



Scrutiny of Acts and Regulations Committee

Alert Digest No. 8 of 2025

June 2025

On the following Acts and Bills

Financial Management Legislation Amendment Bill 2025

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

Justice Legislation Amendment (Miscellaneous) Bill 2025

Justice Legislation Amendment (Miscellaneous) Bill 2025 [House Amendments]

Retirement Villages Amendment Act 2025 [House Amendments]

State Taxation Acts Amendment Bill 2025

Statute Law Revision Bill 2025

Wrongs Amendment (Vicarious Liability) Bill 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

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Useful information

Role of the Committee

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

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

Interpretive use of Parliamentary Committee reports

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

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

When may human rights be limited

Section 7 of the *Charter* provides –

Human rights – what they are and when they may be limited –

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

Glossary and Symbols

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

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

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

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

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

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

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

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

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

'VCAT' refers to the Victorian Civil and Administrative Tribunal

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

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Financial Management Legislation Amendment Bill 2025

Member	Hon Danny Pearson MP	Introduction Date	20 May 2025
Portfolio	Finance	Second Reading Date	27 May 2025

Summary

The Bill amends the *Financial Management Act 1994* (FM Act) and the *Constitution Act 1975* (C Act), and makes consequential amendments.

The Bill—

- removes the requirement for a warrant for issuing public money from the Consolidated Fund
- sets out the financial responsibility obligations of boards, accountable officers and chief finance officers
- alters various provisions relating to financial management

Preliminary

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

Warrants to issue public money

Clauses 6 and 22 and Part 3 remove provisions from the FM Act and C Act requiring a warrant to issue public money from the Consolidated Fund. Note the Second Reading Speech:

[T]he Bill is being modernised by removing the antiquated cash accounting system of warrants. While cash and the cashflow statement are still an important financial measure for Victoria's finances, warrants originated in the days when public servants would seek to take cash from the vaults below Old Treasury Building to fund the activities of departments. In those days the warrant confirmed departments were legally allowed to take and spend that money, because once it was taken, there was no practical way to track it. Since those days, modern controls and checks have been introduced. We now have modern banking and IT systems, and strong requirements to provide annual reports demonstrating how funds are spent, making warrants redundant in the 21st Century. The requirement for warrants consumes considerable administrative effort. This reform will bring Victoria into line with most Australian jurisdictions that have abolished the system of warrants.

They repeal section 17 of the FM Act **[6, 22]**, which provides:

- (1) Public money forming part of the Consolidated Fund may be drawn from the Public Account only in accordance with this section.
- (2) The Minister, as often as occasion may require during a financial year, must—
 - (a) calculate the amount of public money likely to become due and payable out of the Public Account during that financial year; and
 - (b) must prepare an instrument in the form in Schedule 1 or to the like effect specifying that amount; and
 - (c) must sign the instrument and give it to the Auditor-General.

- (3) The instrument, when countersigned by the Auditor-General and approved by the Governor, is the warrant enabling the Minister to order the drawing of money from the Public Account.
- (4) Before countersigning the instrument, the Auditor-General must ascertain that the sums mentioned in it are then legally available and, after countersigning the instrument, the Auditor-General must return it to the Minister, who must submit it to the Governor for approval and signature, and then file the instrument.

They repeal section 93 of the C Act¹ [23, 24], which provides:

No part of the Consolidated Fund shall be issued or shall be made issuable except in pursuance of warrants under the hand of the Governor directed to the Treasurer of Victoria.

Financial responsibility

Part 2 amends Part 7 ('Financial responsibility') of the FM Act. Note the Second Reading Speech:

The legislated accountabilities for Accountable Officers and Chief Finance Officers will be explicitly updated and clarified. For example, the Act only specifies the requirement for there to be an Accountable Officer, but is silent on their responsibilities. While for Chief Finance Officers (CFOs), the Act currently specifies only that CFOs are to receive money, make payments and ensure proper accounting records and systems are maintained. Times have moved on significantly since these were the sole, or even prime duties, of both the Accountable Officer and Chief Finance Officer. These responsibilities will be updated to include, among other things, responsibility for the financial management, financial performance and financial sustainability of the relevant department or agency.

It provides that the 'accountable officer' for a department² is the Departmental Head³ of that department (unless the Finance Minister otherwise determines) [3, 14]. It sets out: [15]

- the accountable officer's 'overarching obligation' to manage the operations of the department or public body and the public resources for which it is responsible in a financially effective, economical, efficient and sustainable manner;⁴ and provides for responsibility and reporting with respect to that obligation: new section 43B.
- any board's obligation to ensure that the accountable officer fulfils their overarching obligation; and provides for responsibility and reporting with respect to the board's obligation: new section 43A.
- the chief finance officer's responsibility and reporting requirements with respect to assisting the accountable officer in fulfilling the overarching obligation: new section 43C.
- the obligations of the board and accountable officer of a body 'declared' by the Finance Minister: new sections 43D and 43E. See the comments under the PCA.

It requires that information be provided (on request or if a person should be made aware) [16]:

- by accountable officers to any relevant Minister, Department Head and board, in respect of financial information: new section 44A

¹ Sub-section 18(1) of the C Act provides: 'Subject to this section, the Parliament may by any Act repeal alter or vary all or any of the provisions of this Act and substitute others in lieu thereof.' The Committee notes that section 18 does not place any express restrictions on repeals, alterations or variations to Division 1 ('Consolidated Revenue') of Part V ('Financial'), which contain sections 93 and 94.

² Section 42(2)(b) of the FM Act provides that the accountable officer of a public body is its chief executive officer (unless the Finance Minister otherwise determines).

³ Sub-section 12(2) of the *Public Administration Act 2004* provides: 'the Premier, on behalf of the Crown, may employ a person as a Department Head'.

⁴ New section 43B(2) specifies that the accountable officer must 'establish and maintain effective controls and reporting mechanisms for matters relating to the financial management' and 'ensure that the... chief finance officer... can meet the responsibilities of that position under this Act or any other Act'.

- by chief finance officers to the relevant department's chief finance officer and the Department Head of the Department of Treasury and Finance, in respect of financial information and information on risks that may have a material impact on the financial position or performance of Victoria: new section 44AC.
- by accountable officers and chief finance officers of bodies declared by the Finance Minister: new sections 44AB and 44AD. See the comments under the PCA.

It requires that departments and public bodies (other than 'declared bodies' – see the comments under the PCA) to give written notification to the Department Head of the Department of Treasury and Finance 'if the department or public body is likely to exceed its budget', including a plan of how to manage the risk and other identified issues and any further information required by the Department Head of the Department of Treasury and Finance [17]. Note the Second Reading Speech:

The Bill introduces a requirement for agencies to stick to their set budgets and report any financial risks through an 'early warning system'. This will allow government to better manage financial risks as they are identified, putting in place the interventions needed before risks manifest into more significant challenges. The *Financial Management Act of 1994* did not require departments and agencies to set a budget and to stick to it. We will embed Government's expectations that sound financial management includes establishing, adhering to and monitoring set budgets put in place at the start of the year.

Note the Statement of Compatibility:

Clauses 17 and 18 of the Bill insert new sections into the FMA [FM Act] that create new reporting requirements for financial information, including where a department or public body is at risk of exceeding its budget. This financial information is principally expected to include documents like balance sheets and records of expenditures. As such, the information provided under these provisions is unlikely to include any personal information. Accordingly, no person's privacy is unlawfully or arbitrarily interfered with because of any of the provisions in the Bill and in my opinion the right to privacy in section 13 of the Charter is not infringed.

It provides that the Finance Minister may dispense with requirements to submit financial statements to the Auditor-General if the Auditor-General has dispensed with an audit of those statements [19].

Other amendments

Part 2 amends the FM Act. It provides that authorities, public bodies and chief finance officers must comply with directions given by the Finance Minister⁵ [4]. It requires Ministers who intend to create or abolish a body, office or trust body to consult with the Finance Minister and to publish notice of the creation or abolition in the Government Gazette [5]. Note the Second Reading Speech:

The Bill also strengthens the financial management obligations associated with the creation or cessation of agencies to ensure accountability for these agencies is well defined. There will be greater clarity on how to correctly establish new entities, and in the right structure, so that consistent and appropriate financial management requirements are applied to those entities.

It inserts a new principle of sound financial management⁶, that the government must 'set an expectation that each department and public body should operate within its budget' [7]. It removes requirements for the Finance Minister to prepare a financial policy objectives and strategy statement [8], a budget update [9] and a quarterly financial report [10] in a financial year if a pre-

⁵ Sub-section 8(1) of the FM Act provides: 'The Minister may give an authority, a public body, an accountable officer or a chief finance and accounting officer directions in writing for or with respect to any of the matters for or with respect to which regulations may be made under this Act.' See sub-section 59(1) of the FM Act (which is amended by clause 21) on the permitted subject-matter of regulations.

⁶ Section 23C of the FM Act provides: 'It is the intention of the Parliament that the Government establish and maintain a budgeting and reporting framework that is consistent with the principles of sound financial management so as to form a basis for the provision of sustainable social and economic services and infrastructure fairly to all Victorians.'

election budget update is released after 15th September and before 15th December of that year. It alters the due date for transmitting a quarterly financial report for the quarter ending on 30th September to Parliament from 15th November to 15th December [11]. It provides for the Finance Minister to determine (by notice in the Government Gazette) that various provisions (on appropriation for borrowing against future appropriation; appropriation of certain revenue and asset proceeds; and transfer between items of departmental appropriation) apply to public bodies as if they are departments [12]. It provides for the Governor-in-Council to make regulations for or with respect to financial planning for authorities and public bodies, and policies, systems and procedures for managing their financial performance and public resources; and for policies, systems and procedures for implementing responses to audits, recording and reporting on the application of appropriations, and procurement of public construction [21].

Part 4 amends the *Local Government Act 1989*. It extends the definition of CPI⁷ to include a forecast published in ‘the pre-election budget update prepared under Division 6 of Part 5 of that Act’.

Comments under the PCA

Inappropriately delegates legislative power – (s. 17(a)(vi), PCA)

Clause 13 inserts a new section 41A into the *Financial Management Act 1994* as follows:

The Governor in Council, by Order published in the Government Gazette, may declare a prescribed office or a public body to be a declared body for the purposes of this Part.

