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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 2018 one penalty unit equals \$158.57)

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

'VCAT' refers to the Victorian Civil and Administrative Tribunal

[] denotes clause numbers in a Bill

Alert Digest No. 7 of 2019

Appropriation (2019-2020) Bill 2019

Bill Information

Member	Hon Tim Pallas MP	Introduction Date	27 May 2019
Portfolio	Treasurer	Second Reading Date	27 May 2019

Summary

The Bill provides appropriation authority for payments from the Consolidated Fund for the ordinary annual services of the Government for the 2019/2020 financial year.

Comments under the PCA

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

Charter Issues

The Appropriation (2019-2020) Bill 2019 is compatible with the rights set out in the *Charter of Human Rights and Responsibilities Act 2006*.

Appropriation (Parliament 2019-2020) Bill 2019

Bill Information

Member	Hon Tim Pallas MP	Introduction Date	27 May 2019
Portfolio	Treasurer	Second Reading Date	27 May 2019

Summary

The Bill provides appropriation authority for payments from the Consolidated Fund to the Parliament for the 2019/2020 financial year.

Comments under the PCA

The Committee makes no comment with respect to its terms of reference under the *Parliamentary Committees Act 2003*.

Charter Issues

The Appropriation (Parliament 2019-2020) Bill 2019 is compatible with the rights set out in the *Charter of Human Rights and Responsibilities Act 2006*.

State Taxation Acts Amendment Bill 2019

Bill Information

Member	Hon Tim Pallas MP	Introduction Date	27 May 2019
Portfolio	Treasurer	Second Reading Date	28 May 2019

Summary

The Bill makes a number of amendments to the *Duties Act 2000*, the *Land Tax Act 2005*, the *Payroll Tax Act 2007* and the *Valuation of Land Act 1960*. In particular the Bill:-

- Increases the foreign purchaser additional duty rate from 7% to 8% from 1 July 2019;
- Increases the motor vehicle duty rate for vehicles valued at above \$100,000 and provides a concessional duty rate for green cars and primary producer passenger cars¹;[16,17]
- Introduces a land transfer duty concession for commercial and industrial properties in regional Victoria.[32] Note the concessions will apply to contracts entered into from 1 July 2019 as a ten percent reduction in the duty otherwise payable for an eligible dutiable concession;
- Removes a current restriction so that it will be possible for a unit trust scheme that was a wholesale unit trust scheme to convert to a public unit trust scheme;[3,4]
- Supports the imposition of duty on arrangements where fixtures are acquired independently from the underlying land.² It implements a value threshold that prevents duty from being imposed on the acquisition of fixtures that are less than \$2 million in overall value. It applies where the fixtures are the only dutiable property being acquired under an arrangement. Duty will be phased in between the values of \$2 million and \$3 million. Full duty will apply when the value of the acquired fixtures exceeds \$3 million.[6,7,8] Note the Explanatory Memorandum:- *The new provisions expressly provide that an interest in a fixture is a form of dutiable property... this only applies where the items are created, dealt with or held separately from the underlying land. Where the underlying land is being dealt with, the fixtures will be brought to duty as part of the transfer of the underlying land under the existing provisions of the Duties Act 2000 as is currently the case.*
- Increases the absentee owner surcharge rate from 1.5% to 2% effective from the 2020 tax year;[36-46]
- Amend Part 2 of Chapter 11 of the *Duties Act 2000*, the existing provisions for corporate reconstruction exemptions to facilitate the adoption of economically efficient corporate structures.[21-31] Note the Second Reading Speech:- *This includes removing the current three-year post association requirement which operates as a significant constraint to efficient business structuring.*
- Limits the principal place of residence exemption for contiguous land to land in regional Victoria by removing the land tax exemption for land contiguous to a principal place of residence for land in metropolitan areas.[35] (Note that owners in metropolitan areas have

¹ See the Second Reading Speech: *Primary producers will also benefit from the concessional rate when acquiring passenger vehicles for the purposes of their business. This measure does not impact non-passenger vehicles-in particular, utes, dual cabs, panel vans, motor cycles and heavy vehicles – which already pay a reduced rate of motor vehicle duty compared to passenger vehicles.*

² Note new section 10(3) defines fixture to mean anything that constitutes a fixture at law or any other items fixed to land including tenant's fixtures. The Explanatory memorandum comments: - *The reference to 'any other items fixed to land' ensures all items currently fixed to land are captured, irrespective of whether the item is technically not a common law fixture, because, for example, it can be severed and moved from the land sometime in the future.*

the option of consolidating titles with their principal place of residence so that an exemption can apply to the consolidated area.)

