regulatory impact statement (RIS) is prepared for a statutory rule unless an exemption applies under section 8. Section 8 provides different categories of exemptions.

The Regulations are accompanied by an exemption certificate which states the Regulations are exempt under section 8(1)(a) on the basis that the statutory rule would not impose a significant economic or social burden on a sector of the public. Accordingly, an RIS was not prepared to accompany the Regulations.

The section 8 certificate states:-

[T]he proposed Credit Regulations 2024 are declaratory or machinery nature and only have effect to prescribe matters that support the continued regulation, under the Credit Act 1984, of credit contracts that were entered into in Victoria prior to 1 November 1996, thus providing a stable regulatory environment for all parties to such credit contracts.

This reflects the wording of an exemption certificate issued pursuant to section 8(1)(c). Section 8(1)(c) provides regulations may be exempt from the RIS process if “the proposed statutory rule is of a fundamentally declaratory or machinery nature.” The Subcommittee notes the 2014 Regulations were exempt under that category.

The Regulations appear to be appropriately exempt from the requirement to prepare an RIS. The Subcommittee draws your attention to the [Committee’s](#)

[Practice Note](#), which is developed to assist government departments comply with obligations under the SLA.<sup>3</sup> The Practice Note notes the importance of using the appropriate exemption category when exempting regulations from the RIS statement process.

**The Subcommittee notes the Regulations may have been exempt under the incorrect section 8 category.**

### Response

The Subcommittee would appreciate your response by Monday, 3 March 2025.

Thank you for your assistance. Please do not hesitate to contact the secretariat at [SARC@parliament.vic.gov.au](mailto:SARC@parliament.vic.gov.au).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Gary Maas', with a stylized flourish at the end.

Gary Maas, MP  
Chair  
Scrutiny of Acts and Regulations Committee

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<sup>3</sup> Scrutiny of Acts and Regulations Committee, *Committee Practice Note*, <<https://www.parliament.vic.gov.au/492473/globalassets/sections-shared/get-involved/inquiries/committees/la-committees/sarc/committee-practice-note.pdf>> accessed 13 February 2025, p. 1.



## The Hon Nick Staikos MP

Minister for Consumer Affairs  
Minister for Local Government

Level 1, 2 Treasury Place  
East Melbourne, Victoria 3002

Gary Maas MP  
Chair  
Scrutiny of Acts and Regulations Committee  
Parliament of Victoria  
By email: [SARC@parliament.vic.gov.au](mailto:SARC@parliament.vic.gov.au)

CMIN-250201291

Dear Mr Maas,

### SR NO. 90 – CREDIT REGULATIONS 2024

Thank you for your letter dated 17 February 2025 in relation to the Credit Regulations 2024 (Regulations). The Scrutiny of Acts and Regulations Committee (Committee) plays an important role in supporting the Victorian Parliament in legislative best practice.

I extend my thanks the Regulations Review Subcommittee (Subcommittee) for its diligent scrutiny of the Regulations and I have given due consideration to the issues raised in your letter.

### Credit Act and Regulations

The *Credit Act 1984* (the Act) and Credit Regulations 2024 (the Regulations) apply to consumer credit contracts entered into in Victoria prior to 1 November 1996. All consumer credit contracts entered into after this date are regulated under the National Credit Code (NCC).

In 2024, the Department of Government Services (DGS) consulted with the Australian Banking Association (ABA) and Customer Owned Banking Association (COBA) in the making of the Regulations and was advised by both ABA and COBA that there were still a number of contracts on foot that were entered into in Victoria prior to 1 November 1996. Consequently, the Regulations were remade to maintain the existing regulatory framework for applicable contracts. The Regulations do not apply to credit contracts entered into after 1 November 1996.

### Matters appropriate for primary legislation

The Committee has requested further information in relation to the following matters:

- The effect of regulation 9 of the Regulations and whether it modifies the operation of the Act;
- Section 11(2) and the authorisation to make regulations which amend Schedule 1 of the Act;
- The nature and scope of any amendments to the Act by the Regulations with reference to the Senate Guidelines.

As you note in your letter, regulation 9 has been unchanged for 30 years, having been incorporated in successive remakes of the Credit Regulations in 1995, 2014 and again in 2024.

Section 11(2) of the Act establishes two methods for the calculation of accrued credit charges and further provides that additional applicable methods may be prescribed. In effect, there are currently four methods for calculating accrued credit charges, being the methods set out in:

- Section 11(2)(a) of the Act;
- Schedule 1 to the Act, as enacted;
- Regulation 9(1); and
- In accordance with Regulation 9(2), Schedule 1 to the Act - *as if amended* by the insertion of prescribed paragraph (d).

Regulation 9(1) supplements section 11 of the Act by providing an additional applicable method for calculating an accrued credit charge by applying the monthly percentage rate to the unpaid monthly balances of the amount financed under a credit sale contract or the amount financed other than a portion that has not been lent at that time under a loan contract.

Regulation 9(2) prescribes a further applicable method by “applying the formula set out in Schedule 1 to the Act, *“as if it had been amended”* to insert prescribed paragraph (d).

Paragraph (d) provides:

*(d) intervals shall be deemed to be equal if all intervals except the first are monthly intervals, the amount financed is provided on the 28th, 29th, 30th or 31st day of a month and the first instalment is payable on the first day of the month that immediately follows the end of the month that next succeeds the month in which the amount financed is provided*

This method operates in addition to, and alongside, the formula contained within Schedule 1 to the Act. Schedule 1 as enacted, remains unamended and remains an applicable means of calculating an accrued credit charge.

Further, I consider that regulation 9(2,) as drafted, operates consistently with the requirements of section 32(2) of the *Interpretation of Legislation Act 1984*, which provides relevantly:

*(2) If an Act (whether passed before or after the relevant day) authorises or requires provision to be made for or in relation to a matter by a subordinate instrument, the subordinate instrument, if made on or after the relevant day and unless the contrary intention appears in the Act under or pursuant to which it is made—*

*(a) may make provision for or in relation to that matter by **applying, adopting or incorporating, with or without modification**, the provisions of—*

*(i) an Act; or*

*...*

*as in force at a particular time or as in force from time to time; and*

*(b) must not make provision for or in relation to that matter by applying, adopting or incorporating any matter contained in a document (not being an Act, Commonwealth Act, Code, statutory rule or statutory rule made under a Commonwealth Act) [emphasis added].*

I also note that the Act and the Regulations have a limited and decreasing regulatory impact, with application constrained to pre-1996 credit sale contracts and loan agreements. Given the longstanding nature of those existing financial arrangements, I do not consider a further review of the Victorian credit regulatory framework is necessary or appropriate at this time.

As regulation 9(2) does not modify the operation of the Act, I do not consider it necessary to address the remaining matters posed by the Committee, including any authorisation to make regulations that amend the Act, and the nature and scope of any such amendments with reference to the *Senate Standing Committee for the Scrutiny of Delegated Legislation Guidelines*.

**Category of exemption from a regulatory impact statement**

The Subcommittee has noted that the Credit Regulations 2014 were certified for a RIS exemption under section 8(1)(c) of the *Subordinate Legislation Act 1994* on the basis that the proposed statutory rule is of a fundamentally declarative or machinery nature. However, the composite certificate issued under section 12B(2) (certificate) of the SL) refers to section 8(1)(a) of the SLA.