The Committee notes that, while a declared body’s accountable officer and board are subject to the same overarching obligation as other public bodies’ accountable officers and boards, and are required to provide information on request to the Department Head of the Department of Treasury and Finance, they are not expressly:

- required to establish and maintain effective control and reporting mechanisms for matters relating to the body’s financial management or to ensure that their chief finance officer can meet their responsibilities under the FM Act or another Act⁸
- responsible to the relevant Minister for the fulfilment of their obligations⁹
- required to report on the fulfilling of the obligations, or to provide information, to the relevant Department Head¹⁰
- required to report to the Department Head of the Department of Treasury and Finance that the declared body is likely to exceed its budget, including how it intends to manage the risk and any further information required by the Department Head;¹¹

The Committee notes that the Bill and explanatory material may not identify any criteria for, or otherwise limit, the making of a declaration under new section 41A.

⁷ CPI currently means ‘the forecast Melbourne consumer price index, as published in the budget update prepared under the *Financial Management Act 1994*’. The Committee notes that the *Local Government Act 1989* provides that ‘“average rate cap” means an amount expressed as a percentage amount, based on the change to CPI over the financial year to which the cap relates, plus or minus any adjustment’. See Part 8A (‘rate caps’).

⁸ Compare new sub-section 43B(2) and new section 43E.

⁹ Compare new para 43B(3)(a) and new sub-section 43E(2).

¹⁰ Compare new para 43B(4)(b) and new sub-section 43E(3); new paras 44A(2)(a)&(c) and new sub-section 44AB(2); and new paras 44AC(3)(a) and new sub-section 43AD(1).

¹¹ See new sub-section 44C(4).

The Committee notes that it may be unclear whether or not an order under new section 41A is a 'legislative instrument' under the *Subordinate Legislation Act 1994* and, in particular, whether or not it is exempt from that definition as an 'instrument of purely administrative character'.¹²

The Committee will write to the Minister seeking information as to the operation of the proposed new section 41A of the *Financial Management Act 1994*.

Charter Issues

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

¹² *Subordinate Legislation Act 1994*, s. 3(1) ('legislative instrument', para (g)).

State Taxation Acts Amendment Bill 2025

Member	Hon Jaclyn Symes MP	Introduction Date	20 May 2025
Portfolio	Treasurer	Second Reading Date	27 May 2025

Summary

The Bill amends the *Commercial and Industrial Property Tax Reform Act 2024* (C&IPTR Act), the *Duties Act 2000* (D Act), the *First Home Owner Grant and Home Buyer Schemes Act 2000* (FHOG&HBS Act), the *Land Tax Act 2005* (LT Act), the *Payroll Tax Act 2008* (PT Act), the *Taxation Administration Act 1997* (TA Act), the *Unclaimed Money Act 2008* (UM Act) and the *Victorian Conservation Trust Act 1972* (VCT Act).

The Bill—

- provides for land valuations and classifications, and for subdivisions, for land that has entered the tax reform scheme in the C&IPTR Act
- extends the temporary off-the-plan land transfer duty concession
- provides for exemptions, grants and concessions for people who left home because of another's family violence
- alters provisions for Build-to-Rent Development benefits
- alters provisions for notices relating to land tax
- alters provisions for land tax concessions relating to an owner's disability or death
- alters provisions for payroll tax concessions for regional employers
- provides for a 50% penalty tax for reckless tax and notification defaults
- provides for repayments if the Registrar is no longer satisfied that a person is the owner of unclaimed money
- expands eligibility for payments from the Vacant Land Conservation Covenants Account

Preliminary

Clause 2 is the commencement provision. The Bill commences on the day after Royal Assent, except for Division 2 of Part 5 and Part 6. Division 2 of Part 5 (on notifications and exemptions relating to land tax) will commence on 1 January 2026. Part 6 (on payroll tax concessions for regional employers) will commence on 1 July 2025.

Tax reform scheme land

Parts 2, 3 and 7 amend the C&IPTR Act, D Act and TA Act. Note the Second Reading Speech:

Under the CIPT Reform Act, land qualifies to enter the CIPT [Commercial & Industrial Property Tax] Reform if it has been allocated a commercial or industrial-related AVPCC [Australian Valuation Property Classification Code] by the VGV [Valuer-General Victoria] under the annual valuation process. On occasions however, where land has not been valued by the VGV and therefore does not have an AVPCC allocated to it, a transaction of that land does not qualify to enter the CIPT Reform, regardless of whether the land is actually commercial or industrial land. The amendments will enable the Commissioner to provisionally determine if land has a qualifying use, ensuring that land that is otherwise eligible to enter the CIPT Reform is not excluded where no AVPCC is yet available.

The Bill also ensures duty under the *Duties Act 2000* applies to the purchase of a child lot following a subdivision within three years after the parent lot enters the CIPT Reform as a partial transaction. This amendment aligns the dutiable treatment of a child lot with that of the parent lot after a subdivision.

They permit the Commissioner to: request the Valuer-General to value and classify non-rateable non-leviable land; and to make a provisional determination that land does or does not have a qualifying use **[4]**. They provide for objections to these evaluations **[30, 31]**. Note the Explanatory Memorandum:

Non-rateable non-leviable land is land that is not rateable land under the *Local Government Act 1989* or leviable land under the *Emergency Services and Volunteer Funds Act 2012*. This land may not be valued under the *Valuation of Land Act 1960* or have an AVPCC allocated to it and hence may not have a qualifying use under sections 4(1)(a) or (b). New section 4A provides the Commissioner with the authority to request a valuation of the land so the land can be allocated one or more AVPCC. This enables the identification of whether the land has a qualifying use...

Previously, land could not have a qualifying use under section 4(1)(a) or (b) of the *Commercial and Industrial Property Tax Reform Act 2024* if it was not valued under the *Valuation of Land Act 1960* or not allocated an AVPCC in its latest valuation. New section 4B(1) addresses this issue by enabling the Commissioner to make a provisional determination of whether the land has or does not have a qualifying use.

Note the Statement of Compatibility:

[T]o the extent that natural persons' property rights are affected by these amendments to the CIPT Reform Act and Duties Act, any limit is in accordance with the law, which is clearly articulated, not arbitrary, and sufficiently precise to enable affected natural persons to inform themselves of their legal obligations and to regulate their conduct accordingly. Furthermore, natural persons who are issued with assessments or reassessments as a result of the amendments will have the protections provided by the TAA [TA Act] including rights of objection, review, appeal and refund of overpaid tax...

A provisional determination may be made in relation to land as at the date of a transaction that occurred before the commencement of the provision... [T]he Commissioner's ability to make a provisional determination regarding land at the time of a transaction that occurred prior to the commencement of the provision is necessary to overcome the unintended outcome that land otherwise eligible to enter the CIPT reform has been excluded from doing so as no AVPCC was available at the time of the transaction.

They provide that, for the purposes of Division 9 ('Tax reform scheme transactions') of Part 5 ('Exemptions and concessional rates of duty') **[10]** and Division 3A ('Tax reform scheme land') of Part 7 ('Acquisition of interests in certain land holders') **[11]** of the D Act, a lot in a registered plan of a subdivision that have both entered the tax reform scheme in the C&IPTR Act: has the same quantum and entry interest as the subdivision; is taken to have been the subject of any acquisition of a further interest in the subdivision; and its interests are taken to have the same duty consequences and (as far as is practicable) characteristics as the subdivision's interests. Note the Explanatory Memorandum, which states that these deemings are 'necessary as some exemptions [and] provisions... involve consideration of the entry interest and any further interest acquired in tax reform scheme land'. They provide that the unencumbered value of land holdings that comprise an interest in land that has entered the tax reform scheme is taken to be excluded from duty calculations to the extent that the interest is substantially the same as any further interest 'a person' is taken to have obtained before the landholder made a relevant acquisition **[12]**. Note the Explanatory Memorandum:

This amendment is intended to rectify anomalous outcomes between section 69AQ(1)(a) and 89FA(3)(b), which are intended to have similar effects. The amendment ensures that any further interest obtained in tax reform scheme land before a relevant acquisition (that was chargeable with duty) can be taken into account for the purpose of applying the exclusion under section 89FA(3) of the *Duties Act 2000*. Previously, only a further interest obtained by the same person who made the relevant acquisition could be taken into account for the purpose of section 89FA(3).

Temporary off-the-plan land transfer duty concessions

Clause 6 amends the DT Act. It extends an adjustment of the consideration for a transfer of certain residential property to land contracted for purchase between 21 October 2025 and 21 October 2026. Note the Second Reading Speech:

As announced in the 2025–26 Budget, the eligibility period for the temporary off-the-plan land transfer duty concession for purchases of eligible apartments and townhouses will be extended for a further twelve 12 months to 21 October 2026. The concession was announced on 21 October 2024 and is available to off-the-plan purchasers of dwellings including apartments and townhouses. It reduces the amount of duty imposed on land transfers by allowing purchasers to exclude construction costs incurred on or after the contract date from the dutiable value of the land. The extension of the concession for a further twelve months will support homebuyers and the construction industry by encouraging more off-the-plan purchases of apartment and townhouses.

Family violence

Clauses 8, 14, 15 and 16 amend the D Act, FHOG&HBS Act and LT Act. Note the Second Reading Speech:

The Bill amends the *Land Tax Act 2005*, the *Duties Act 2000* and the *First Home Owner Grant and Home Buyer Schemes Act 2000* to enable victim-survivors of family violence to access tax relief. Currently, victim-survivors of family violence are unable to access a land tax exemption when they leave their principal place of residence (PPR) due to family violence with no intention to return. Victim-survivors are also unable to access first home buyer benefits on the purchase of a new home where they've been part of an earlier application or because of their or their partner's prior relevant interest in a property.

Consistent with its long-standing commitment to addressing family violence, until now the government has offered ex gratia tax relief to victim-survivors fleeing family violence. To give victim-survivors the certainty of legislative protection, the Bill amends the *Land Tax Act 2005* to introduce an exemption from land tax for victim-survivors for up to 6 years where they have left their PPR due to family violence and have not received income from the land. The Bill also amends the *Duties Act 2000* and the *First Home Owner Grant and Home Buyer Schemes Act 2000* to allow victim-survivors to requalify for first home buyer benefits, subject to similar requirements.

