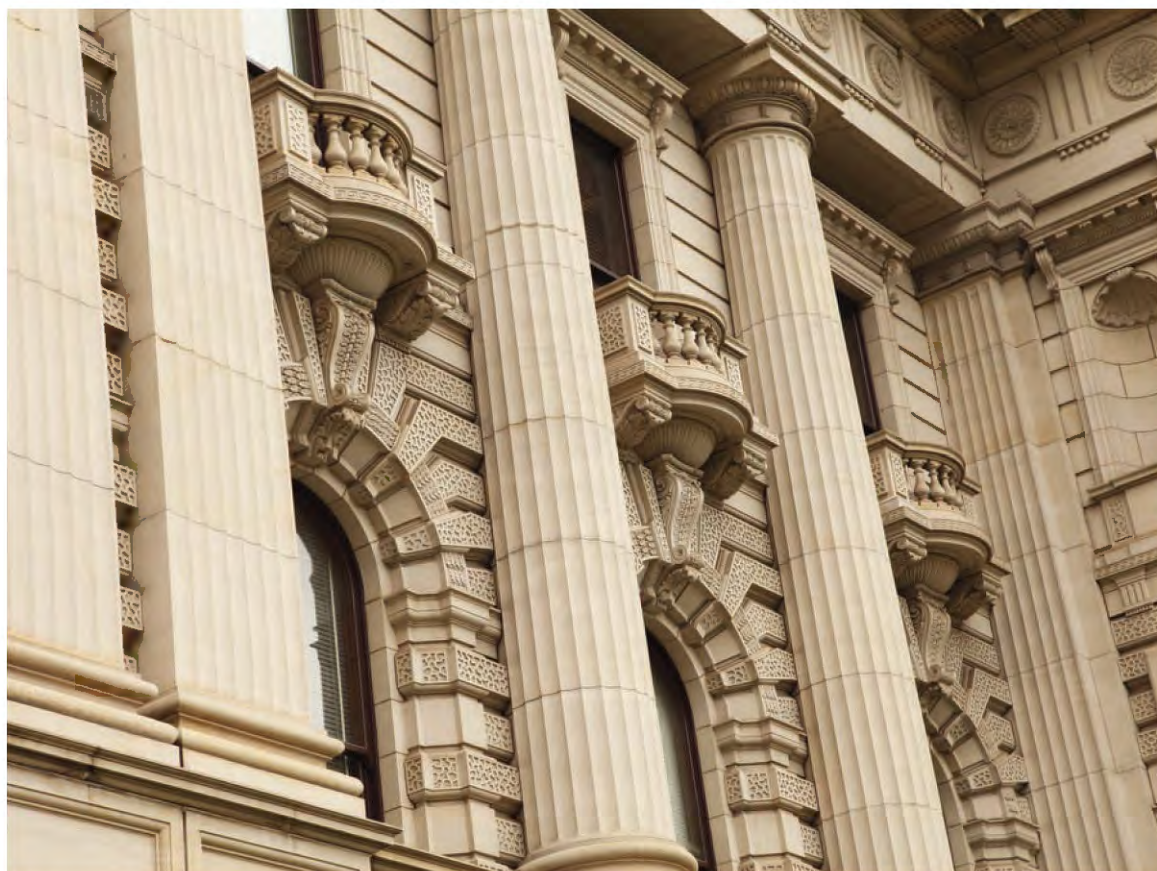




Scrutiny of Acts and Regulations Committee

Annual Review 2025 Statutory Rules and Legislative Instruments

August 2026





Scrutiny of Acts and Regulations Committee

Annual Review 2025 Statutory Rules and Legislative Instruments

Parliament of Victoria, Australia
Scrutiny of Acts and Regulations Committee
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Terms of Reference

The statutory functions of the Scrutiny of Acts and Regulations Committee as set out in section 17 of the *Parliamentary Committees Act 2003* are:—