The reference to section 8(1)(a) was a typographical error and should have been a reference to section 8(1)(c). I apologise for this oversight and for any confusion it may have caused.

I thank the Subcommittee for drawing my attention to the Committee's practice note addressing the requirement to designate an appropriate RIS exemption category, which I have relayed to the Department of Government Services.

Thank you again for taking the time to write to me on this matter.

Sincerely,



**The Hon Nick Staikos MP**  
Minister for Consumer Affairs  
Minister for Local Government

24/3/2025



# Scrutiny of Acts and Regulations Committee

14 February 2025

The Hon. Nick Staikos  
Minister for Local Government  
2 Treasury Place  
East Melbourne  
Victoria, 3002

By email: [minister.staikos@dgs.vic.gov.au](mailto:minister.staikos@dgs.vic.gov.au)

Dear Minister

## **SR No. 92 – Local Government (Infringement Notices) Regulations 2024**

The Regulations Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee (Committee) considered SR No. 92 – Local Government (Infringement Notices) Regulations 2024 (Regulations) at a meeting on 12 February 2025.

The Regulations prescribe specified offences against the Act to be infringement offences. The Regulations also prescribe associated infringement penalties.

The Subcommittee approved the Regulations.

However, pursuant to section 21(1)(i) of the *Subordinate Legislation Act 1994* (SLA) the Subcommittee seeks additional information in relation to the Regulations.

Section 6A of the SLA sets out requirements for statutory rules which provide for infringement offences. The Minister is required to certify:

- the Department of Justice has been consulted about the enforcement and suitability of the proposed infringement offences;
- the Attorney-General's guidelines under the *Infringements Act 2006*<sup>1</sup> (the Attorney-General's guidelines) have been taken into account;
- the infringement offences either:
  - meet the requirements in the Attorney-General's guidelines, or

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<sup>1</sup> Attorney-General's Guidelines to the Infringements Act 2006: For Legislating Agencies, at <<https://www.justice.vic.gov.au/justice-system/attorney-generals-guidelines-to-the-infringements-act-2006/for-Legislator-Agencies>> accessed 12 February 2024.

- do not meet the requirements of the Attorney-General's guidelines but should be made despite not meeting those requirements because of specified reasons.

The Regulations are accompanied by a section 6A certificate which certifies the above matters. The certificate states the infringement offences meet the requirements in the Attorney-General's guidelines.

The Attorney-General's guidelines state infringement penalties should be set by reference to the court-imposed maximum penalty for the offence.<sup>2</sup> They provide infringement penalties should generally be set between 10 and 25 per cent of the maximum penalty which may be imposed by a court.

The Subcommittee notes three infringement penalties in the Regulations are set at 5 per cent of the maximum penalty a court could impose. Section 133(1) and (2) and section 134(1) of the Act have a maximum penalty of 60 penalty units. The infringement penalty in the Regulations for these offences is 3 penalty units.

There may be valid reasons for setting the infringement penalties at a lower amount than the recommended range. However, there is no additional information in the accompanying documentation. This information is usually provided in a section 6A certificate if infringement penalties do not meet the requirements in the Attorney-General's guidelines.

The Subcommittee requests additional information in relation to setting the penalties at a lower level than the recommended range in the Attorney-General's guidelines.

## Response

The Subcommittee would appreciate your response by Monday, 3 March 2025.

Thank you for your assistance. Please do not hesitate to contact the secretariat at [SARC@parliament.vic.gov.au](mailto:SARC@parliament.vic.gov.au).

Yours sincerely,



Gary Maas, MP  
Chair  
Scrutiny of Acts and Regulations Committee

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<sup>2</sup> Ibid., p. 24.



## The Hon Nick Staikos MP

Minister for Consumer Affairs  
Minister for Local Government

Level 1, 2 Treasury Place  
East Melbourne, Victoria 3002

Mr Gary Maas MP  
Chair  
Scrutiny of Acts and Regulations Committee  
Parliament House  
Spring Street  
EAST MELBOURNE VIC 3002  
By email: [SARC@parliament.vic.gov.au](mailto:SARC@parliament.vic.gov.au)

CMIN-250201065

Dear Mr Maas,

Thank you for your letter of 14 February 2025 regarding SR No. 92 - Local Government (Infringement Notices) Regulations 2024 (Regulations). My apologies for the delay in responding.

I note the Regulations Review Subcommittee (Subcommittee) considered the Regulations at its meeting on 12 February 2025 and that the Subcommittee approved the Regulations.

I understand that the Subcommittee has requested additional information in relation to the reasons for setting infringement penalties for certain offences under sections 133(1), 133(2) and 134(1) of the *Local Government Act 2020* (the Act) at a lower level than the recommended range in the *Attorney General's Guidelines to the Infringement Act 2006* (Attorney-General's Guidelines).

I note that the Attorney-General's Guidelines recommend that infringement penalties should generally not be less than 10 per cent of the maximum statutory penalty for an offence. I also note that the infringement penalties for these offences of 3 penalty units, or 5 per cent of the statutory maximum, are therefore below the recommended range.

I wish to advise that the infringement penalties for these offences were prescribed following close consultation with the Infringements System Oversight Unit of the Department of Justice and Community Safety. The Chief Municipal Inspector, through the Local Government Inspectorate, was also closely consulted when determining the penalty amounts. The Chief Municipal Inspector is responsible for the enforcement of these offences. The lower penalty amounts set by the Regulations reflect the advice provided by the Chief Municipal Inspector regarding what would be both sufficient to achieve deterrence and proportionate to the nature of the offences.

In this regard, I note that the offences under sections 133(1), 133(2) and 134(1) of the Act relate to the requirement for councillors, members of delegate committees and key members of council staff to lodge initial and biannual personal interests with the council. These returns record the private interests of individuals in public office, helping to ensure transparency, manage conflicts of interest, and promote probity in decision-making. Given the recurring and administrative nature of these reporting obligations to which these offences relate, a lower

infringement amount of 3 penalty units was considered to provide a proportionate and effective enforcement option in relation to the specific low-level offending behaviour.

If you would like further information, please contact Mike Gooley, Executive Director, Local Government Victoria, Department of Government Services at [mike.gooley@dgs.vic.gov.au](mailto:mike.gooley@dgs.vic.gov.au).

I trust this information is of assistance to you and the Subcommittee and thank you for taking the time to write to me about this matter.

Sincerely,



**The Hon Nick Staikos MP**  
Minister for Consumer Affairs  
Minister for Local Government

20/3/2025  
...../...../.....



# Scrutiny of Acts and Regulations Committee

14 February 2025

The Hon. Melissa Horne  
Minister for Roads and Road Safety  
Level 22, 1 Spring Street  
Melbourne  
Victoria, 3000

By email: [minister.horne@minstaff.vic.gov.au](mailto:minister.horne@minstaff.vic.gov.au)

Dear Minister

## **SR No. 102 – Road Safety (General) Amendment (Electric Scooters) Regulations 2024**

The Regulations Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee (Committee) considered SR No. 102 – Road Safety (General) Amendment (Electric Scooters) Regulations 2024 (Regulations) at a meeting on 12 February 2025.