They provide that a requirement for an exemption from duty that the transferee or their partner has not received an exemption in relation to an earlier transfer does not apply if the person does not reside in the home to which the transfer relates because of another's family violence and has not received and will not receive any financial benefit from that home [8]. They provide that a person is not ineligible for a first home owner grant due to an earlier application [14] or a relevant interest [15] if the person does not reside in the home to which an application or interest relates and has not received and will not receive any financial benefit from that home. Note the Explanatory Memorandum:

The no financial benefit requirement means a person can only requalify for first home buyer benefits where they have received no material benefit from owning the previous home, putting them in the same position as a first home buyer who has never owned a home. A financial benefit includes rental returns if the home has been held as an investment property, enjoying profits from the sale of the home and can include a financial payout from the dissolution of assets of a relationship where the property was taken into account as an asset.

They provide that land is taken to be a principal place of residence for the purpose of land tax exemptions or concessions despite a person's absence if that absence is because of another's family violence, the person does not have another principal place of residence and the person did not derive any income from the land in the preceding tax year [16].

Build-to-Rent Developments

Part 5 amends the LT Act. It allows the Commissioner for State Revenue to determine that land is eligible for Build-to-Rent Development benefits despite a period when the land was not occupied if the

land was temporarily unsuitable for occupation during that period and the Commissioner considers it is reasonable in the circumstances to disregard that period¹³ [17]. Note the Second Reading Speech:

[T]he Bill gives the Commissioner of State Revenue... the power to disregard periods where an eligible property is temporarily uninhabitable and it is reasonable to do so, when determining whether developments remain eligible for BTR [Build-to-Rent] benefits. A property may be temporarily uninhabitable due to unforeseen circumstances such as natural disasters or other reasonable circumstances such as planned refurbishments. In these circumstances, it is not fair that BTR developments lose access to BTR benefits because the property was temporarily unsuitable for occupancy.

It requires that, to be eligible for benefits, a non-rented property must be 'genuinely offered for rent' for 3 years, be rented for at least 12 months and a joint declaration be made of any renter's election to rent for less than 3 years [23, 24], and for a transitional provision for agreements entered into before 1 January 2026 [25]. Note the Second Reading Speech:

To show that a lease term of at least 3 years was genuinely offered, the Bill requires the BTR provider and renter to jointly sign a declaration if the renter elects a lease term shorter than 3 years. The Bill also amends the *Land Tax Act 2005* to prohibit rental terms of less than 12 months being used in eligible BTR developments, except in limited cases, such as the extension of a long-term lease. These amendments will apply to rental agreements that are signed on or after 1 January 2026 in recognition that some developers may need time to alter their practices.

Note the Statement of Compatibility:

[T]o the extent that natural persons' property rights are affected by the amendments, any limit is in accordance with the law, which is clearly articulated, not arbitrary, and sufficiently precise to enable affected natural persons to inform themselves of their legal obligations and to regulate their conduct accordingly. Furthermore, natural persons who are issued with assessments or reassessments as a result of the amendments will have the protections provided by the TAA [TA Act] including rights of objection, review, appeal and refund of overpaid tax.

Land tax notifications

Clause 19 amends the LT Act. It requires written notice within one month of a person becoming an owner of land that the person previously owned as trustee of a trust if: the person becomes the owner of the land as trustee of a different trust, the trust becomes a different category of trust; or the person becomes the owner other than as a trustee [19]. Note the Second Reading Speech:

[T]he Bill amends the *Land Tax Act 2005* to make certain notification obligations imposed on trustees operate more effectively, reducing red tape. Trustees will now only be required to notify the Commissioner of a disposal or acquisition of land where a trustee ceases holding trust land in their capacity as trustee and acquires that land in their own right or where a trustee ceases holding land subject to one trust and commences holding the same land subject to a second (different) trust.

Note the Explanatory Memorandum:¹⁴

The notification requirement under existing section 46K(2) of the *Land Tax Act 2005* applies more broadly than required. It has been replaced by new section 46K(3), which provides that a person who owns land as trustee of a trust and then becomes the owner of the land in any capacity other than as

¹³ Note the Explanatory Memorandum: 'For example, a dwelling may be temporarily unsuitable for occupancy due to fire damage. If the fire damage is minor and can be rectified quickly then exempting the dwelling from a requirement in section 70B(1)(d) or (e) for an extended period would not be reasonable. Similarly, refurbishments that result in a dwelling not being offered for rent for an extended period are also unlikely to be considered reasonable. For a refurbishment to be considered reasonable, it should be planned to minimise the period for which the dwelling is not available to be rented and the works should be kept to the minimum needed to refresh the dwelling. The discretion is not intended to apply where significant renovations are being undertaken to the dwelling or to the BTR development.'

¹⁴ Sub-section 46K(2) of the LT Act currently provides: 'A trustee who disposes of any land that is subject to the trust must lodge a written notice with the Commissioner within one month after disposing of the land.'

trustee of a trust must lodge a written notice with the Commissioner within one month after becoming the owner of the land in that capacity.

Note the Statement of Compatibility:

To the extent that the collection of any personal information from a natural person in relation to these provisions may result in interference with a natural person's privacy, any such interference will be lawful and not arbitrary as these provisions do not require that a person's personal information be published. Further, these provisions only require the provision of necessary information exclusively in the taxpayer's possession to achieve the purpose of determining a person's tax liability or eligibility for certain tax concessions. There are no other reasonable means available to achieve these purposes.

Land tax concessions and exemptions relating to the owner's disability or death

Clauses 20 and 21 amend the LT Act. They provide that land remains eligible for concessions or exemptions when the owner is unable to live independently **[20]** or dies **[21]** even if income was derived from part of that land to carry on a substantial business or provide accommodation in a separate residence. Note the Second Reading Speech:

The Bill amends the *Land Tax Act 2005* to support families of landowners in difficult circumstances, where the landowner is unable to live independently or has passed away. The *Land Tax Act 2005* currently provides that a PPR [principal place of residence] is exempt from land tax in limited concessionary circumstances where an owner no longer uses and occupies the land, including where they have lost the ability to live independently for an indefinite period, or where they have passed away and their estate is under administration. The exemption is only available if no income was derived from the land in the preceding tax year. If part of the land is being used to derive income from a substantial business activity or a separately rented residence such as a granny flat, the exemption does not apply, resulting in the land becoming fully taxable. The amendments remove this unfairness by allowing the exemptions for owners unable to live independently or who have passed away to apply to that part of the land used as the person's residence. This means tax will only be assessed on the value of that portion of the land used to derive income from a substantial business activity or a separately rented residence.

Payroll tax for regional employers

Part 6 amends the PT Act. It amends the definition of 'regional employer' to provide that it is not necessary to meet the requirement that 85% of wages are paid to regional employees 'every' month **[27]**. Note the Explanatory Memorandum:

Clause 27... makes a technical amendment to section 3A(3) of the *Payroll Tax Act 2007* by replacing the reference to "any" with "every", to clarify that employers are not required to meet the 85% threshold in every month during a financial year.

It provides that a person is a 'regional employee' if the person's wages are payable for services performed in Victoria and the person's services in Victoria are performed mainly in regional Victoria **[28]**. Note the Explanatory Memorandum:

Previously, some regional Victorian businesses were not entitled to the lower payroll tax rate because their employees were performing services mainly in other jurisdictions and not mainly in regional Victoria. Under the new definition, it is intended that only the time spent by the employee performing services for the employer in Victoria is to be taken into account in determining whether services are performed mainly in regional Victoria.

Penalty tax for recklessness

Clause 29 amends the TA Act. It provides that the Commissioner of State Revenue may increase the penalty tax payable in respect of a tax default or a notification default to 50% of the tax unpaid or additional tax that would have been payable but for a default 'caused wholly or partly by recklessness by the taxpayer (or a person acting on behalf of the taxpayer)'. Note the Second Reading Speech:

The Bill amends the *Taxation Administration Act 1997* to introduce a 50% penalty tax for recklessness by a taxpayer or a person acting on their behalf in respect of the taxpayer's obligations. Under the Taxation Administration Act, the Commissioner may impose penalty tax when a taxpayer does not comply with an obligation to pay tax or make certain notifications required under taxation legislation. The Act currently provides that the Commissioner may impose a 25% penalty tax, as the standard penalty rate, or a 75% penalty tax where a taxpayer shows intentional disregard of the law. This framework limits the Commissioner's ability to respond proportionately to non-compliance across a range of severity. The Bill addresses this issue by introducing a 50% penalty tax for recklessness. The new penalty is modelled on the penalty tax framework under the *Taxation Administration Act 1953* (Cth). The amendment will come into effect from the day after Royal Assent.

Note the Statement of Compatibility:

[T]o the extent that natural persons' property rights are affected by the amendments, any limit is in accordance with the law, which is clearly articulated, not arbitrary, and sufficiently precise to enable affected natural person taxpayers to inform themselves of their legal obligations and regulate their conduct in relation to tax and notification defaults accordingly. Further any deprivation of property as a result of these amendments is justified as the amendments are intended to deter non-compliance with Victorian taxation laws and promote voluntary compliance. Natural persons who are issued with assessments or reassessments as a result of the amendments will have the protections provided by the TAA including rights of objection, review, appeal and refund of overpaid tax.

See the comments under the PCA and Charter report.

Repayments of unclaimed money

Part 8 amends the UM Act. Note the Second Reading Speech:

The Bill amends the *Unclaimed Money Act 2008* to empower the Registrar of Unclaimed Money (the Registrar) to recover an amount of unclaimed money paid to a person who is not the owner by issuing a notice of repayment. The Bill also empowers the Registrar to pay an amount of unclaimed money to a subsequent genuine claimant, even if the entitlement has already been paid to an earlier claimant. The amendment to empower the Registrar to pay a subsequent claimant will take effect from the day after Royal Assent. The amendment empowering the Registrar to issue notices of repayment will commence in relation to amounts that were paid to a claimant on or after the day after the Bill receives Royal Assent.