- Extends the exemption for wages paid or payable to employees on maternity or adoption leave to all types of parental leave;
- Increases the payroll tax free annual threshold amount to \$675,000 from 1 July 2021 and to \$700,000 from 1 July 2022;
- Decreases the payroll tax rate for regional employers to 2.02% from 1 July 2020, to 1.62% from 1 July 2021 and to 1.2125% from 1 July 2022 while expanding the range of eligible regional employers;
- Remakes and amends the existing duty provisions regarding the acquisition of economic entitlements³ that form part of the landholder regime in Part 2 of Chapter 3 in response to the Victorian Supreme Court case of *BPG Caulfield Village Pty Ltd v CSR* [2016] VSC 172. [9-13] Note the comments in the Explanatory Memorandum:- *BPG concerned the economic entitlement provisions in Part 2 of Chapter 3 of the Duties Act 2000 and found, among other things, that an economic entitlement could not be acquired in circumstances where the taxpayer only acquired an economic entitlement to some, but not all, of the land holdings of a landholder. The decision in BPG case meant that matters could easily be arranged to avoid the application of the provisions. For example, quarantining a portion of land from an arrangement, no matter how small, would result in the whole arrangement being outside the scope of the provisions. These amendments address this issue...To achieve this, the economic entitlement provisions in Part 2 of Chapter 3 ...have been repealed and new provisions addressing these arrangements have been inserted into Chapter 2, specifically new Part 4B.*
- Removes the special provisions for calculating the value of land on which a heritage building is situated or where the removal of a heritage building is situated or where removal of a heritage building is prohibited.⁴ [56-59]

Comments under the PCA

Retrospectivity (section 17(a)(i), PCA)

Part 5 of the Bill (clauses 56-59) amends the *Valuation of Land Act* 1960 to remove the special provisions⁵ for calculating the value of land on which a heritage building is situated or where removal of a heritage building is prohibited. The Explanatory Memorandum provides:- *The repeal of section 2(8) and (9) allows the value of heritage affected land (in particular, the site value of the land) to be*

³ See the Second Reading Speech:- *An economic entitlement is an entitlement to participate in the economic benefits of land held by another party: for example, an entitlement to the proceeds of sale, income, or rent of that land... The amendments will make it unnecessary for the economic benefit to relate to all the lands of the landholder for it to be an economic entitlement-rather it will be sufficient if the benefit relates to some of the lands of the landholder (ie: the lands to which the economic entitlement relates.)* See also clause 10 which inserts new Part 4B – Acquisition of economic entitlements in relation to relevant land. See new section 32XC which defines economic entitlement. It includes (a) an arrangement made in relation to relevant land that has an unencumbered value that exceeds \$1,000,000. Pursuant to new section 32XG duty is phased in according to a formula where the unencumbered value of the land exceeds \$1,000,000 but does not exceed \$2,000,000.

⁴ See the Second Reading Speech: - *The Bill responds to the recent Victorian Civil and Administrative Tribunal Decision in ISPT Pty Ltd v Melbourne City Council [2018] VCAT 1647 (known as the 'GPO' case). Disputes over the valuation of heritage registered properties have led to significant litigation costs for the Valuer-General and municipal councils. As the recent GPO case has demonstrated, these disputes have resulted in unrealistic outcomes such as site values of \$1... The Bill... (repeals) the specific assumptions that currently must be made when valuing heritage-listed property. This will enable valuers to determine site values for heritage-registered property taking into account its highest and best use on a consistent basis to all other properties.*

⁵ See sections 2(8) and (9) of the *Valuation of Land Act* 1960.

determined in accordance with the requirements set out in section 5A and other relevant sections of the Valuation of Land Act 1960, taking into account the heritage nature of the land.