17. Scrutiny of Acts and Regulations Committee

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 on rights or freedoms;
 - (ii) makes rights, freedoms or obligations dependent on insufficiently defined administrative powers;
 - (iii) makes rights, freedoms or obligations dependent on 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;
- (c) to consider any Act that was not considered under paragraph (a) or (b) when it was a Bill—
 - (i) within 30 days immediately after the first appointment of members of the Committee after the commencement of each Parliament; or
 - (ii) within 10 sitting days after the Act receives Royal Assent—whichever is the later, and to report to the Parliament with respect to that Act or any matter referred to in those paragraphs;
- (d) the functions conferred on the Committee by the *Subordinate Legislation Act 1994*;
- (e) the functions conferred on the Committee by the *Environment Protection Act 2017*;
- (f) the functions conferred on the Committee by the *Co-operative Schemes (Administrative Actions) Act 2001*;
- (fa) the functions conferred on the Committee by the Charter of Human Rights and Responsibilities;
- (g) to review any Act in accordance with the terms of reference under which the Act is referred to the Committee under this Act.

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Chairperson's Foreword

I am pleased to present the Annual Review of the operations of the Regulation Review Subcommittee (the Subcommittee) to the Parliament of Victoria. The report examines major issues arising out of the scrutiny of subordinate legislation during 2025.

I wish to thank the Members of the Subcommittee during the period between 30 April 2025 and 25 March 2026 in which this subordinate legislation was considered: John Pesutto MP (Deputy Chairperson to 4 February 2026), Roma Britnell MP (Deputy Chairperson from 16 February 2026), Eden Foster MP, Rachel Payne MP, and Sheena Watt MP. The Members' commitment enabled the Subcommittee to perform its important scrutiny functions within strict legislative timeframes.

The Subcommittee worked diligently and carefully through the 2025 series. Each statutory rule and legislative instrument was considered in accordance with the requirements of the *Subordinate Legislation Act 1994* and in the context of the *Charter of Human Rights and Responsibilities Act 2006*.

The Subcommittee extends its appreciation to responsible Ministers and departmental officers who provided information and assistance in relation to the 2025 series. The Subcommittee will continue to work collaboratively with Ministers and their Departments to ensure the timely resolution of scrutiny issues.

I acknowledge with gratitude the work of the Subcommittee's secretariat staff through the 2025 statutory rule and legislative instrument series. Alex Kershaw performed the legal scrutiny of the statutory rules and legislative instruments; I thank her for the provision of timely and informative advice. I thank Helen Mason for her contribution, ongoing oversight and guidance. I also thank Sonya Caruana for her efficient administrative support. I thank Simon Dinsbergs for his additional administrative support and Prof. Jeremy Gans for the provision of human rights advice.

The Subcommittee will continue to use its best endeavours to perform its role on behalf of the Parliament.

Gary Maas MP
Chairperson
Regulation Review Subcommittee

August 2026

Chapter 1

Introduction

1.1 Overview

This report examines the major issues arising out of the scrutiny of subordinate legislation in Victoria by the Regulation Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee (Committee). The work outlined in the report was undertaken by the Subcommittee during the 60th Parliament. In particular, the report examines:

- 156 statutory rules in the 2025 Statutory Rules Series (see Chapter 2); and
- 24 legislative instruments published in the Victoria Government Gazette during the 2025 calendar year (see Chapter 3).¹

The 2025 statutory rules and legislative instruments were considered by the Subcommittee during the 60th Parliament in eight meetings held between 30 April 2025 and 25 March 2026.

1.2 Background

The power to enact laws is a fundamental function of the Parliament. However, the Parliament may also delegate legislative power to the Executive. These laws are generally referred to as ‘subordinate legislation’.² Subordinate legislation is intended to cover administrative matters and detail, rather than matters of substantive policy. In this regard, the delegation of legislative powers to the Executive is necessary as it ensures that lawmakers possess appropriate expertise, laws may be quickly changed, and the Parliament is not over-burdened with administrative matters.

The delegation of legislative powers to the Executive is a long-standing and widely accepted feature of Westminster-style parliamentary democracies. While subordinate legislation is sometimes considered to be of lesser importance than primary legislation, it may also control and prohibit the conduct of citizens in much the same way as Acts of Parliament.³ Accordingly, as this mode of law-making is subject to less public debate than an Act of Parliament, subordinate legislation may have significant impacts on personal rights and liberties.