The Regulations amend the Road Safety (General) Regulations 2019. They increase traffic infringement penalties relating to electric scooters. They also insert a new infringement offence of being a passenger on an electric scooter and an associated penalty.

The Subcommittee approved the Regulations.

However, pursuant to section 21(1)(i) of the Subordinate Legislation Act 1994 (SLA) the Subcommittee seeks additional information in relation to the Regulations.

Section 6A of the SLA sets out requirements for statutory rules which provide for infringement offences. The Minister is required to certify:

- the Department of Justice has been consulted about the enforcement and suitability of the proposed infringement offences;
- the Attorney-General's guidelines under the *Infringements Act 2006*<sup>1</sup> (the Attorney-General's guidelines) have been taken into account;
- the infringement offences either:

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<sup>1</sup> Attorney-General's Guidelines to the Infringements Act 2006: For Legislating Agencies, at <<https://www.justice.vic.gov.au/justice-system/attorney-generals-guidelines-to-the-infringements-act-2006/for-Legislator-Agencies>> accessed 12 February 2024.

- meet the requirements in the Attorney-General's guidelines, or
- do not meet the requirements of the Attorney-General's guidelines but should be made despite not meeting those requirements because of specified reasons.

The Regulations are accompanied by a section 6A certificate which certifies the above matters. The certificate states the Regulations do not meet the Attorney-General's guidelines but should be made for the following reasons:

The Attorney-General's guidelines provide that an infringement penalty for a proposed offence must reflect the seriousness of the offence compared with other infringement offences. A person who rides as a passenger on an electric scooter without a helmet is performing two illegal acts. The penalty may seem to be disproportionate to other like offences, however, due to the disproportionately high non-compliance with electric scooter laws, and the fact that safety risks associated with being a passenger on an electric scooter increase significantly if that person is also not wearing a helmet, I am satisfied that the proposed Road Safety (General) Amendment (Electric Scooters) Regulations 2024 (in particular regulation 4(f)) should be made notwithstanding the guidelines.

The Subcommittee notes the reasons focus on the creation of the infringement offence of being a passenger on an electric scooter. The certificate omits the other provisions which do not comply with the Attorney-General's guidelines.

The Attorney-General's guidelines provide infringement penalties should generally be set between 10 and 25 per cent of the maximum penalty which may be imposed by a court.<sup>2</sup> The infringement penalties for rules 262C, 262D, and 262F are between 30 and 35 per cent of the maximum penalty which may be imposed by a court.

There may be valid reasons for setting the infringement penalties at a higher amount than the recommended range. However, there is no additional information in the accompanying documentation. This information is usually provided in a section 6A certificate if infringement penalties do not meet the requirements in the Attorney-General's guidelines.

The Subcommittee requests additional information in relation to setting the penalties at a higher level than the recommended range in the Attorney-General's guidelines.

## Response

The Subcommittee would appreciate your response by Monday, 3 March 2025.

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<sup>2</sup> Ibid., p. 24.

Thank you for your assistance. Please do not hesitate to contact the secretariat at [SARC@parliament.vic.gov.au](mailto:SARC@parliament.vic.gov.au).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Gary Maas', with a stylized flourish at the end.

Gary Maas, MP  
Chair  
Scrutiny of Acts and Regulations Committee



## The Hon Melissa Horne MP

Minister for Health Infrastructure  
Minister for Ports and Freight  
Minister for Roads and Road Safety

PO Box 2392  
Melbourne, Victoria 3001 Australia

Ref: BMIN-1-25-730

Mr Gary Maas MP  
Chair  
Scrutiny of Acts and Regulation Committee  
Parliament House  
SPRING STREET, EAST MELBOURNE VICTORIA 3002

Dear Mr Maas

Thank you for your letter of 14 February 2025 regarding the Road Safety (General) Amendment (Electric Scooters) Regulations 2024 (the Regulations). You have asked for additional information in relation to the setting of penalties at a higher level than the recommended ranges in the Attorney General's Guidelines.

The Regulations implemented changes to infringement penalties for various offences in the Road Safety Road Rules 2017 (the Road Rules) that relate to the use of electric scooters (e-scooters). These regulatory changes coincided with the cessation of the trial of the use of e-scooters. The trial ended on 4 October 2024 which was the same day the Regulations commenced.

As part of the evaluation of the trial, the Government observed that there was significant non-compliance with certain Road Rules that apply to the use of an e-scooter. The Government determined that it was critical to amend the regulatory framework to support increased compliance with these Road Rules and to improve safety outcomes. In particular, the Road Safety Road Rules Amendment (Electric Scooters) Rules 2024 created new offences and increased the penalties for certain existing offences in relation to the use of an e-scooter.

The effect of these changes, as identified by the Committee, is that the ratio of infringement penalties to the maximum penalties for Rules 262C, 262D and 262F of the Road Rules is higher than what is recommended under the Attorney General's Guidelines. Rule 262C provides that it is an offence to ride an e-scooter on a footpath. Rules 262D provides that it is an offence to ride on an e-scooter on certain roads. Finally, Rule 262F provides that it is an offence for a person under 16 years of age to ride an e-scooter.

The establishment of new offences and the implementation of increased penalties are intended to serve as a deterrent to individuals who fail to comply with the Road Rules pertaining to e-scooter usage. Non-compliance with the Road Rules poses significant risks to both e-scooter riders and members of the public. Rules 262C, 262D and 262F are particularly important as significant consequences may result if the rider of an e-scooter does not comply with these requirements.

Accordingly, the Government has formed a view that it is appropriate to have infringement penalties for these offences set at amounts higher than recommended under the Attorney General's Guidelines because it is important that riders comply with these rules. Setting the infringement penalties at these amounts is intended to deter offending behaviour. Consequently, these measures enhance safety and overall amenity, while also promoting greater community confidence in the regulatory framework governing e-scooters.

Thank you for raising this matter. I trust that this information addresses your question regarding the rationale for setting of infringement penalties under the Regulations.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Melissa Horne', is positioned above the printed name.

**Hon Melissa Horne MP**

Minister for Health Infrastructure

Minister for Ports and Freight

Minister for Roads and Road Safety

20/03/2025



# Scrutiny of Acts and Regulations Committee

17 March 2025

The Hon. Ros Spence  
Minister for Agriculture  
Level 22, 50 Lonsdale Street  
Melbourne  
Victoria, 3000

By email: [ros.spence@parliament.vic.gov.au](mailto:ros.spence@parliament.vic.gov.au)

Dear Minister

## **SR No. 113 – Plant Biosecurity Amendment Regulations 2024**

The Regulations Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee (Committee) considered SR No. 113 – Plant Biosecurity Amendment Regulations 2024 (Regulations) at a meeting on 12 March 2025.

The Regulations amend the Plant Biosecurity Regulations 2016 (Principal Regulations). The amendments insert new infringement offences and associated penalties into the Principal Regulations. The Regulations also increase penalty amounts for existing infringement penalties

The Subcommittee approved the Regulations.

However, pursuant to section 21(1)(i) of the *Subordinate Legislation Act 1994* (SLA) the Subcommittee seeks additional information in relation to the Regulations.