It permits the Registrar of Unclaimed Money to make a payment even if a payment was previously made to someone else [33]. It permits the Registrar to issue a repayment notice if the Registrar is no longer satisfied that a person to whom a payment was made is the owner of the unclaimed money and to recover the amount as a debt due to the state [34]. It provides for objections [35], referrals to VCAT [36], court appeals [37], refunds [38], interest [39] and a transitional provision [40] for such repayments. Note the Statement of Compatibility:

This may affect the right to property as natural persons who have received amounts of money from the Registrar to which they were not genuinely entitled may be liable to repay unclaimed money and interest on any unpaid amounts to the Registrar of unclaimed money. However, these amendments are in accordance with the law, which is clearly articulated, not arbitrary, and sufficiently precise to enable affected natural person taxpayers to inform themselves of their legal obligations and to regulate their conduct accordingly. Further, objection and appeal rights under the UMA [UM Act] will be available to these natural persons. Any deprivation of property as a result of these amendments is justifiable as the amendments are intended to help promote the policy objectives of the unclaimed money scheme which is to return amounts of unclaimed money only to genuine owners.

Funding for conservation covenants

Part 9 amends the VCT Act. It removes a restriction to ‘specified land’¹⁵ from a provision permitting money to be distributed from the Victorian Land Conservation Covenants Account for reasonable costs and expenses incurred by the Trust for Nature (Victoria) in relation to entering into covenants binding the use of land to conservation and care of things found on the land [41]. See the Second Reading Speech:

The VLCCA [Victorian Land Conservation Covenants Account] was established to support the Trust for Nature (TfN) conservation covenants on unimproved land within residential planning zones of metropolitan Melbourne. Initial funding of \$2 million was allocated to the VLCCA to fund conservation covenants in respect of up to 50 properties in metropolitan Melbourne that may be impacted as part of the expansion of the Vacant Residential Land Tax to unimproved residential land in metropolitan Melbourne that has remained undeveloped for at least five years and is capable of residential development. Greater opportunities exist to protect Victoria’s unique biodiversity outside metropolitan Melbourne. The strict criteria for the use of the funds within the VLCCA has limited the use of the funds. The expanded criteria of the VLCCA will enable money standing to the credit of the VLCCA to be used in relation to land that contains a dwelling, land that has been zoned for non-residential purposes, or land in Victoria that is outside metropolitan Melbourne.

Comments under the PCA

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

Clause 29 amends section 30 of the *Taxation Administration Act 1997* as follows:

- (1) The amount of penalty tax payable in respect of a tax default is 25% of the amount of tax unpaid, subject to this Division.
- (1A) The amount of penalty tax payable in respect of a notification default is 25% of the additional amount of tax that the taxpayer would have been assessed as liable to pay had the notification default not occurred, subject to this Division.
- (1B) The Commissioner may increase the amount of penalty tax payable in respect of a tax default to 50% of the amount of tax unpaid if the Commissioner is satisfied that the tax default was caused wholly or partly by recklessness by the taxpayer (or a person acting on behalf of the taxpayer) as to the operation of a taxation law.
- (1C) The Commissioner may increase the amount of penalty tax payable in respect of a notification default to 50% of the additional amount of tax that the taxpayer would have been assessed as liable to pay had the notification default not occurred if the Commissioner is satisfied that the notification default was caused wholly or partly by recklessness by the taxpayer (or a person acting on behalf of the taxpayer) as to the operation of section 34G, 46K, 61B, 61C, 61D, 61E, 61F, 70N, 104A or 104B of the *Land Tax Act 2005*, section 33 or 34 of the *Commercial and Industrial Property Tax Reform Act 2024* or section 26 of the *Windfall Gains Tax Act 2021* (as the case requires).
- (2) The Commissioner may increase the amount of penalty tax payable in respect of a tax default to 75% of the amount of tax unpaid if the Commissioner is satisfied that the tax default was caused wholly or partly by the intentional disregard by the taxpayer (or a person acting on behalf of the taxpayer) of a taxation law.
- (2A) The Commissioner may increase the amount of penalty tax payable in respect of a notification default to 75% of the additional amount of tax that the taxpayer would have been assessed as liable to pay had the notification default not occurred if the Commissioner is satisfied that the notification default was caused wholly or partly by the intentional disregard by the taxpayer (or a person acting on behalf of the taxpayer) of section 34G, 46K, 61B, 61C, 61D, 61E, 61F, 70N, 104A

¹⁵ “specified land” means land that— (a) is within a municipal district of a Council listed in Schedule 1; and (b) is not within a non-residential zone; and (c) does not contain a dwelling;’ Schedule 1 is titled ‘Metropolitan Melbourne’.

or 104B of the *Land Tax Act 2005*, section 33 or 34 of the *Commercial and Industrial Property Tax Reform Act 2024* or section 26 of the *Windfall Gains Tax Act 2021* (as the case requires).

- (3) The Commissioner may determine that no penalty tax is payable in respect of a tax default or notification default if the Commissioner is satisfied that—
- (a) the taxpayer (or a person acting on behalf of the taxpayer) took reasonable care to comply with the taxation law; or
 - (b) the default occurred solely because of circumstances beyond the taxpayer’s control (or, if a person acted on behalf of the taxpayer, because of circumstances beyond either the person’s or the taxpayer’s control) but not amounting to financial incapacity.

The *Taxation Administration Act 1997* provides for a reduction of these penalties for voluntary disclosure (80% if pre-investigation, 20% if mid-investigation) and an increase if steps were taken to prevent or hinder an investigation (20%).¹⁶

The Committee notes that the 25% penalty for tax defaults and the 75% for ‘intentional disregard... of a taxation law’ were part of the *Taxation Administration Act 1997* as first enacted. The equivalent penalties for ‘notification defaults’ were enacted in 2009.¹⁷

The Committee notes that the meaning of ‘recklessness’ is not addressed in clause 30 or the explanatory materials.

The Committee notes the Victorian Law Reform Commission’s recent report, which examined the meaning of the term ‘recklessness’ in Victoria’s criminal law:¹⁸

‘Conscious disregard of risk’ is the essence of recklessness as a legal concept. The more an offender turns their mind to the consequences of their conduct, the more culpable they are.

Consequences aside, recklessness as a fault element is considered more culpable than negligent behaviour, but less culpable than an act done intentionally. In some circumstances there may be little difference between high-end recklessness and intention.

In Victoria, recklessness is not defined in the Crimes Act. It takes its meaning from the common law. A person is reckless if they know that a particular harmful consequence will probably (is likely to) result from their action, but they continue regardless. The test is subjective.

The common law definition applies to all offences against the person in Part I, Division 1 of the Crimes Act involving recklessness.

A person can be reckless as to:

- a result (for example, causing serious injury)
- a circumstance (for example, the victim being an emergency services worker).

The fault element of intention sits at the top of the hierarchy of Victorian offences against the person, indicating the highest level of culpability. Intention reflects a decision to bring about an act (general intent) or a result (specific intent).

A person may also be held criminally responsible if they act ‘with the knowledge that a particular circumstance exists, or with the awareness that a particular consequence will result from ... the conduct.’

At the lowest end of the scale of culpability is criminal negligence. It is not a true ‘state of mind’ offence as it involves an objective test and is primarily concerned with a failure to take sufficient care where a legal duty exists. For a person’s conduct to be negligent, it must involve ‘a great falling short of the standard of care which a reasonable [person] would have exercised’.

¹⁶ *Taxation Administration Act 1997*, ss. 31 & 32.

¹⁷ *State Taxation Acts Further Amendment Act 2009*, s. 32.

¹⁸ Victorian Law Reform Commission, *Recklessness*, Report, May 2024, [2.20]-[2.27], [3.53].

...

The definition of recklessness in Victoria has developed in its own distinct way and has evolved over time. Victoria has adopted a threshold requiring foresight of 'probable' harm for modern offences against the person. The current test has been in operation for nearly three decades and a substantial and settled jurisprudence exists based on that test.

The Committee notes that the Victorian Law Reform Commission did not discuss the meaning of 'recklessness' in the context of taxation law or civil penalties.

The Committee notes that the federal *Taxation Administration Act 1953* (Cth) provides for administrative penalties with base penalties in similar terms to section 30 as amended by clause 29.¹⁹ A similar provision has been part of federal taxation law since 1992.²⁰ In 2008, the federal Commissioner of Taxation ruled that:²¹

...'recklessness' connotes conduct that is more culpable than a failure to take reasonable care to comply with a taxation law but less culpable than an intentional disregard of a taxation law. The scheme of the uniform penalties regime is to impose the higher penalty in response to conduct that goes beyond mere carelessness or inadvertence by displaying a high degree of carelessness.

Like the test for determining whether reasonable care has been shown, a finding of recklessness depends on the application of an essentially objective test. There must be the presence of conduct that falls short of the standard of a reasonable person in the position of the entity. Similar to the position with a failure to take reasonable care, dishonesty is not an element of establishing recklessness. The actual intention of the entity is of no relevance.

Behaviour will indicate recklessness where it falls significantly short of the standard of care expected of a reasonable person in the same circumstances as the entity. Although the test for determining whether recklessness is shown is the same as that applied for testing a want of reasonable care, it is the extent or degree to which the conduct of the entity falls below that required of a reasonable person that underscores a finding of recklessness.

The Committee notes the Charter report.

Charter Issues

Property – Penalty tax – Recklessness

Summary: *The effect of clause 29 may be to impose an additional 25% penalty tax where a default was caused wholly or partly by a taxpayer or agent's recklessness. The Committee will write to the Treasurer seeking further information.*

Relevant provision

The Committee notes that clause 29, amending existing s. 30 of the *Taxation Administration Act 1997*, provides the Commissioner may increase the amount of penalty tax payable in respect of a tax default or notification default to 50% of the amount of tax unpaid or that the taxpayer would have been as assessed as liable to pay but for the default if the Commissioner of State Revenue is satisfied that 'the default was caused wholly or partly by recklessness by the taxpayer (or a person acting on behalf of the taxpayer) as to the operation of' a taxation law or a specified notification law.

¹⁹ *Taxation Administration Act 1953* (Cth), Schedule, cl. 284 – 90(1).

²⁰ *Taxation Laws Amendment (Self-Assessment) Act 1992* (Cth), s. 31, inserting ss. 226H & 226J into *Taxation Administration Act 1953* (Cth).