Clause 58 inserts new subsection (8) into section 21 of the *Valuation of Land Act 1960* which provides for the process by which objections to valuations of land are determined. New section 21(8) expressly provides that:-

Despite section 14(2) of the *Interpretation of Legislation Act 1984*, on an objection to the site value of any land contained in a general valuation or supplementary valuation as at 1 January 2018 or any later date including an objection on foot at the commencement of this subsection, no account is to be taken of section 2(8) or (9) (as in force at the date of the valuation)—

- (a) by the valuer to whom the objection is referred in determining whether an adjustment in the site value is justified; or
- (b) by the valuer-general in determining whether a recommended adjustment in the site value is correct.

Clause 59 inserts new subsection (3) in section 24 of the *Valuation of Land Act 1960* which limits the grounds of an objector's case on review by VCAT or appeal to the Supreme Court. New section 24(3) expressly provides:-

Despite section 14(2) of the *Interpretation of Legislation Act 1984*, on a review or appeal in relation to the site value of any land contained in a general valuation or supplementary valuation as at 1 January 2018 or any later date, including a review or appeal on foot at the commencement of this subsection, no account is to be taken by VCAT or the Court (as the case requires) of section 2(8) or (9) (as in force at the date of the valuation) in determining the correct site value of the land.

The amendments have a retrospective effect. In any proceeding already on foot, or review or appeal in relation to the site value of any land contained in a general valuation or supplementary valuation as at 1 January 2018 including a review or appeal on foot at the commencement of the new subsections, no account is to be taken by VCAT or the Supreme Court of sections 2(8) or 2(9) (as in force at the date of the valuation) in determining the correct site value of the land.

The Committee notes the comments in the Second Reading Speech:- *This Bill will bring much needed clarity to the valuation of these properties by repealing the specific assumptions that currently must be made when valuing heritage-registered property. This will enable valuers to determine site values for heritage-registered property taking into account its highest and best use on a consistent basis to all other properties. The amendments will ensure that any objections, reviews and appeals to the site values issued for heritage registered properties against the 2018 valuations onwards will be considered in light of the amendments being made by this Bill. This is necessary to ensure consistent treatment of all landowners and to protect the substantial land tax revenue at risk. The Bill does not remove the normal rights of taxpayers to object to site valuations for reason other than those related to the specific heritage valuation provisions being repealed.*

Additional comments addressing the retrospective effect of the amendments are made in the Statement of Compatibility:- *To the extent that the proposed provisions will apply to natural persons who have commenced their objection, review or appeal proceedings to their 2018 revaluation prior to the commencement date, such retrospective operation is necessary to ensure consistent treatment of landowners/taxpayers, and to protect the State's revenue against the risk of significant leakage arising from the inherent ambiguity of the heritage valuation provisions as in force at the time those objection, review or appeal proceedings to the 2018 valuations were lodged.*

The Committee notes the retrospective effect and the Charter Report and will write to the Minister to seek further information.

Charter Issues

Equality – Nationality discrimination – Taxation of foreign purchasers or owners of land

Summary: *The effect of clauses 14, 15 and 36 is to impose increased tax liabilities on some foreign purchasers or owners of land that do not apply to equivalently placed Australian nationals. The Committee will write to the Treasurer seeking further information.*

Relevant provision

The Committee notes that clauses 14 and 15, amending existing ss. 18A & 28A of the *Duties Act 2000*, increase the additional duty payable on dutiable transfers of intended or current residential property where the purchaser or owner (or a controlling interest in a corporate or trust purchaser or owner) is neither an Australian citizen, an eligible New Zealand citizen nor the holder of a visa permitting an indefinite stay in Australia from 3% to 4%.

The Committee also notes that clause 36, amending existing s. 35, increases the additional land tax for land owned by a person who does not ordinarily reside in Australia and who was absent from Australia at the end of (or for six months during) the previous tax year, where the purchaser or owner (or a controlling interest in a corporate or trust purchaser or owner) is neither an Australian citizen, an eligible New Zealand citizen nor the holder of a visa permitting an indefinite stay in Australia, from 1.5% to 2%.