As the Parliament has delegated its power to the Executive, the exercise of this power must also be safeguarded and monitored by the Parliament. Parliamentary scrutiny committees, with power to examine subordinate legislation made by the Executive, are one of the most important safeguards against the misuse of Executive power. Since the 1930s most Westminster-style Parliaments have kept control over subordinate legislation through the use of legislative scrutiny committees. Scrutiny committees exist in all Australian states and territories. Some of these scrutiny committees examine bills and subordinate legislation, while others examine only subordinate legislation.⁴

Parliamentary committees in Victoria have scrutinised subordinate legislation since 1956. From 1982 to 1992 the Legal and Constitutional Committee was responsible for scrutinising subordinate legislation. In 1992, the Committee was created by the *Parliamentary Committees (Amendment) Act 1992*.

¹ The report examines legislative instruments published in the Victorian Government Gazette during the 2025 calendar year. This includes legislative instruments published between 1 January 2025 and 31 December 2025.

² Subordinate legislation is a broad term which refers to laws which are made by a person or body other than the Parliament. This may include a range of different instruments, including regulations, rules, determinations or directions. In the context of the Subcommittee, subordinate legislation is taken to include ‘statutory rules’ and ‘legislative instruments’ as defined in section 3 of the *Subordinate Legislation Act 1994* (Vic). See section 1.4 below for further details about defining these instruments.

³ *Watson v Lee* [1979] 155 CLR 374 at 394.

⁴ Australian jurisdictions which examine both subordinate legislation and bills include the Australian Capital Territory, the Commonwealth, New South Wales, Queensland and Victoria.

1.3 Regulation Review Subcommittee

The Committee is a joint investigatory Committee of the Parliament of Victoria. It has members from the Upper and Lower Houses.

The Subcommittee is responsible for scrutinising subordinate legislation. In particular, the Subcommittee scrutinises statutory rules and legislative instruments as defined in section 3 of the *Subordinate Legislation Act 1994* (SLA). It may also conduct inquiries in relation to statutory rules and legislative instruments.

The Subcommittee's work can be broadly described as technical legislative scrutiny. The Subcommittee does not directly consider the policy merits of subordinate legislation. However, the policy content of an instrument may provide context for the Subcommittee's scrutiny.

1.3.1 Subcommittee Membership

The Committee was formed on 8 February 2023 for the 60th Parliament. The following members served on the Subcommittee for the period between 30 April 2025 and 25 March 2026 in which the 2025 statutory rules series and legislative instruments were considered:

- Gary Maas MP (Chair)
- Roma Britnell MP (Deputy Chair) (from 16 February 2026)
- Eden Foster MP
- Rachel Payne MP
- John Pesutto MP (Deputy Chair) (to 4 February 2026)
- Sheena Watt MP

1.4 Role of the Subcommittee – *Subordinate Legislation Act 1994*

In Victoria, the SLA sets out the procedures for making subordinate legislation and sets out the Subcommittee's powers for scrutinising subordinate legislation. Pursuant to the SLA, the Subcommittee scrutinises:

- statutory rules within the meaning of 'statutory rule' in section 3 of the SLA;
- legislative instruments within the meaning of 'legislative instrument' in section 3 of the SLA; and
- Environment Reference Standards under Part 5.2 of the *Environment Protection Act 2017*.⁵

1.4.1 Scrutiny of statutory rules

Pursuant to section 3 of the SLA, statutory rules are:

- a regulation (other than one made by a local authority or by a person or body with jurisdiction limited to a district or locality, or a local law made under Division 3 of Part 3 of the *Local Government Act 2020*) that has been made by or with the consent or approval of the Governor in Council;
- a rule relating to a court or tribunal or the procedure, practice or costs of a court or tribunal; or
- an instrument or class of instrument that is deemed to be a statutory rule or rules by section 4(1)(a) of the SLA or by the authorising Act.

The Subcommittee scrutinises statutory rules to determine whether they comply with the legislative principles specified in the SLA. These principles require the Subcommittee to ensure that statutory rules do not unduly trespass on rights and freedoms and comply with the procedural and practical requirements of the SLA. As noted above, the Subcommittee does not comment on matters involving policy and its review focuses on the technical criteria contained in the SLA.

⁵ Section 94 of the *Environment Protection Act 2017* (Vic) sets out the application of the *Subordinate Legislation Act 1994* (Vic) to Environment Reference Standards.