²¹ *Penalty relating to statements: meaning of reasonable care, recklessness and intentional disregard* [2008] ATOMTR MT2008/1.

Existing s. 30 provides for penalty taxes of 25% or, if the default was caused wholly or partly by the intentional disregard of the taxpayer (or agent), 75%; and for the Commissioner to determine that no penalty tax is payable if the Commissioner is satisfied that the taxpayer (or any agent) took reasonable care to comply or the default occurred solely because of circumstances beyond the taxpayer's (or any agent's) control.

The Second Reading Speech remarks:

The new penalty is modelled on the penalty tax framework under the *Taxation Administration Act 1953* (Cth).

The Committee observes that the effect of clause 29 may be to impose an additional 25% penalty tax where a default was caused wholly or partly by a taxpayer or agent's recklessness (if the taxpayer and agent did not intentionally disregard the law and did not take reasonable care to comply.)

Charter analysis

The Statement of Compatibility remarks:

This may affect the right to property to the extent that natural person taxpayers who are reckless with respect to their state taxation obligations may be liable for increased rates of penalty tax. However, to the extent that natural persons' property rights are affected by the amendments, any limit is in accordance with the law, which is clearly articulated, not arbitrary, and sufficiently precise to enable affected natural person taxpayers to inform themselves of their legal obligations and regulate their conduct in relation to tax and notification defaults accordingly. Further any deprivation of property as a result of these amendments is justified as the amendments are intended to deter non-compliance with Victorian taxation laws and promote voluntary compliance. Natural persons who are issued with assessments or reassessments as a result of the amendments will have the protections provided by the TAA including rights of objection, review, appeal and refund of overpaid tax.

The Committee notes that the Statement of Compatibility does not discuss the meaning of 'recklessness', which is not expressly defined in clause 30 or addressed in the explanatory material.

The Committee observes that the term 'recklessness' has previously been defined to mean:

- in Australia's common law on criminal responsibility, a subjective awareness of a possibility²²
- in Victoria's criminal law of offences against the person, a subjective awareness of a likelihood or probability²³
- in Australian federal law on criminal responsibility, a subjective awareness of a substantial risk that is not justified having regard to all of the known circumstances²⁴
- in federal taxation law, 'behaviour [that] falls significantly short of the standard of care expected of a reasonable person'.²⁵

Relevant comparisons

The Committee notes that other Australian laws on penalty taxes provide:

- federally, in similar terms to s. 29, as amended by clause 30.²⁶

²² *Aubrey v R* [2017] HCA 18.

²³ *Director of Public Prosecutions Reference No 1 of 2019* [2021] HCA 26.

²⁴ *Criminal Code Act 1995* (Cth), Schedule, s. 5.4.

²⁵ *Penalty relating to statements: meaning of reasonable care, recklessness and intentional disregard* [2008] ATOMTR MT2008/1.

²⁶ *Taxation Administration Act 1953* (Cth), Schedule, clause 284 – 90.

- in the ACT, in similar terms to existing s. 29, but with a 50% penalty tax for delays, incorrect or misleading information or a repeat default in relation to a similar tax liability.²⁷
- in New South Wales, in similar terms to existing s. 29, but with a 50% penalty tax if the taxpayer is a significant global entity.²⁸
- in the Northern Territory, South Australia and Tasmania, similarly to existing s. 29.²⁹
- in Queensland, for a 75% penalty tax for all defaults.³⁰
- in Western Australia, for a 100% penalty tax for all defaults.³¹

The Committee observes that only the federal taxation statute currently provides for penalties for unintentional defaults caused by recklessness.

Conclusion

The Committee will write to the Treasurer seeking further information as to the meaning of 'recklessness' in clause 30.

²⁷ *Taxation Administration Act 1999* (ACT), s. 31.

²⁸ *Taxation Administration Act 1996* (NSW), s. 27. A 'significant global entity' has an annual income of \$1 billion or more: see *Income Tax Assessment Act 1997* (Cth), s. 960.555.

²⁹ *Taxation Administration Act 2007* (NT), s. 41; *Taxation Administration Act 1996* (SA), s. 31; *Taxation Administration Act 1997* (Tas), s. 40.

³⁰ *Taxation Administration Act 2001* (Qld), s. 58. See Queensland Revenue Office, *Public Ruling TAA060.2.6 Penalty tax*.

³¹ *Taxation Administration Act 2003* (WA), s. 26. See Revenue WA, *Commissioner's Practice TAA 18.3*.

Statute Law Revision Bill 2025

Member	Hon Jacinta Allan MP	Introduction Date	27 May 2025
Portfolio	Premier	Second Reading Date	28 May 2025

Summary

The Bill amends various Acts.

The Bill—

- corrects errors in various Acts
- changes references to the federal Administrative Appeals Tribunal to the Administrative Review Tribunal
- updates references to Departments in light of administrative arrangements orders

Preliminary

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

Corrections

Clause 3 enacts Schedule 1. Schedule 1 corrects various Acts. Note the Second Reading Speech, which states that the former amendments correct:

typographical, grammatical, numbering and section reference errors in the *Accident Compensation Act 1985*; *Administration and Probate Act 1958*; *Australian Consumer Law and Fair Trading Act 2012*; *Business Franchise (Petroleum Products) Act 1979*; *Caulfield Racecourse Reserve Act 2017*; *Cemeteries and Crematoria Act 2003*; *Child Employment Act 2003*; *Corrections Act 1986*; *Country Fire Authority Act 1958*; *Court Services Victoria Act 2014*; *Disability Service Safeguards Act 2018*; *Family Violence Protection Act 2008*; *Fisheries Act 1995*; *Health Complaints Act 2016*; *Mental Health and Wellbeing Act 2022*; *Serious Offenders Act 2018*; *Status of Children Act 1974*; *Surveying Act 2004*; *Tobacco Act 1987*; *Transfer of Land Act 1958*; *Triple Zero Victoria Act 2023*; and the *Youth Justice Act 2024*.

and also amend:

...the *Aboriginal Heritage Act 2006* to correct a reference to that Act being “the specified Act” for the purposes of the *Land Acquisition and Compensation Act 1986*, as the term defined in the *Land Acquisition and Compensation Act 1986* is “the special Act”

and:

... the *Circular Economy (Waste Reduction and Recycling) Act 2021* to replace references to an Alpine Resort Management Board with references to Alpine Resorts Victoria, its successor in law, following the abolition of the Alpine Resort Management Boards by the *Alpine Resorts Legislation Amendment Act 2022*.

Federal Administrative Review Tribunal

Clause 3 enacts Schedule 1. Schedule 1 changes various references to the federal Administrative Appeals Tribunal to the Administrative Review Tribunal. Note the Explanatory Memorandum, which states that the latter amendments ‘reflect the repeal of the Administrative Appeals Tribunal Act 1975 of the Commonwealth and the enactment of the Administrative Review Tribunal Act 2024 of the Commonwealth’.

References to Departments

Clause 4 enacts Schedule 2. Note the Explanatory Memorandum:

This Schedule contains amendments to a number of Acts to correct references in those Acts to names of Departments that are out of date because of Orders made under the *Administrative Arrangements Act 1983*, which have reconstrued the references to other Department names.

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*.

House Amendments

Justice Legislation Amendment (Miscellaneous) Bill 2025

Member	Hon Sonya Kilkeny MP	Introduction Date	1 April 2025
Portfolio	Attorney-General	Second Reading Date	2 April 2025

The Committee reported on the Bill as originally introduced in *Alert Digest No. 6 of 2025*³² tabled on 13 May 2025.

The Committee now provides a further report on the amendments made by the Legislative Council. The amendments were made in the Legislative Council on 29 May 2025.

Summary

The house amendments amend the *Victoria Police Act 2013* (VP Act.) The house amendments set out citizenship, residency or visa requirements for appointments of the Chief Commissioner and Deputy Commissioners of Victoria Police.

Preliminary

The house amendments insert a new Division 4 ('Amendment of *Victoria Police Act 2013*') into Part 5 ('Miscellaneous amendments') of the Bill.

Section 1 is the purpose section. The house amendments add a new purpose to the clause for that section. See the Charter report.

Section 2 is the commencement section. All of the Bill, including the new provisions inserted by the house amendments, will commence on the day after Royal Assent.

Appointment of Chief Commissioner and Deputy Commissioners

New Division 4 of Part 5 amends the VP Act [20]. It provides that the Chief Commissioner of Victoria Police, an Acting Chief Commissioner, a Deputy Commissioner and an Acting Deputy Commissioner 'must be... an Australian citizen', 'a permanent resident', 'a person who has a permanent visa or is entitled to be granted a permanent visa' or 'a New Zealand citizen who has a special visa or is entitled to be granted a special visa'. Note the remarks of the Minister who introduced the house amendment:

This is a targeted amendment that will, out of an abundance of caution, ensure that there can be no question of the citizenship requirements of people appointed to the ranks of chief commissioner and deputy commissioners of Victoria Police. As part of the appointment process of the new chief commissioner, the Victorian government has identified a legal rule that suggests that there may be some citizenship requirements for the holder of the office of chief commissioner. As most of us would know, the *Victoria Police Act 2013*, which is the act which governs appointments to these roles, is currently silent on citizenship requirements. The amendments will put this beyond doubt by making it clear and explicit that Australian citizens, permanent residents, permanent visa holders and special category visa holders can be appointed to the ranks of chief commissioner and deputy commissioners. I would also

³² See *Alert Digest No 6 of 2025*, Justice Legislation Amendment (Miscellaneous) Bill 2025, pp 5-16 <<https://www.parliament.vic.gov.au/49c1f4/globalassets/committee-publication-record-documents/committee-36/publication-344/alert-digest-no-6-of-2025.pdf>>.

like to bring to the attention of the chamber that this is currently what applies to police officers at the assistant commissioner level or below. So this is just bringing consistency across the force from below assistant commissioner level all the way up now to the top.

See the Charter report.

Comments under the PCA

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

Charter Issues

House amendments – Supplementary statement of compatibility – Practice Note

Summary: *Amendment 2 may have been unrelated to the Bill's purpose as introduced. The Committee will write to the Attorney-General seeking further information.*

Relevant provision

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

to amend the *Victoria Police Act 2013* in relation to the appointment of the Chief Commissioner of Police, Deputy Commissioners and persons acting as Chief Commissioner of Police or a Deputy Commissioner...