Section 6A of the SLA sets out requirements for statutory rules which provide for infringement offences. The Minister is required to certify:

- the Department of Justice has been consulted about the enforcement and suitability of the proposed infringement offences;
- the Attorney-General's guidelines under the *Infringements Act 2006*<sup>1</sup> (the Attorney-General's guidelines) have been taken into account;

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<sup>1</sup> Attorney-General's Guidelines to the Infringements Act 2006: For Legislating Agencies, at <<https://www.justice.vic.gov.au/justice-system/attorney-generals-guidelines-to-the-infringements-act-2006/for-Legislator-Agencies>> accessed 12 March 2024.

- the infringement offences either:
  - meet the requirements in the Attorney-General's guidelines, or
  - do not meet the requirements of the Attorney-General's guidelines but should be made despite not meeting those requirements because of specified reasons.

The Regulations are accompanied by a section 6A certificate which certifies the above matters. The certificate states that the infringement offences meet the requirements in the Attorney-General's guidelines.

The Attorney-General's guidelines state that infringement penalties should be set by reference to the court-imposed maximum penalty for the offence.<sup>2</sup> They provide infringement penalties should generally be set between 10 and 25 per cent of the maximum penalty which may be imposed by a court.

The Subcommittee notes the following penalties are set at a rate lower than the 10 per cent amount recommended by the Attorney-General's guidelines:

- section 19(5): infringement penalty is 5 penalty units, which is 8.3 percent of the maximum penalty a court could impose (60 penalty units)
- section 133A(1): infringement penalty is 5 penalty units for a natural person and 25 penalty units for a body corporate, which is 8.3 percent of the maximum penalty a court could impose (60 penalty units for a natural person and 300 penalty units for a body corporate)
- sections 25(2), (3), (4) and 27(2): infringement penalty is 40 penalty units for a body corporate, which is 6.7 per cent of the maximum penalty a court could impose (600 penalty units).

There may be valid reasons for setting the infringement penalties at a lower amount than the recommended range. However, there is no additional information in the accompanying documentation. This information is usually provided in a section 6A certificate if infringement penalties do not meet the requirements in the Attorney-General's guidelines.

The Subcommittee requests additional information in relation to setting the penalties at a lower level than the recommended range in the Attorney-General's guidelines.

## Response

The Subcommittee would appreciate your response by Monday, 21 April 2025.

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<sup>2</sup> Ibid., p. 24.

Thank you for your assistance. Please do not hesitate to contact the secretariat at [SARC@parliament.vic.gov.au](mailto:SARC@parliament.vic.gov.au).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Gary Maas', with a stylized flourish at the end.

Gary Maas, MP  
Chair  
Scrutiny of Acts and Regulations Committee



The Hon. Ros Spence MP

Minister for Agriculture  
Minister for Community Sport  
Minister for Carers and Volunteers

GPO Box 4509  
Melbourne, Victoria 3001 Australia  
Telephone: 1300 622 308

MBR-250301610

Gary Maas MP  
Chair  
Scrutiny of Acts and Regulations Committee  
[SARC@parliament.vic.gov.au](mailto:SARC@parliament.vic.gov.au)

Dear Mr Maas MP

### **SR N. 113 – Plant Biosecurity Amendment Regulations 2024**

Thank you for your letter dated 17 March 2025 regarding the Regulation Review Subcommittee's (the Subcommittee) consideration of the Plant Biosecurity Amendment Regulations 2024 (the Regulations).

The Subcommittee notes that infringement penalties should generally be set between 10% and 25% of the maximum penalty, which may be imposed by a court. The Subcommittee notes that some penalties in the Regulations are set at a rate lower than the 10% amount recommended by the Attorney-General's Guidelines to the *Infringements Act 2006* for legislating agencies (the Guidelines).

As the Guidelines are not cast in absolute terms and the percentage limits for penalty guidance are in general terms, the certificate issued by me for the specific infringement offences prescribed in the Regulations was in accordance with section 6A of the *Subordinate Legislation Act 1994*. Further to this, I provide the following information regarding certain provisions of the Regulations noted by the Subcommittee.

For the statutory offences in sections 19(5) (contravene a direction of an inspector in a control area) and 133A(1) (unauthorised plant health declaration or unauthorised use of a purported declaration) of the *Plant Biosecurity Act 2010* (PB Act), Schedule 4 of the Regulations prescribes infringement penalties for these offences at 8.3% of the maximum penalty a court could impose. As the Guidelines note, this approach aims to ensure that the infringement penalty is proportionate, that lower-level offending is addressed in an efficient way, and that only the most serious matters are taken to court via a criminal charge.

In relation to the infringement penalty of 40 penalty units for an infringement offence by a body corporate in relation to the statutory offences under sections 25(2), 25(3), 25(4) and 27(2) carrying a maximum statutory penalty for a body corporate of 600 penalty units, the infringement penalties prescribed by Schedule 4 of the Regulations are 6.7% of the maximum penalty a court could impose, and this follows the requirements of the PB Act.

Section 120 of the PB Act requires that the infringement penalty for an offence for which an infringement notice can be prescribed by regulations must not exceed 10 penalty units in the case of a natural person, and 40 penalty units in the case of a body corporate. Section 120 of the PB Act applies despite the Guidelines.

If you have further questions, please contact Angela Brierley, Director Food, Chemicals and Biosecurity Regulatory Policy, Department of Energy, Environment and Climate Action at [Angela.Brierley@agriculture.vic.gov.au](mailto:Angela.Brierley@agriculture.vic.gov.au).

Thank you again for raising these matters with me.

Yours sincerely



**The Hon. Ros Spence MP**  
Minister for Agriculture

19/4/25

OFFICIAL



# Scrutiny of Acts and Regulations Committee

17 March 2025

The Hon. Sonya Kilkenny  
Attorney-General  
Level 20, 1 Spring Street  
Melbourne  
Victoria, 3000

By email: [attorney-general@justice.vic.gov.au](mailto:attorney-general@justice.vic.gov.au)

Dear Attorney-General

## **SR No. 124 – Supreme Court (Fees) Amendment Regulations 2024**

The Regulations Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee (Committee) considered the SR No. 124 – Supreme Court (Fees) Amendment Regulations 2024 (Regulations) at a meeting on 12 March 2025.

The Regulations amend the Supreme Court (Fees) Regulations 2018 to alter the fees charged for probate services.

The Subcommittee approved the Regulations.

However, the Subcommittee draws your attention to section 12 of the *Subordinate Legislation Act 1994* (SLA).

The Regulations are accompanied by a regulatory impact statement. Section 12 of the SLA applies to statutory rules which have undergone a regulatory impact statement process. Section 12 requires the responsible Minister to publish a notice advising of the decision to make or not make a statutory rule in the Government Gazette and a daily newspaper circulating throughout Victoria.

Section 12(3) provides the notice of decision to make a proposed statutory rule must be published before the proposed statutory rule is made. The Regulations were made on 6 November 2024. The notice of decision was

published in the Government Gazette on 6 November 2024 and on the Public Notices website on 7 November 2024, a day after the Regulations were made.<sup>1</sup>

The Subcommittee notes section 12(4) of the SLA provides failure to comply with section 12(3) does not affect the operation of a statutory rule. However, it provides the Committee may report the failure to each House of Parliament.

The Subcommittee recommends processes are reviewed to ensure future notices of decision comply with section 12 of the SLA.