The Committee observes that the effect of clauses 14, 15 and 36 is to impose increased tax liabilities on some foreign purchasers or owners of land that do not apply to equivalently placed Australian nationals.

Charter analysis

The Statement of Compatibility remarks:

It is arguable that simple variations to the tax rate of measures already in force is contemplated and provided for under the existing legislation. On this basis, the amendments to the *Duties Act* and the *Land Tax Act* do not limit the section 8(3) rights of affected natural persons.

If, however, the increased rates and the resultant increase in tax liabilities operates to limit the section 8(3) rights of foreign natural persons and natural person absentees, in my view any limitation on those rights would be reasonable and justified in accordance with section 7(2) of the Charter because rate increases constitute technical amendments that implement the underlying purpose of collecting additional duty and the surcharge.

Such differential treatment of foreign natural persons is central to the policy intent of the additional duty and surcharge measures—which are to improve housing affordability for Victorians and to fund vital infrastructure by increasing the cost of purchasing and holding land for foreign persons in the Victorian residential housing market.

The Committee observes that the Charter's equality rights apply to all tax liabilities, including alterations to existing rates of taxation.

The Committee notes the Charter s. 7(2) provides:

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.

The Committee notes that the Statement of Compatibility, in its discussion of whether or not clauses 14, 15 and 36 reasonably limit the Charter right to equality without discrimination on the basis of nationality, does not expressly address the five factors listed in Charter s. 7(2) and in particular may not have addressed Charter s. 7(2)(a), (d) and (e).

Conclusion

The Committee will write to the Treasurer seeking further information as to whether or not clauses 14, 15 and 36 are reasonable limits on the Charter right of foreign purchasers or owners of Victorian land to equal protection of the law without discrimination on the basis of nationality, in particular taking account the nature of the right to equal protection of the law without discrimination, the relationship between the limitation on that right by clauses 14, 15 and 36 (in particular, the increases of 1% in stamp duty and .5% in land tax) and the purpose set out in the statement of compatibility and whether there is any less restrictive means reasonably available to achieve that purpose.

Fair hearing – Amendments to valuation law – Where objections, reviews or appeals are on foot – Certain rights or privileges already accrued or accrued must not be taken into account

Summary: Clauses 56, 57, 58 and 59 may bar a court or tribunal where proceedings are currently on foot from upholding rights or privileges already acquired or accrued under existing law when the proceedings commenced. The Committee will write to the Treasurer seeking further information.

Relevant provision

The Committee notes that clause 56 repeals existing sub-ss. 2(8) & (9) of the *Valuation of Land Act* 1960. The Explanatory Memorandum explains:

Section 2(8) and (9) effectively require the value of heritage-affected land to be calculated to reflect the continual use of the land and improvements. This constrains the value of heritage-affected land in accordance with the existing improvements on the land and their associated use. The repeal of section 2(8) and (9) allows the value of heritage-affected land (in particular, the site value of the land) to be determined in accordance with the requirements set out in section 5A and other relevant sections of the *Valuation of Land Act* 1960, taking into account the heritage nature of the land.

Clause 57 repeals existing sub-ss. 13DF(2)(g) & 13L(2)(f). The Explanatory Memorandum explains that '[t]he repeal of these provisions is intended to support the repeal of section 2(8) and (9) of the *Valuation of Land Act* 1960 by removing heritage-related events as a basis for carrying out a supplementary valuation.'

The Committee also notes that clauses 58 and 59, inserting new sub-sections 21(8) and 24(3), provides that, on an objection to, or on a review or appeal in relation to, the site value of land in a valuation as at 1 January 2018, 'no account is to be taken' by the valuer, valuer-general, VCAT or a court of existing sub-ss. 2(8) & 2(9). The Explanatory Memorandum explains that clause 58 and 59 apply the effect of clauses 56 and 57 to objections, appeals and reviews 'on foot on or after the commencement of the amendments, where the relevant valuation was carried out before commencement'. Clauses 58 and 59

are expressed to apply 'despite section 14(2) of the *Interpretation of Legislation Act 1984*', which would otherwise preserve 'any right, privilege, obligation or liability acquired, accrued or incurred under that Act or provision' and 'any investigation, legal proceeding or remedy' in respect of those things.