Under section 21 of the SLA, the Subcommittee scrutinises statutory rules to ensure they:

- are within the powers of the authorising Act;
- do not, without clear and express authority, have a retrospective effect, impose a tax, fee, fine, imprisonment or other penalty, purport to shift the onus of proof to a person accused of an offence, or provide for the sub-delegation of powers delegated by the authorising Act;
- are consistent with the general objectives of the authorising Act;
- do not make unusual or unexpected use of the powers conferred by the authorising Act having regard to the general objectives of the authorising Act;
- do not contain any matters which should be contained in an Act of Parliament rather than subordinate legislation;
- do not unduly trespass on rights and liberties of the person previously established by law;
- do not make rights and liberties of the person unduly dependent on administrative rather than judicial decisions;
- do not authorise or require any acts or practices which may have an adverse effect on personal privacy within the meaning of the *Privacy and Data Protection Act 2014*;
- do not authorise or require any acts or practices which may have an adverse effect on privacy of health information within the meaning of the *Health Records Act 2001*;
- are consistent with principles of justice and fairness;
- are not incompatible with the human rights set out in the *Charter of Human Rights and Responsibilities Act 2006* (Charter of Human Rights and Responsibilities);
- do not require explanation as to form or intention;
- do not substantially or materially contravene the provisions of the SLA or the *Subordinate Legislation Act 1994 Guidelines* (Guidelines);⁶ and
- are not likely to result in administration and compliance costs which outweigh the benefits sought to be achieved.

The Subcommittee also ensures compliance with the procedural requirements of the SLA, including whether:

- all appropriate certificates have been received by the Subcommittee;
- consultation is adequate and in particular whether appropriate organisations and individuals have been consulted;
- certificates are dated and signed by the responsible Minister;
- certificates contain all the required information;
- the Regulatory Impact Statement (RIS) is adequate;
- the statutory rule is exempted from the requirement to create a RIS under the appropriate category in the SLA and the exemption certificate is adequate;
- there has been compliance with all notice, gazettal and tabling requirements of the SLA.

Detail about the Subcommittee's scrutiny of 2025 statutory rules is set out in Chapter 2.

⁶ *Subordinate Legislation Act 1994 Guidelines* <<https://content.vic.gov.au/sites/default/files/2023-09/Subordinate-Legislation-Act-1994-Guidelines-September-2023.pdf>>.

1.4.2 Scrutiny of legislative instruments

Since 2011, the Subcommittee has scrutinised legislative instruments.⁷ Legislative instruments are instruments that are legislative in character and made under an Act or statutory rule. Legislative instruments may encompass a range of types of instruments, including orders, guidelines, and standards. The Guidelines state that ‘an instrument will generally be considered to have ‘legislative character’ if it contains mandatory requirements with general application to undertake certain action(s), often accompanied by penalties or sanctions for non-compliance’.⁸

The definition of ‘legislative instrument’ in section 3 of the SLA provides examples of instruments that are not legislative instruments, including:

- a statutory rule;
- a local law made under Division 3 of Part 3 of the *Local Government Act 2020*;
- a proclamation of commencement of an Act or any provision of an Act;
- a planning scheme or an amendment to a planning scheme under the *Planning and Environment Act 1987*;
- an instrument of purely administrative character;⁹ or
- a prescribed instrument or prescribed class of instruments.

The power to prescribe an instrument to be a legislative instrument, not to be a legislative instrument, or to be exempt from provisions of the SLA is set out in section 4A of the SLA. Pursuant to section 4A, the *Subordinate Legislation (Legislative Instruments) Regulations 2021* defines prescribed legislative instruments, instruments prescribed not to be legislative instruments and exempt legislative instruments.

The Committee’s power to review legislative instruments is set out in section 25A of the SLA. Under section 25A, the Subcommittee scrutinises legislative instruments to ensure they:

- appear to be within the powers conferred by the authorising Act or the statutory rule under which it is made;
- do not, without clear and express authority being conferred by the authorising Act or the statutory rule under which it is made, have a retrospective effect, impose any tax, fee, fine, imprisonment or other penalty, purport to shift the legal burden of proof to a person accused of an offence, or provide for the sub-delegation of powers delegated by the authorising Act or the statutory rule under which it is made;
- are not incompatible with the human rights set out in the Charter of Human Rights and Responsibilities; and
- do not substantially or materially contravene the provisions of the SLA or the Guidelines.