### Response

The Subcommittee would appreciate your response by Monday, 21 April 2025.

Thank you for your assistance. Please do not hesitate to contact the secretariat at [SARC@parliament.vic.gov.au](mailto:SARC@parliament.vic.gov.au).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Gary Maas', with a stylized flourish at the end.

Gary Maas, MP  
Chair  
Scrutiny of Acts and Regulations Committee

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<sup>1</sup> Pursuant to section 38M of the *Interpretation of Legislation Act 1984*, publishing a notice on the Public Notices website fulfils the requirement to circulate a notice in a print newspaper.



The Hon. Sonya Kilkenny MP

Attorney-General

GPO Box 4356  
Melbourne Victoria 3000  
Telephone: +61 3 8684 1111

Our ref: 25032824

Mr Gary Maas MP  
Chair  
Scrutiny of Acts and Regulations Committee  
Parliament House  
Spring Street  
EAST MELBOURNE VIC 3002

Dear Mr Maas

**SR No. 124 – Supreme Court (Fees) Amendment Regulations 2024**

Thank you for your letter dated 17 March 2025 regarding the making of the Supreme Court (Fees) Amendment Regulations 2024 (*the Regulations*).

The Scrutiny Acts and Regulations Committee has inquired into the compliance with s.12(3) of the *Subordinate Legislation Act 1994* in the making of the Regulations. I acknowledge that under section 12(3) of the *Subordinate Legislation Act 1994* the notice of decision to make a proposed statutory rule must be published before the proposed statutory rule is made.

The failure to comply with section 12(3) was the result of an administrative error and I apologise for any inconvenience this may have caused. Thank you for drawing the error to my attention. As noted in your letter, this oversight does not affect the operation or effect of the Regulations.

If you wish to discuss this matter further, please contact, Tom Speirs, Director, Courts Policy, Strategy and Legislation, DJCS at [tom.speirs@justice.vic.gov.au](mailto:tom.speirs@justice.vic.gov.au).

Yours sincerely

**Sonya Kilkenny**  
Attorney-General

Date:

13/4/2025



# Scrutiny of Acts and Regulations Committee

17 March 2025

The Hon. Sonya Kilkenny  
Attorney-General  
Level 20, 1 Spring Street  
Melbourne  
Victoria, 3000

By email: [attorney-general@justice.vic.gov.au](mailto:attorney-general@justice.vic.gov.au)

Dear Attorney-General

## **Australian Computer Society Incorporated Professional Standards Scheme**

The Regulations Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee (Committee) considered the legislative instrument Australian Computer Society Incorporated Professional Standards Scheme (LI) at a meeting on 12 March 2025.

The LI is part of a national scheme to limit the occupational liability of members of occupational associations. It limits the occupational liability of members of the Australian Computer Society Incorporated.

The Subcommittee has not yet approved the LI. Pursuant to section 21(1)(i) of the *Subordinate Legislation Act 1994* (SLA), the Subcommittee seeks information about the application of the LI in Victoria.<sup>1</sup>

The LI is made under section 14 of the *Professional Standards Act 2003* (Victorian Act). Section 8(4) of the Victorian Act enables professional standards schemes to apply to Victoria or to Victoria and other jurisdictions.

The Australian Computer Society Incorporated Professional Standards Scheme (Scheme) was initially made pursuant to the Professional Standards Act 1994 (NSW) (NSW Act). The Scheme was submitted to the Victorian Attorney-General by the Professional Standards Council of New South Wales. Pursuant to section 14 of the Victorian Act the Attorney-General authorised

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<sup>1</sup> Section 21(1)(i) applies to statutory rules. Section 14(2) of the Victorian Act states that Part 5 of the SLA (which includes section 21) applies to the LI as if it were a statutory rule.

the publication of Scheme in the Victorian Government Gazette on 31 October 2024. ~~The publication made the Scheme a legislative instrument in Victoria.~~

The Preamble of the LI states:

D. The Scheme will have force in Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia. To the extent that the Scheme applies to limit liability in jurisdictions other than New South Wales, it is subject to the applicable Professional Standards Legislation.

The LI is intended to apply in New South Wales, Australian Capital Territory, Northern Territory, Queensland, South Australia, Tasmania, Victoria, and Western Australia “in accordance with, and subject to the requirements of, the corresponding Professional Standards Legislation.”<sup>2</sup>

Clause 3.2 of the LI is set out in full (emphasis added):

In addition to New South Wales, the Scheme is intended to operate in the Australian Capital Territory, the Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia in accordance with, and subject to the requirements of, the corresponding Professional Standards Legislation of those jurisdictions. The references to a provision of the Act,<sup>3</sup> the application of the scheme to a liability, the limit of a liability under the Act, or what constitutes Occupational Liability, shall be determined pursuant to the relevant provisions of the corresponding Professional Standards Legislation, applied mutatis mutandis, to the extent that is necessary for the application of the Scheme in any of those jurisdictions.

Clause 7.1 provides the definition of “Professional Standards Legislation”, which is:

- (a) the Act;<sup>4</sup>
- (b) Professional Standards Act 1994 (NSW);
- (c) Professional Standards Act 2004 (Qld);
- (d) Professional Standards Act 2004 (SA);
- (e) Professional Standards Act 2005 (Tas);
- (f) Professional Standards Act 1997 (WA);
- (g) Professional Standards Act 2004 (NT); and

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<sup>2</sup> Australian Computer Society Incorporated Professional Standards Scheme, clause 3.

<sup>3</sup> “The Act” is defined in the LI to mean the Professional Standards Act 1994 (NSW). See clause 7.1.

<sup>4</sup> Ibid.

(h) Civil (Wrongs) Act 2002 (ACT).

There is no reference in the definition of “Professional Standards Legislation” in clause 7.1 to the Victorian professional standards legislation, the Victorian Act. Clauses 3.2, 6.1.2 and the Preamble state the LI is intended to apply in Victoria. The NSW Act is included in the definition twice under clause 7.1 paragraphs (a) and (b). The omission of the Victorian Act may be an oversight. However, in those circumstances, it is unclear how the LI applies in Victoria.

The Subcommittee requests information in relation to the application of the LI in Victoria.

### Response

The Subcommittee would appreciate your response by Monday, 24 March 2025. This will give the Subcommittee the time to consider the response before the time period for disallowance of the LI ends.

Thank you for your assistance. Please do not hesitate to contact the secretariat at [SARC@parliament.vic.gov.au](mailto:SARC@parliament.vic.gov.au).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Gary Maas', with a stylized flourish at the end.

Gary Maas, MP  
Chair  
Scrutiny of Acts and Regulations Committee



The Hon. Sonya Kilkeny MP

Attorney-General

GPO Box 4356  
Melbourne Victoria 3000  
Telephone: +61 3 8684 1111

Our ref: 25032834

Mr Gary Maas MP  
Chair  
Scrutiny of Acts and Regulations Committee  
By email: [SARC@parliament.vic.gov.au](mailto:SARC@parliament.vic.gov.au)

Dear Mr Maas

Thank you for your letter of 17 March 2025 in relation to the application of the Australian Computer Society Incorporated Professional Standards Scheme (Scheme) in Victoria.