The purposes of the Bill as introduced were to amend various Acts in the justice portfolio, and did not refer to the *Victoria Police Act 2013* or to appointments of police officers.

The Committee also notes that Amendment 2, which inserts a new Division 4 of Part 5, provides that the Chief Commissioner, Acting Chief Commissioner, Deputy Commissioners and Acting Deputy Commissioners 'must be':

- (a) an Australian citizen; or
- (b) a permanent resident within the meaning of the *Australian Citizenship Act 2007* of the Commonwealth; or
- (c) a person who has a permanent visa or is entitled to be granted a permanent visa under the *Migration Act 1958* of the Commonwealth; or
- (d) a New Zealand citizen who has a special category visa or is entitled to be granted a special category visa under the *Migration Act 1958* of the Commonwealth.

The Committee observes that Amendment 2 may have been unrelated to the Bill's purpose as introduced.

The Committee also observes that the effect of Amendment 2 may be to exclude non-citizens holding temporary visas (and who are not entitled to be granted a permanent visa) from being employed as a Chief or Deputy Commissioner of Victoria Police in a permanent or acting capacity.

Charter analysis

The Statement of Compatibility did not discuss new Division 4 of Part 5 (as that Division was not part of the Bill when it was introduced in either house.)

The Committee's *Practice Note*³³ states:

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

The Committee observes that Charter sub-s. 18(2) provides:

Every eligible person has the right, and is to have the opportunity, without discrimination—...

(b) to have access, on general terms of equality, to the Victorian public service and public office.

'Discrimination' includes discrimination on the basis of 'nationality'.³⁴ 'eligible' is not defined.³⁵

Relevant comparisons

The Committee notes that regulation 6 of the *Victoria Police Regulations 2024* provides:³⁶

(1) ...the criteria for appointment as a police officer are that—...

(b) the person is a citizen or permanent resident of Australia or entitled to that status under Commonwealth law, or is a New Zealand citizen who has a special category visa or is entitled to be granted a special category visa under the *Migration Act 1958* of the Commonwealth.

(2) Subregulation (1)(b) and (d) do not apply to a person who has the special qualifications or required expertise to perform in a specialist area.

The Committee also notes that other Australian statutory provisions on qualifications for appointments of police officers provide:

- federally, that '[t]he Commissioner must not engage, as an AFP employee, a person who is not an Australian citizen, unless the Commissioner considers it appropriate to do so' and that '[t]he Commissioner may, by written determination, specify... qualification requirements' for an AFP employee to be a member of the Australian Federal Police.³⁷
- in New South Wales and Western Australia, in similar terms to reg 6(1).³⁸
- in the Northern Territory and South Australia, for criteria for eligibility to be determined by the Commissioner.³⁹
- in Queensland, appointments must be on 'merit' and 'prevent unjust discrimination'.⁴⁰

The Committee observes that when house amendments were made in the Legislative Council to the Terrorism (Community Protection) and Control of Weapons Amendment Bill 2024 (which added provisions concerning machetes that were not within the scope of that Bill, and also amended

³³ Scrutiny of Acts and Regulations Committee, *Practice Note* [26 May 2014] – reissued 21 June 2016 with further amendments, B, available at <<https://www.parliament.vic.gov.au/practicenote>>.

³⁴ Charter s. 3(1); *Equal Opportunity Act 2010*, ss. 4(1) ('race', para (c)) & 6(m).

³⁵ The Explanatory Memorandum for the Bill for the Charter Act explained: 'This clause is modelled on article 25 of the *International Covenant on Civil and Political Rights*. Article 25 relevantly states: 'Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions... (c) To have access, on general terms of equality, to public service in his country.'

³⁶ *Victoria Police Regulations 2024*, reg 6.

³⁷ *Australian Federal Police Act 1979* (Cth), ss. 24 & 40C.

³⁸ *Police Act 1990* (NSW), s. 94; *Police Force Regulations 1979* (WA), reg 503(a).

³⁹ *Police Administration Act 1978* (NT), s. 15B; *Police Regulations 2014* (SA), reg 8. See also *Police Services Act 2003* (Tas), s. 7.

⁴⁰ *Police Service Administration Act 1990* (Qld), s. 5.2. See <<https://www.policerecruit.qld.gov.au/international-police-recruitment>>.

provisions relating to weapons searches), the Minister who moved those amendments tabled a supplementary statement of compatibility.

Conclusion

The Committee will write to the Attorney-General seeking further information as to whether, and if so how, new Division 4 of Part 5 is compatible with human rights, including the Charter right of eligible persons to have access, without discrimination and on general terms of equality, to the Victorian public service and public office.

Retirement Villages Amendment Act 2025

Member	Hon Gabrielle Williams MP	Introduction Date	27 November 2024
Portfolio	Consumer Affairs	Second Reading Date	28 November 2024
		Royal Assent	3 June 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*⁴¹ tabled on 4 February 2025.

The Committee now provides a further report on the amendments made by the Legislative Council. The amendments were made by the Legislative Council on 27 May 2025. The Legislative Assembly agreed to the amendments on 28 May 2025.

Summary

The house amendments altered or inserted provisions that will amend the *Retirement Villages Act 1986* (RV Act). The house amendments:

- provide for the meaning of vacant possession
- provide for the provision of insurance information relating to residential villages
- provide for a cooling-off period for contracts for residential villages
- alter the quorum for meetings of residents
- prohibit by-laws unreasonably limiting the keeping of animals on residents' premises
- prohibit maintenance and optional services charges after the death of a resident
- provide for certain consequential and transitional matters

Preliminary

Section 2 is the commencement section. All of the Bill, including the provisions altered or inserted by the house amendments, will commence on 1 May 2026, or an earlier day proclaimed.

Vacant possession

Amendment 3 adds a provision to the RV Act. Note the remarks of the Minister in the Legislative Assembly:

This amendment will clarify that a resident or their estate delivers vacant possession when they have given notice, they no longer occupy the unit, they remove all personal property and they return the keys to the unit. This will ensure both residents and operators understand when the exit entitlement repayment period begins and certain fees can no longer be charged to the resident.

It provides that a reference in the RV Act to giving up or delivering vacant possession of (including permanently vacating) premises occupied by a resident in a retirement village is a reference to the

⁴¹ See *Alert Digest No 1 of 2025*, Retirement Villages Amendment Bill 2024, pp 24-27 <<https://www.parliament.vic.gov.au/49c1f4/globalassets/committee-publication-record-documents/committee-36/publication-339/alert-digest-no-1-of-2025.pdf>>.

point in time after specified events have occurred, and provides that this provision is not intended to limit the common law meaning of vacant possession [7].

Insurance information

Amendments 4, 6 and 7 amend the substituted Part 4 of the RV Act. Note the remarks of the Minister in the Legislative Assembly:

[A] key focus of these reforms is to support residents to make informed decisions about entering and living in a retirement village by making important information easier to access and to understand. This amendment will go further by requiring retirement village operators to disclose information about insurance arrangements protecting the retirement village. Operators will be required to disclose insurance information to prospective residents in the information statement and to all residents as part of their annual contract check.

They provide that the information statements for retirement villages, and the information given in a contract check for a resident of a retirement village, must include 'the prescribed information about or relating to all insurance arrangements that are in place in relation to the retirement village', including details of policies and funds set aside for insurance against damage [19].

Cooling-off period

Amendment 8 amends the substituted Part 4 of the RV Act. Note the remarks of the Minister in the Legislative Assembly:

Residents should be able to take time to decide whether retirement village living is right for them. This amendment will provide non-owner residents with more time to make those important decisions by extending the cooling-off period from three to seven business days. If residents change their mind about entering a village during the cooling-off period, they can cancel their contract and get their money back.

It permits a person who signs a residence contract to become a resident in a retirement village to rescind the contract within 7 business days of signing it [19].

Quorum for meetings of residents

Amendment 13 amends the substituted Division 1 of Part 6 of the RV Act. Note the remarks of the Minister in the Legislative Assembly:

The bill introduces a quorum requirement to ensure that important decisions cannot be made without resident participation, such as increasing maintenance charges, paying a special levy and varying services provided in the village. This amendment will strike the balance between supporting residents' participation and ensuring that quorums for residents meetings are workable.

It provides that the quorum for a meeting of residents is 50% of residents (for a village with fewer than 20 residents), 10 residents (for a village with between 20 and 40 residents) and 25% of residents (for a village with 40 or more residents) [36].

Animals

Amendment 15 amends a substituted provision of the RV Act. Note the remarks of the member who introduced the amendment in the Legislative Council:

This amendment seeks to prohibit retirement villages from creating rules which unreasonably limit the keeping of companion animals by their residents. As it stands, elderly Victorians can be told they must give up their beloved pet in order to access housing and care in a retirement village. While many retirement villages do allow new residents to move in with an existing pet, there are still widespread restrictions when it comes to obtaining a new pet or replacing a pet that has passed away. These limitations can be deeply distressing, particularly for older residents who rely on the companionship,

routine and emotional support that animals provide us. It is important that retirement villages retain the ability to implement reasonable rules around pet ownership and behaviour, and this amendment does not seek to change or undermine that. What it does seek to do is put an end to the restrictive and often unnecessary rules that prevent residents from keeping pets in their homes, often imposed as a matter of policy or convenience. These blanket bans or arbitrary limitations fail to consider individual circumstances and can have a significant impact on the wellbeing of residents. This amendment aims to strike a fair balance by allowing villages to manage legitimate concerns while ensuring residents are not unfairly denied the companionship and comfort that their pets provide.

It provides that a by-law of a residential village must not unreasonably limit the keeping of any animal (other than an assistance dog⁴²) on the resident's premises [43].

Maintenance charges and optional services

Amendments 17, 20 and 23 amend substituted provisions of the RV Act. Note the remarks of the Minister in the Legislative Assembly:

Commonly the granting of probate or administration can take several weeks to finalise. It is not fair that fees and charges continue to accrue during this time. This amendment will clarify that operators cannot continue to levy maintenance charges against the resident's estate for any period after they have died.