The Committee observes that the combined effect of clauses 56, 57, 58 and 59 may be to bar a court or tribunal where proceedings are currently on foot from upholding rights or privileges already acquired or had accrued under existing ss. 2(8), 2(9), 13DF(2)(g) & 13L(2)(f) when the proceedings commenced.

Charter analysis

The Statement of Compatibility remarks:

To the extent that the amendments affect natural person land owners, and section 24 of the Charter is engaged and limited by these provisions, I am satisfied that any such limit would be demonstrably justified. These amendments have been introduced to prevent anomalous and inequitable outcomes, such as inconsistent valuations for different lands (including \$1 site valuations for commercial property of significant value). Such site values attributed to highly valuable commercial properties results in significant land tax leakage. This is particularly unfair to landowners who cannot challenge site valuations for their commercial properties because the heritage valuation provisions do not apply to their land. It is also not in the public interest for the owners of valuable commercial property to continue exploiting the inherent ambiguity of the heritage valuation provisions to minimise or evade what would otherwise be significant land tax liabilities. Any limit on the right is justified as a revenue protection measure intended to prevent significant tax leakage based on exploitation of ambiguous statutory language. It also ensures all landowners are treated equally before the law.

The Committee notes the Charter s. 7(2) provides:

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.

The Committee notes that the Statement of Compatibility does not expressly address the five factors listed in Charter s. 7(2) and in particular may not have addressed Charter s. 7(2)(a), (c), (d) and (e).

Conclusion

The Committee will write to the Treasurer seeking further information as to whether or not clauses 56, 57, 58 and 59 are reasonable limits on the right of existing litigants in valuation matters to have civil proceedings determined by a court or tribunal after a fair hearing, in particular taking account of the nature of the right to a fair hearing, the nature and extent of the limitation imposed by clauses 56, 57, 58 and 59 (in particular the override of existing s. 14(2) of the *Interpretation of Legislation Act 1984*), the relationship between that limitation and the purpose set out in the statement of compatibility and whether there is any less restrictive means reasonably available to achieve that purpose.

Appendix 1

Index of Bills in 2019

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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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(ii) makes rights, freedoms or obligations dependent upon insufficiently defined administrative powers;

Professional Engineers Registration Bill 2019	4, 5
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(viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities

Audit Amendment Bill 2018	1, 2
Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Bill 2018	1, 2
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Section 17(b)

(i) and (ii) repeals, alters or varies the jurisdiction of the Supreme Court

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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
Audit Amendment Bill 2018	Special Minister of State	05.02.19 14.02.19	1 of 2019 2 of 2019
Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Bill 2018	Special Minister of State	05.02.19 14.02.19	1 of 2019 2 of 2019
Justice Legislation Miscellaneous Amendment Act 2018 (House Amendment)	Attorney-General	05.02.19 27.03.19	1 of 2019 5 of 2019
Spent Convictions Bill 2019	Fiona Patten MP	19.02.19 21.02.19	2 of 2019 3 of 2019
Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Bill 2019	Special Minister of State	19.02.19 01.03.19	2 of 2019 3 of 2019
Open Courts and Other Acts Amendment Bill 2019	Attorney-General	05.03.19 18.03.19	3 of 2019 4 of 2019
West Gate Tunnel (Truck Bans and Traffic Management) Bill 2019	Transport Infrastructure	05.03.19 28.03.19	3 of 2019 5 of 2019
Primary Industries Legislation Amendment Bill 2019	Agriculture Fishing and Boating	19.03.19 19.03.19	4 of 2019 4 of 2019
Professional Engineers Registration Bill 2019	Treasurer	19.03.19 23.04.19	4 of 2019 5 of 2019
Sale of Land Amendment Bill 2019	Consumer Affairs, Gaming and Liquor Regulation	30.04.19 23.05.19	5 of 2019 6 of 2019
State Taxation Acts Amendment Bill 2019	Treasurer	04.06.19	7 of 2019