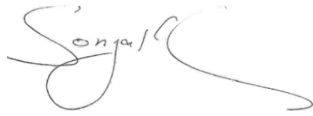
Your letter identified an oversight in the Scheme instrument, where the reference to the *Professional Standards Act 2003* (Vic) in the definition of “Professional Standards Legislation” was not included and the NSW legislation was included twice.

I am of the view that the Scheme instrument is valid, and does not need to be re-made. This is because:

- the Scheme instrument is a form of subordinate legislation and is subject to ordinary statutory interpretation principles;
- these principles hold that when interpreting legislation, it is permissible to depart from the literal meaning of words when there has been a drafting error of the kind made in this case; and
- the instrument would be read consistently with an interpretation that the Scheme is intended to apply in Victoria, because:
  - the instrument otherwise makes it clear that the Scheme is intended to operate in Victoria – as shown by the wording of the Preamble in which it says ‘The Scheme will have force in...Victoria’, as well as clauses 3.2 and 6.1.1; and
  - the second reference to the NSW Act, were it to be read literally, is clearly redundant.

I trust this information is of assistance to the Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sonya / K', with a stylized flourish extending to the right.

**Sonya Kilkenny**  
Attorney-General

Date: 16 / 04 / 2025



# Scrutiny of Acts and Regulations Committee

6 November 2024

The Hon. Tim Pallas  
Minister for Industrial Relations  
Level 4, 1 Treasury Place  
East Melbourne  
Victoria, 3002

By email: [treasurer@dtf.vic.gov.au](mailto:treasurer@dtf.vic.gov.au)

Dear Treasurer,

## **Declaration of a kind of insurance that is excluded from the definition of business insurance under section 3(2A)**

The Regulations Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee considered the above legislative instrument at a meeting on 4 November 2024.

The Subcommittee resolved to raise one matter with you about the Declaration of a kind of insurance that is excluded from the definition of business insurance under section 3(2A) (the Declaration).

### [Declaration of a kind of insurance that is excluded from the definition of business insurance under section 3\(2A\)](#)

The Declaration was made under section 3(2A) of the *Duties Act 2000* on 20 June 2024. The Declaration excludes “public liability attaching to householder insurance policies” from the definition of business insurance. This insurance will not be subject to the gradual abolition of duty on premiums that was announced as part of the 2023-24 Budget.

### [Further information on analytical and consultation process](#)

The *Subordinate Legislation Act 1994* (the SLA) requires Ministers to ensure a regulatory impact statement is prepared to accompany a legislative instrument. This is unless an exemption under section 12F of the SLA applies. Section 12F provides different categories of exemptions.

The Declaration is accompanied by an exemption certificate issued under section 12F(1)(g) of the SLA, on the basis that the legislative instrument has undergone an analytical and consultation process equivalent to the process for a regulatory impact statement.

Exemptions under section 12F(1)(g) are relatively uncommon. The [Subordinate Legislation Act 1994 Guidelines](#) (the Guidelines) prescribe requirements for statutory rules exempt under section 12F(1)(g). The process undertaken does not have to be identical to the RIS process, but it should be equivalent.

The Guidelines state:

Section 12H of the SL Act sets out a number of RIS requirements which should preferably be met by the equivalent process. However, as a minimum, the process must meet the following substantive requirements to qualify for exemption under this provision:

- the instrument must undergo an analysis of the costs and benefits, including consideration of alternative options for achieving the regulatory goal;
- the analysis must be independently assessed; and
- the instrument must undergo a public consultation for at least 28 days.

The material accompanying the Declaration, including the exemption certificate, provides some detail about the process undertaken. For example, the exemption certificate states the Declaration underwent consultation with affected stakeholders and an assessment of the proposal's costs and benefits.

The Subcommittee requests further information about the analytical and consultation process that informed the making of the Declaration. Specifically, the Subcommittee would appreciate further information on the options analysed (including costs and benefits of the preferred option), the consultation process, and whether the analysis was independently assessed.

## Response

The Subcommittee would appreciate your response no later than Friday, 15 November 2024.

Thank you for your assistance with these matters. If you have any questions, please contact the Subcommittee's secretariat at [SARC@parliament.vic.gov.au](mailto:SARC@parliament.vic.gov.au).

Yours sincerely,



Gary Maas, MP  
Chair  
Scrutiny of Acts and Regulations Committee



## Treasurer of Victoria

Minister for Industrial Relations  
Minister for Economic Growth

1 Treasury Place  
GPO Box 4379  
Melbourne Victoria 3001  
Telephone: +61 3 7005 9474

D24/260043

Mr Gary Maas MP  
Chair  
Scrutiny of Acts and Regulations Committee

Dear Mr Maas

### **DECLARATION OF A KIND OF INSURANCE THAT IS EXCLUDED FROM THE DEFINITION OF BUSINESS INSURANCE UNDER SECTION 3(2A) OF THE *DUTIES ACT 2000***

Thank you for your letter dated 6 November 2024 in relation to my declaration under section 3(2A) of the *Duties Act 2000* (the Declaration) to exclude public liability attaching to householder insurance policies (household PL insurance) from the definition of business insurance under the *Duties Act 2000*.

As requested, further information on the analytical and consultation process that informed the making of the Declaration is set out below.

#### *Background*

As part of the 2023–24 budget, the Government announced the gradual abolition of duty on business insurance over a 10-year period commencing from 1 July 2024. It was intended that this revenue initiative would not extend to duty on any householder insurance policies, such as household PL insurance.

Notwithstanding this intention, household PL insurance was included in the legislated gradual abolition of duty on business insurance due to an unintended consequence of amendments to the *Duties Act 2000* made by the *State Taxation Acts Amendment Act 2023* (2023 Act).

#### *The Declaration*

The goal of the Declaration was to rectify the unintended consequence of the 2023 Act and exclude household PL insurance from the gradual abolition, as originally intended.

There were no alternative policy option which could fully achieve this goal – either household PL insurance could be included in or excluded from the legislated abolition.

#### *Analysis of costs and benefits of the Declaration*

The Declaration formed part of the 2023–24 budget process, which included an assessment of the types of business insurance policies that should be included in the abolition.

Analysis of the financial costs and benefits of including a type of insurance in the gradual abolition involved analysis of the direct exchange of lower amounts of duty payable by insurers / insured (benefits) for lower revenue for the Government (costs).

Inversely, the financial costs and benefits of excluding household PL insurance from the gradual abolition (i.e. the Declaration) involved a similar direct exchange.

The financial costs for insurers / insured were a higher amount of duty than if the Declaration was not made (but the same amount of duty as if the 2023 Act was not made). The financial benefits of the Declaration were higher revenue for the Government than if the Declaration was not made (equal to the costs for insurers / insured).

The costs and benefits of the Declaration should also be considered against the regulatory position previously in place. Given that the 2023 Act would have inadvertently reduced the amount of duty applicable on household PL insurance, the Declaration also had the benefit of ensuring that insurers would avoid a range of business costs associated with changing existing insurance policies to remain compliant with the law. This is because policies generally represent insurance premiums as inclusive of taxes and charges and, without altering policy structures, insurers would risk overcharging for household PL insurance.