They provide that a resident is not liable for maintenance charges between the resident's death and the delivery of vacant possession, and make it an offence to purport to charge such a maintenance charge [46]. They provide that it is an offence to charge for optional services after a resident's death [48].

Consequential and transitional

Amendments 27 and 28 amend provisions that amend the RV Act. They provide that a reference in another Act to a 'residential right' under the Act is a reference to a 'right to occupy premises' (as now defined in section 6) and disapply some divisions⁴³ in substituted Part 4 ('Contracts and related matters') and apply previous provisions⁴⁴ to current occupants of retirement villages [66].

Comments under the PCA

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

Charter Issues

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

⁴² 'assistance dog means a dog that is trained to perform tasks or functions that assist a person with a disability to alleviate the effects of his or her disability'. The Committee notes that sub-section 54(1) of the *Equal Opportunity Act 2010* provides: 'A person must not refuse to provide accommodation to a person with a disability because that person has an assistance dog.'

⁴³ Divisions 2 ('requirements for contracts'), 3 ('Particular contract provisions'), 5 ('Entry payments') and 6 ('Miscellaneous matters').

⁴⁴ Sections 18 ('Application of the Australian Consumer Law and Fair Trading Act 2012'), 18A ('Provision of factsheet'), 18B ('Inspection of documents relating to retirement village'), 20 ('Resident to be given certain information'), 21 ('Inspection of documents'), 21A ('Offence not to use a contract that complies with the regulations'), 21B ('Further matters relating to contracts'), 22 ('Rescission'), 23 ('Court may excuse inadvertent contraventions'), 24 ('Cooling-off period'), 25 ('In-going contributions to be held in trust') & 26 ('Refund of in-going contribution').

Ministerial Correspondence

The Committee received responses from the Attorney-General and member in relation to the Act and Bills listed below.

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

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

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

Justice Legislation Amendment (Miscellaneous) Bill 2025

Wrongs Amendment (Vicarious Liability) Bill 2025



The Hon. Sonya Kilkenny MP

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Our ref: 25052481

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

By email: sarc@parliament.vic.gov.au

Dear Mr Maas

I refer to your letter of 13 May 2025, enclosing an extract from Alert Digest No. 6 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) Act 2025* (Act) [House Amendments]. As the Minister responsible for the Act, I am pleased to provide the following information in response to the Committee's queries.

Are Director of Public Prosecutions (DPP) decisions under section 195Q of the *Crimes Act 1958* subject to judicial review?

The Committee has sought further information as to whether a court could review a decision by the DPP under section 195Q of the *Crimes Act 1958* to prosecute a serious vilification offence, on the ground that the Director did not take all of the circumstances surrounding the alleged offending conduct into account.

The DPP is required under their Prosecution Policy to take into account all relevant matters when deciding whether to prosecute a matter.

It is my understanding that whether a court could review any future DPP decisions on the grounds stated above is a matter for the common law. I note the High Court authorities, including *Maxwell v The Queen* (1996) 184 CLR 501, which you have highlighted in your letter.

Is sub-section 195Q(2) compatible with the *Charter of Human Rights and Responsibilities Act 2006* (Charter) right to equality before the law?

The Committee has sought further information as to whether section 195Q(2) is compatible with the Charter section 8 right to recognition and equality before the law, to the extent that it requires the DPP to consider all circumstances surrounding the alleged offending conduct, including the social, cultural and historical circumstances.

The reforms in the Act have been developed to carefully balance rights under the Charter, including the right to equality before the law and the section 18 right to equal participation in public life. Any limit this Act places on the section 8(3) right to equal protection of the law without discrimination is reasonably and demonstrably justified under section 7(2) of the Charter, because the purpose of the limitation is to ensure the reforms are not used in a way that disproportionately impacts people and groups who are currently over-represented in our justice system. Ensuring that social, cultural and historical circumstances are considered promotes equality.

For these reasons, I consider that new section 195Q(2) is compatible with the Charter right to equality.

I note that some other Australian jurisdictions' Prosecution Policies provide exceptions for special considerations, which you have highlighted. The new serious vilification criminal offences will not commence until 20 September 2025. The DPP, as an independent office holder, may take this opportunity to consider whether any amendments are required to their Prosecution Policy.

I hope this information is of use to the Committee.

Yours sincerely



Sonya Kilkeny
Attorney-General

Date: 1/4/2025



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Dear Mr Maas

I refer to your letter of 13 May 2025 on behalf of the Scrutiny of Acts and Regulations Committee (the Committee), enclosing an extract from the Alert Digest No. 6 of 2025, tabled in Parliament that same day. I understand that the Committee has several queries on the proposed reforms to section 180 of the *Crimes Act 1958* (Crimes Act) in the Justice Legislation Amendment (Miscellaneous) Bill 2025, which is currently before Parliament. As the Minister responsible for the Bill, I am pleased to provide the following information in response to the Committee's queries.

Application of section 186 of the Crimes Act to new section 180

Section 186(1) provides that valuable consideration that is customary in any trade or calling is not a defence to any offence under the subdivision, which includes an offence under section 180. The offences in new section 180 will only capture conduct done for a dishonest or otherwise corrupt purpose, and with the requisite intent or knowledge. This has the effect of protecting routine, good faith transactions, as a prosecution would presumably not be brought in the absence of evidence that conduct was done for a dishonest or otherwise corrupt purpose. Therefore, the absence of a defence that valuable consideration is customary does not trespass on an accused's rights.

Section 186(2) shifts the onus of proof to the accused in certain circumstances, where the prosecution has established beyond reasonable doubt¹ –

- that valuable consideration had been given to an agent

¹ See *R v Jamieson* [1988] VR 879.

- that the giving was by a person having business relations with the principal, and
- that the giving was without the assent of the principal.

The terms ‘agent’, ‘principal’, and ‘person having business relations with the principal’ are defined in section 175 and mostly appear in the offences in sections 176 to 178. Current section 180 and new section 180 do not use these terms. Section 180 does not appear to encompass the type of business relationships and assent described by section 186.

The government is focused on delivering these reforms in a timely manner to provide certainty and confidence to affected industries. The Bill responds to recent Supreme Court interpretations of section 180 of the Crimes Act, and the reported impacts of those decisions on the banking, financial and superannuation sectors. No concerns were raised by stakeholders on the operation of section 186 in relation to section 180, and any application of section 186 to new section 180 will be a matter for judicial interpretation.

Application of new section 640(3) in criminal proceedings, including the onus of proof and the relevance of a mistake by the accused

The transitional arrangement in new section 640(3) provides that conduct engaged in before commencement of the Bill does not contravene new section 180 if the conduct was assented to by beneficiaries to a trust or the Supreme Court pursuant to current section 180. It will be a matter for judicial interpretation as to whether the prosecution or defence bears the onus of proof in relation to section 640(3).

It would also be a matter for the court as to whether section 640(3) applies to a mistaken belief that assent was given.

A prosecution under section 180 would presumably only proceed if there was evidence that the accused acted for a dishonest or otherwise corrupt purpose and with the requisite intent or knowledge. The scenario of an honest mistake by the accused in this context is far-fetched to say the least. A mistaken belief that assent was given is highly unlikely in any context. For example, Supreme Court decisions are published, including court decisions on applications for assent under section 180, as was the case in the recent Victorian Supreme Court decisions on section 180.²

Alternatives to retrospective application of new section 180

Clause 4 of the Bill is a transitional provision on retrospective application of new section 180. The intention of the retrospective application is to narrow the scope of conduct that is criminalised, by requiring the conduct to be done for a dishonest or otherwise corrupt purpose and with the requisite intent or knowledge. Prior conduct done in good faith, such as routine transactions to facilitate the replacement of a trustee, would not attract criminal liability, because there is no dishonest or otherwise corrupt purpose. The new offences will not criminalise prior conduct that current section 180 would not capture.

² See *Diversa Trustees Ltd in its capacity as Trustee for the Future Super Fund* [2023] VSC 279 (‘Diversa’); *Re Guild Trustee Services Pty Ltd (in its capacity as trustee for the Guild Retirement Fund)* [2023] VSC 629 (‘Guild’).

New section 180 omits current section 180's requirement that the alleged conduct occur without the assent of the beneficiaries or the Supreme Court because it is unnecessary, as neither beneficiaries nor the Court would knowingly assent to dishonest or otherwise corrupt conduct.

The Committee has suggested that – in lieu of retrospective application of new section 180 – the Bill could expressly provide that a person may not be found guilty under current section 180 unless the prosecution proves beyond reasonable doubt that the accused's conduct was committed for a dishonest or otherwise corrupt purpose. However, this would require the prosecution to apply the new mental element to current section 180, which is difficult to understand and includes a convoluted range of conduct involving multiple actors under one overarching offence.

The Committee's suggested approach would not address the subtle differences between the offences in new section 180, particularly on requisite intent or knowledge. For example, the offence in new section 180(1) prohibits a person from dishonestly or otherwise corruptly offering or giving valuable consideration to a trustee, with the intent of inducing the trustee to appoint a person in the trustee's place. What the prosecution must prove here is different to, for example, an offence by a former trustee against new section 180(5), which requires the valuable consideration to have been given to a former trustee for a dishonest or otherwise corrupt purpose as a reward for the appointment of a replacement trustee, and the former trustee knowing or believing that the consideration was given for that purpose and intent.

The clause 4 approach was considered the most effective drafting method to achieve the purpose and intent of the reforms. Applying new section 180 retrospectively is a clear and easy to understand approach that steps out exactly what the prosecution must prove and provides legal certainty to trustees and other persons.

Interaction with section 114(1) of the *Sentencing Act 1991*

Clause 3 of the Bill has the effect of repealing current section 180 and replacing it with five new offences that narrow the ambit of the existing provision. As the Committee notes, this has involved substantial redrafting to clarify the application and intent of the offences, including renaming the provision, separating conduct into distinct offences, and specifying a mental element for each of these offences.

In the unlikely event that a person is convicted of a historic section 180 offence (in relation to conduct that occurred before commencement of new section 180), the court will have discretion to consider the appropriate penalty (taking into account the maximum prescribed by new section 180). Depending on when the conduct occurred, this may include a consideration of the penalty matter raised by the Committee.