#### *Independent assessment*

In assessing whether a regulatory impact statement (RIS) was required for the Declaration, the State Revenue Office (SRO) consulted with Better Regulation Victoria in the Department of Treasury and Finance. This consultation included a general discussion of the costs and benefits of the Declaration and the merits of an exemption from a RIS under section 12F(1)(g) of the *Subordinate Legislation Act 1994*.

#### *External consultation*

From at least February 2024, the SRO consulted with the Insurance Council of Australia (ICA) on issues related to the gradual abolition of insurance duty, including the treatment of household PL insurance. As part of this consultation, the ICA made submissions to the SRO and me on the treatment of household PL insurance including expressing support for its exclusion from the gradual abolition (i.e. the effect of the Declaration).

On 14 May 2024, 37 days before I made the Declaration, I publicly announced in Parliament my intention to exclude household PL insurance from the definition of business insurance in the *Duties Act 2000* during my second reading speech for the 2023 Act. I also confirm this position in writing in the Explanatory Memorandum for the 2023 Act, which was tabled in Parliament and publicly available for consideration on the same day.

I trust the above information is of assistance to the Regulations Review Subcommittee.

Yours sincerely



**Tim Pallas MP**  
**Treasurer**  
17/12/2024



# Scrutiny of Acts and Regulations Committee

17 March 2025

The Hon. Sonya Kilkenny  
Attorney-General  
Level 20, 1 Spring Street  
Melbourne  
Victoria, 3000

By email: [attorney-general@justice.vic.gov.au](mailto:attorney-general@justice.vic.gov.au)

Dear Attorney-General

## **Practitioner Remuneration Order 2025**

The Regulations Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee (Committee) considered the Practitioner Remuneration Order 2025 (Order) at a meeting on 12 March 2025.

The Order is a legislative instrument which sets out the costs that may be charged by law practices for providing legal services other than in relation to litigious matters.

The Subcommittee approved the Order.

However, the Subcommittee draws your attention to section 16C of the *Subordinate Legislation Act 1994* (SLA).

Section 16C of the SLA requires the responsible Minister to provide a legislative instrument to the Committee no later than 10 working days after the legislative instrument is made. The Order was made on 2 December 2024. It was received by the Subcommittee on 31 December 2024, 18 working days after the legislative instrument was made.

Pursuant to section 16C(3) of the SLA, failure to provide a legislative instrument to the Committee within the timeframe does not affect the operation of the legislative instrument. However, the Subcommittee notes that timeliness in sending a legislative instrument to the Committee is important to facilitate effective parliamentary oversight of subordinate legislation.

## **Response**

The Subcommittee would appreciate your response by Monday, 21 April 2025.

Thank you for your assistance. Please do not hesitate to contact the secretariat at [SARC@parliament.vic.gov.au](mailto:SARC@parliament.vic.gov.au).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Gary Maas', with a stylized flourish at the end.

Gary Maas, MP  
Chair  
Scrutiny of Acts and Regulations Committee



The Hon. Sonya Kilkeny MP

Attorney-General  
Minister for Planning

GPO Box 4356  
Melbourne Victoria 3000  
Telephone: +61 3 8684 1111

Our ref: 25023831

Mr Gary Maas  
Chair, Scrutiny of Acts and Regulations Committee  
Parliament House, Spring Street  
EAST MELBOURNE VIC 3002

By email: [sarc@parliament.vic.gov.au](mailto:sarc@parliament.vic.gov.au)

Dear Chair

Thank you for your letter of 17 March 2025 regarding the Practitioner Remuneration Order 2025 (the Order).

In accordance with section 16C of *Subordinate Legislation Act 1994*, the Order is required to be provided to the Scrutiny of Acts and Regulations Committee (Committee) no later than 10 working days after it is made. In this instance, I acknowledge the Order was provided to the Committee 18 working days after it was made.

I apologise for the delay in providing the Order to the Committee. I appreciate that providing legislative instruments to the Committee in a timely manner is an important component in supporting effective parliamentary oversight of subordinate legislation. Due to an administrative processing issue, there was a delay in providing the Order. I confirm the Order was actioned and processed as soon as the oversight was identified. As noted in your letter, this delay does not affect the operation of the Order.

I trust this information is of use to the Committee.

Yours sincerely

**Sonya Kilkeny**  
Attorney-General  
Minister for Planning

Date: 15/04/2025

# Appendix 1

## Index of Bills and Subordinate Legislation in 2025

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| <b>BILLS</b>                                                                                              | <b>Alert Digest Nos.</b> |
|-----------------------------------------------------------------------------------------------------------|--------------------------|
| Agriculture and Food Safety Legislation Amendment Bill 2024                                               | 13 of 2024, 1            |
| Bail Amendment Act 2025                                                                                   | 5                        |
| Building Legislation Amendment (Buyer Protections) Bill 2025                                              | 4                        |
| Constitution Amendment (Abortion) Bill 2024                                                               | 2, 4                     |
| Consumer and Planning Legislation Amendment (Housing Statement Reform) Bill 2024                          | 1, 4                     |
| Energy and Land Legislation Amendment (Energy Safety) Bill 2025                                           | 2                        |
| Family Violence Protection Amendment Act 2025                                                             | 5, 6                     |
| Fire Services Property Amendment (Emergency Services and Volunteers Fund) Bill 2025                       | 4                        |
| Gambling Legislation Amendment (Pre-commitment and Carded Play) Bill 2024                                 | 1                        |
| Gambling Legislation Amendment Bill 2025                                                                  | 6                        |
| Help to Buy (Commonwealth Powers) Bill 2025                                                               | 3                        |
| Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025                            |                          |
| [House Amendments]                                                                                        | 6                        |
| Justice Legislation Amendment (Anti-vilification and Social Cohesion) Bill 2024                           | 1                        |
| Justice Legislation Amendment (Anti-vilification and Social Cohesion) Bill 2024                           |                          |
| [House Amendments]                                                                                        | 3, 6                     |
| Justice Legislation Amendment (Committals) Bill 2024                                                      | 15 of 2014, 1            |
| Justice Legislation Amendment (Miscellaneous) Bill 2025                                                   | 6                        |
| Protecting Public Assets and Services Bill 2024                                                           | 13 of 2024               |
| Regulatory Legislation Amendment (Reform) Bill 2025                                                       | 2                        |
| Retirement Villages Amendment Bill 2024                                                                   | 1                        |
| Roads and Road Safety Legislation Amendment Bill 2024 [House Amendments]                                  | 15 of 2024, 1            |
| Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Amendment Bill 2025                    | 3                        |
| State Taxation Further Amendment Bill 2024                                                                | 15 of 2024               |
| Superannuation Legislation Amendment Bill 2025                                                            | 4                        |
| Terrorism (Community Protection) and Control of Weapons Amendment Act 2025                                | 5                        |
| Terrorism (Community Protection) and Control of Weapons Amendment Bill 2024                               | 1, 3                     |
| Tobacco Amendment (Tobacco Retailer and Wholesaler Licensing Scheme) Bill 2024                            | 16 of 2024, 1            |
| Transport Legislation Amendment (Vehicle Sharing Scheme Safety and Standards) Bill 2025                   | 3                        |
| Victorian Energy Efficiency Target Amendment (Energy Upgrades for the Future) Bill 2025                   | 5                        |
| Voluntary Assisted Dying Amendment (Equity and Access) Bill 2024                                          | 4                        |
| Wage Theft Amendment Bill 2025                                                                            | 6                        |
| Workplace Injury Rehabilitation and Compensation Amendment Bill 2025                                      | 4                        |
| Wrongs Amendment (Vicarious Liability) Bill 2025                                                          | 6                        |
| <b>SUBORDINATE LEGISLATION</b>                                                                            |                          |
| SR No 30 – Transport (Safety Schemes Compliance and Enforcement) (Infringements) Regulations 2024         | 1                        |
| SR No 40 – Subordinate Legislation (Forest (Fire Protection) Regulations 2014) Extension Regulations 2024 | 2                        |
| SR No 59 – Building Amendment (Fees and Other Matters) Regulations 2024                                   | 1                        |
| SR No 66 – Honorary Justices Regulations 2024                                                             | 2                        |
| SR No 83 – Supreme Court (Chapter I Costs Amendment) Rules 2024                                           | 2                        |
| SR No 90 – Credit Regulations 2024                                                                        | 6                        |

**SUBORDINATE LEGISLATION** (continued)

|                                                                                                                                           |   |
|-------------------------------------------------------------------------------------------------------------------------------------------|---|
| SR No 92 – Local Government (Infringement Notices) Regulations 2024                                                                       | 6 |
| SR No 95 – Livestock Disease Control Further Amendment Regulations 2024                                                                   | 4 |
| SR No 102 – Road Safety (General) Amendment (Electric Scooters) Regulations 2024                                                          | 6 |
| SR No 108 – Subordinate Legislation (Gambling Regulation (Pre-commitment and Loyalty Scheme) Regulations 2014) Extension Regulations 2024 | 4 |
| SR No 113 – Plant Biosecurity Amendment Regulations 2024                                                                                  | 6 |
| SR No 124 – Supreme Court (Fees) Amendment Regulations 2024                                                                               | 6 |
| Australian Computer Society Incorporated Professional Standards Scheme                                                                    | 6 |
| By-law No. 2024/01 Waterways Protection – North East Catchment Management Authority                                                       | 4 |
| By-law No. 02 Waterways Protection 2024 – North Central Catchment Management Authority                                                    | 4 |
| By-law No. 3 Waterways Protection 2024 – Wimmera Catchment Management Authority                                                           | 4 |
| By-law No. 2 Waterways Protection 2024 – Mallee Catchment Management Authority                                                            | 4 |
| By-law No. 4 Waterways Protection 2024 – West Gippsland Catchment Management Authority                                                    | 4 |
| By-law No. 5 Waterways Protection 2024 – Corangamite Catchment Management Authority                                                       | 4 |
| By-law No. 4 Waterways Protection 2024 – Goulburn Broken Catchment Management Authority                                                   | 4 |
| Dairy Food Safety Victoria Determination of Licence Classes and Fees for Dairy Businesses                                                 | 2 |
| Ministerial Order No. 1452 – Fees for Services Provided to Children in Government Early Learning Centres                                  | 1 |
| Notice of Declaration of a kind of insurance that is excluded from the definition of business insurance under section 3(2A)               | 6 |
| Practitioner Remuneration Order 2025                                                                                                      | 6 |

## Appendix 2

# Committee Comments classified by Terms of Reference

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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          |
| Justice Legislation Amendment (Anti-vilification and Social Cohesion) Bill 2024<br>[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<br>[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          |
| Family Violence Protection Amendment Act 2025                                    | 5, 6          |

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

|                                                                                                       |               |
|-------------------------------------------------------------------------------------------------------|---------------|
| Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025<br>[House Amendments]  | 6             |
| Justice Legislation Amendment (Anti-vilification and Social Cohesion) Bill 2024<br>[House Amendments] | 3, 6          |
| Justice Legislation Amendment (Miscellaneous) Bill 2025                                               | 6             |
| Protecting Public Assets and Services Bill 2024                                                       | 13 of 2024    |
| Roads and Road Safety Legislation Amendment Bill 2024 [House Amendments]                              | 15 of 2024, 1 |
| State Taxation Further Amendment Bill 2024                                                            | 15 of 2024    |
| Terrorism (Community Protection) and Control of Weapons Amendment Act 2025                            | 5             |
| Terrorism (Community Protection) and Control of Weapons Amendment Bill 2024                           | 1, 3          |
| Voluntary Assisted Dying Amendment (Equity and Access) Bill 2024                                      | 4             |
| Wage Theft Amendment Bill 2025                                                                        | 6             |
| Wrongs Amendment (Vicarious Liability) Bill 2025                                                      | 6             |

## Appendix 3

# Table of Ministerial Correspondence

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### *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<br>04-12-24                           | 13 of 2024<br>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<br>27-11-24                           | 15 of 2024<br>1 of 2025                            |
| Roads and Road Safety Legislation Amendment Bill 2024<br>[House Amendments]                           | Roads and Road Safety                | 12-11-24<br>04-12-24                           | 15 of 2024<br>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<br>21-01-25                           | 16 of 2024<br>1 of 2025                            |
| Consumer and Planning Legislation Amendment (Housing Statement Reform) Bill 2024                      | Consumer Affairs                     | 05-02-25<br>04-03-25                           | 1 of 2025<br>4 of 2025                             |
| Terrorism (Community Protection) and Control of Weapons Amendment Bill 2024                           | Police                               | 05-02-25<br>27-02-25                           | 1 of 2025<br>3 of 2025                             |
| Constitution Amendment (Abortion) Bill 2024                                                           | Sarah Mansfield MP                   | 18-02-25<br>07-03-25                           | 2 of 2025<br>4 of 2025                             |
| Justice Legislation Amendment (Anti-vilification and Social Cohesion) Bill 2024<br>[House Amendments] | Attorney-General                     | 05-03-25<br>15-04-25                           | 3 of 2025<br>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<br>15-04-25                           | 5 of 2025<br>6 of 2025                             |

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

## Appendix 4

# Statutory Rules and Legislative Instruments considered

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The following subordinate legislation was considered by the Subcommittee on 30 April 2025.

### **Statutory Rules Series 2024**

SR No. 135 – County Court (Chapter I Costs Amendment) Rules 2024

SR No. 136 – Subordinate Legislation (Legislative Instruments) Amendment Regulations 2024

SR No. 137 – National Gas (Victoria) (Declared System Provisions) Amendment Regulations 2024

SR No. 138 – Circular Economy (Waste Reduction and Recycling) (Waste to Energy Scheme) Amendment Regulations 2024

SR No. 139 – Water Industry (Reservoir Parks Land) Regulations 2024

SR No. 140 – Service Victoria (General) Amendment Regulations 2024

SR No. 141 – Assisted Reproductive Treatment Amendment Regulations 2024

Education and Care Services National Amendment (Transitional Provisions) Regulations 2024

### **Legislative Instruments 2024**

2025 Greenhouse Gas Reduction Rates

Australian Computer Society Incorporated Professional Standards Scheme

### **Statutory Rules Series 2025**

SR No. 1 – Food (Primary Production and Processing) Regulations 2025

### **Legislative Instruments 2025**

Ministerial Order No. 1472 – Order Amending Structured Workplace Learning and Workplace Experience Arrangements Ministerial Orders (Ministerial Order No. 1412 and Ministerial Order No. 1413)