Any amendments to the penalties at a more general level would be more appropriately addressed in a future review of all secret commission prohibitions in Division 2, Part 1 of the Act. This Bill focuses on the immediate issues with the trustee secret commission offence in section 180.

Compatibility with the *Charter of Human Rights and Responsibilities Act 2006*

As the Committee notes, section 27(1) of the Charter provides that 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. I note that any conduct that would lead to criminal liability under new section 180, if engaged in prior to the commencement of new section 180, would have been conduct that was a criminal offence at the time (under current section 180).

The significance of the timeframe for the retrospective application of new section 180 (for the period 1 April 1959, up until commencement of new section 180), is that this is the period the Crimes Act has been in force. This approach was taken for completeness and to ensure clarity of the law, despite the extreme unlikelihood of any historical prosecutions. It was considered unnecessary to retrospectively apply the new provision to previous iterations of the Crimes Act and the *Secret Commissions Prohibition Act 1905*, given the even more remote likelihood of a prosecution for conduct that occurred more than 66 years ago.

The government is not aware of any convictions under section 180 since its consolidation and commencement in the Crimes Act on 1 April 1959. Recognising that the conduct captured by the new offences is considerably narrower than current section 180, the prospect of any prosecution or conviction for conduct prior to commencement is highly unlikely. And as noted above, any such conduct would have been criminal at the time it was engaged in.

Section 27(1) of the Charter

The Committee notes that the Statement of Compatibility does not address 'how' clause 4 does not limit section 27 of the Charter, and implications arising from the differences in mental elements between new section 180 and current section 180.

Clause 4 does not limit section 27(1) of the Charter because new section 180 does not expand the conduct captured by current section 180, but rather narrows it. As mentioned above, the five new offences will not criminalise prior conduct that current section 180 would not capture. The Bill narrows the scope of conduct that is criminalised to only conduct done for a dishonest or otherwise corrupt purpose and with the requisite intent or knowledge. This may be compared with current section 180, which, according to recent Supreme Court decisions,³ captures conduct done with simply an intent to offer, give, solicit or receive a benefit without assent, as an inducement or reward for the trustee's replacement. The Court held that a corrupt purpose is not required for the offence to be made out. Therefore, the reforms may be said to have the effect of decriminalising prior good faith conduct.

³ See *Diversa* (n 2); *Guild* (n 2).

Section 27(2) of the Charter

The Committee notes section 27(2) of the Charter on the retrospective application of penalties under new section 180, and the differences in penalties in earlier versions of section 180.

As the Committee notes, the current imprisonment level for section 180 has been in place since 1988, when the offence was amended by the *Crimes (Computers) Act 1988*. The current fine level has been in place since the Sentencing Act commenced. I acknowledge that it is significantly higher than the applicable penalty prior to the enactment of the Sentencing Act. As mentioned above, the government is not aware of any convictions during this period, or prior to 1988 for that matter. I also note that the original provision of the Crimes Act, when enacted, specified a pecuniary penalty in pounds currency, which was later changed to Australian currency by the *Decimal Currency Act 1965*.

As noted above, these reforms narrow the offence in current section 180, have the effect of decriminalising past good faith conduct, and provide much needed clarity and understanding on the application of section 180. I am confident that the likelihood of a successful historic prosecution that would otherwise attract a lower maximum penalty is highly unlikely. Were there to be such a prosecution, although a sentencing judge must have regard to the new maximum penalty, judicial discretion is of course preserved in relation to the appropriate penalty to apply.

To the extent that there is any limitation of section 27(2) of the Charter, such limitation is reasonable and justified under section 7(2) by the purpose of these reforms, the legal clarity they provide, and the practical benefit they will bring to affected industries.

Other matters identified by the Committee on retrospectivity

The Committee notes several other potential detriments that may follow from a finding of guilt for an offence involving the new mental element under new section 180 that may not arise under current section 180. I address these in the order raised by the Committee –

- I have addressed the Committee's concern on mistaken belief as to assent earlier in this letter (page 2).
- New section 180(5) requires that the former trustee had knowledge or a belief of the other person's state of mind in giving the valuable consideration. This is a very high threshold. It would be highly unusual for a former trustee to accept receipt of valuable consideration knowing or believing that it is being given for a dishonest or otherwise corrupt purpose and as a reward for an appointment made by that trustee. In the case of innocent or unknowing receipt, I am satisfied that prosecutorial discretion and judicial discretion is sufficient to address the scenario raised by the Committee.
- I have addressed the Committee's concern on differing penalties earlier in this letter.
- I note that other identified potential detriments, such as aggravated sentencing, are unlikely to raise issues. The reforms will restore the original intent of the provision

when first introduced in the *Secret Commissions Prohibition Act 1905*. Despite new section 180 altering the title of the provision, it is clear from the then Attorney-General's second reading of the 1905 Bill in the Legislative Council, that the Bill 'was not intended to in any way prevent honest commissions being given or taken, but it was for the purpose of preventing a commission being given or obtained for the purpose of inducing a person to do something dishonest which otherwise he would not do.'

The section 180 reforms were designed to remove the ongoing risk of criminal liability for prior routine, good faith conduct, and the legal uncertainty this places on trustees and other persons, including insurers. Industry and legal stakeholders consulted during drafting were overwhelmingly supportive of the drafting approach taken, including on retrospectivity. Indeed, it was this group of stakeholders that brought the problem to my attention in the first place, calling for urgent retrospective reforms.

These reforms address real concerns whilst ensuring that persons that engaged in prior conduct for a dishonest or otherwise corrupt purpose, and with the requisite intent or knowledge, may still be held accountable for their wrongful and improper conduct. Without these reforms, affected stakeholders will have no alternative but to seek the Supreme Court's assent to avoid potential criminal liability, which is costly, causes delays, and adds to the Supreme Court's workload.

For these reasons I am satisfied that clause 3 and clause 4 of the Bill are compatible with the Charter.

I hope this information is of use to the Committee.

Yours sincerely



Sonya Kilkenny
Attorney-General

Date: 29/5/2025



3 June 2025

Mr Gary Mass MP
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament of Victoria

By email: sarc@parliament.vic.gov.au

Dear Chairperson

Wrongs Amendment (Vicarious Liability) Bill 2025

Thank you for your letter of 13 May 2025 in relation to queries adopted in Alert Digest No. 6 of 2025. In response, I confirm the following:

Regulations made under new section 93G altering the operation of new section 93B may apply retrospectively.

Nothing in clause 4 is incompatible with the Charter right of abuse victims to equal protection of the law without discrimination on the ground of age. Clause 4 supports the right of protection of children under section 17(2) of the Charter and acknowledges institutional responses to child sexual abuse.

Nothing in clause 4 is incompatible with the charter right of employers (who are individuals or groups of individuals) to not be deprived of property other than in accordance with law. The relevant organisation must have placed the employee in a role which supplies the occasion for the perpetration of abuse. Any deprivation of property will be in accordance with the law and not arbitrary.

I trust this information is of assistance to the Committee.

Sincerely

A handwritten signature in black ink, appearing to be 'Rachel Payne', written in a cursive style.

Rachel Payne MP

Appendix 1

Index of Bills and Subordinate Legislation in 2025

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Bail Amendment Act 2025	5
Building Legislation Amendment (Buyer Protections) Bill 2025	4
Constitution Amendment (Abortion) Bill 2024	2, 4
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Appendix 2

Committee Comments classified by Terms of Reference

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

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Section 17(a)

(i) trespasses unduly upon rights or freedoms

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Tobacco Amendment (Tobacco Retailer and Wholesaler Licensing Scheme) Bill 2024	16 of 2024, 1
Voluntary Assisted Dying Amendment (Equity and Access) Bill 2024	4

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

Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025 [House Amendments]	6, 8
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(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
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(vi) inappropriately delegates legislative power

Financial Management Legislation Amendment Bill 2025	8
Wage Theft Amendment Bill 2025	6
Wrongs Amendment (Vicarious Liability) Bill 2025	6, 8

(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

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

Consumer and Planning Legislation Amendment (Housing Statement Reform) Bill 2024	1, 4
Corrections Legislation Amendment Bill 2025	7
Energy and Land Legislation Amendment (Energy Safety) Act 2025 [House Amendments]	7
Family Violence Protection Amendment Act 2025	5, 6
Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025 [House Amendments]	6, 8
Justice Legislation Amendment (Anti-vilification and Social Cohesion) Bill 2024 [House Amendments]	3, 6
Justice Legislation Amendment (Miscellaneous) Bill 2025	6, 8
Justice Legislation Amendment (Miscellaneous) Bill 2025 [House Amendments]	8
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 Acts Amendment Bill 2025	8
State Taxation Further Amendment Bill 2024	15 of 2024
Terrorism (Community Protection) and Control of Weapons Amendment Act 2025	5, 7
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, 8

Appendix 3

Table of Ministerial Correspondence

Table of correspondence between the Committee and Ministers or Members

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

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

Bill Title	Minister/ Member	Date of Committee Letter / Minister's Response	Alert Digest No. Issue raised / Response Published
Terrorism (Community Protection) and Control of Weapons Amendment Act 2025	Police	01-04-25 25-05-25	5 of 2025 7 of 2025
Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025 [House Amendments]	Attorney-General	13-05-25 01-06-25	6 of 2025 8 of 2025
Justice Legislation Amendment (Miscellaneous) Bill 2025	Attorney-General	13-05-25 29-05-25	6 of 2025 8 of 2025
Wage Theft Amendment Bill 2025	Industrial Relations	13-05-25	6 of 2025
Wrongs Amendment (Vicarious Liability) Bill 2025	Rachel Payne MP	13-05-25 03-06-25	6 of 2025 8 of 2025
Corrections Legislation Amendment Bill 2025	Corrections	28-05-25	7 of 2025
Energy and Land Legislation Amendment (Energy Safety) Act 2025 [House Amendments]	Energy and Resources	28-05-25	7 of 2025
Financial Management Legislation Amendment Bill 2025	Finance		8 of 2025
State Taxation Acts Amendment Bill 2025	Treasurer		8 of 2025
Justice Legislation Amendment (Miscellaneous) Bill 2025 [House Amendments]	Attorney-General		8 of 2025