The Subcommittee also ensures compliance with the procedural requirements of the SLA, such as the preparation of a RIS and tabling within required timeframes.

Detail about the Subcommittee’s scrutiny of 2025 legislative instruments is set out in Chapter 3.

⁷ The Subordinate Legislation Amendment Bill 2010 was introduced in August 2010. Amendments to the SLA came into effect on 1 January and 1 July 2011. The amendments relate to the scrutiny of legislative instruments and specifically inserted a new Part 3 into the Subordinate Legislation Act. The amendments essentially duplicate and extend the arrangements relating to the scrutiny of statutory rules to legislative instruments.

⁸ Guidelines, p. 5.

⁹ Section 3(2) of the SLA provides examples of instruments of purely administrative character, including an instrument of delegation, an evidentiary certificate, or an instrument which has the sole purpose of giving notice of the making of another instrument. The Guidelines provide additional guidance in relation to the threshold decision as to whether an instrument is of a legislative or administrative character.

1.5 Operation of the Subcommittee

1.5.1 Meetings of the Subcommittee

The Subcommittee meets regularly to examine and review subordinate legislation. Meetings of the Subcommittee are not open to the public. However, the Subcommittee may invite members of the public or representatives from various organisations or government departments and agencies to address it at meetings. At the meetings, the Senior Research Officer presents the Subcommittee with written and verbal advice in respect of each statutory rule or legislative instrument. The Subcommittee members discuss each statutory rule and legislative instrument and address any issues or concerns. The Subcommittee assesses whether there has been compliance with the SLA in respect of a statutory rule or legislative instrument.

1.5.2 Reporting to the Parliament

Where the Subcommittee is dissatisfied with any matters or requires clarification, the Subcommittee corresponds with the responsible Minister to highlight its concerns. In the first instance, the Subcommittee will seek an explanation or amendment of the statutory rule or legislative instrument. When its concerns are satisfied and it has concluded its examination of the statutory rule or legislative instrument, the Subcommittee makes a recommendation to the full Committee to publish its correspondence in the *Alert Digest*.¹⁰

If the Subcommittee does not receive a satisfactory explanation, it may prepare a report to Parliament. This report is submitted to all Members of the Committee for formal approval and adoption. The Subcommittee has all the powers and privileges of the full Committee. However, it cannot report directly to Parliament. The Committee may adopt or reject the Subcommittee's report or part of it or make any changes it deems necessary.

A report to Parliament may include a recommendation that a statutory rule or legislative instrument be amended or disallowed in whole or in part. Alternatively, a report provided by way of information to the Parliament may simply outline the Committee's concerns. As a statutory rule or legislative instrument has already commenced operation by the time it is scrutinised by the Subcommittee, the power to recommend disallowance is only used in exceptional circumstances. Generally, such a power would be used where all other efforts to resolve the issue have failed.

Where the Committee decides to report to Parliament it may also recommend that a statutory rule or legislative instrument be suspended whilst Parliament considers the issues contained in the report. Such a course may be undertaken in the interests of justice and fairness. When statutory rules or legislative instruments are suspended in this manner they are deemed not to have been made. People are not required to comply with them during the period of suspension.

1.5.3 Use of the disallowance procedure

Disallowance is the primary procedural mechanism through which the Parliament may exercise control over subordinate legislation. Disallowance has the effect of revoking the statutory rule or legislative instrument.

Pursuant to sections 23 and 25C of the SLA, any Member of either House of Parliament may give notice of a disallowance motion within 18 sitting days of the tabling of the statutory rule or legislative instrument in that House if:

- the authorising Act under which the statutory rule or legislative instrument is made states that it is subject to disallowance; or
- the Committee has tabled a report under section 21 or 25A of the SLA recommending that the statutory rule or legislative instrument be disallowed in whole or in part; or
- there was a failure to comply with section 15(1), 15(1A) or 16B(1) of the SLA and the Committee has reported that failure to each House of the Parliament.

¹⁰ Copies of the Alert Digest are available from the Committee's website at: <<https://www.parliament.vic.gov.au/get-involved/committees/scrutiny-of-acts-and-regulations-committee/publicationssearch>>.

Disallowance motions may relate to a statutory rule or legislative instrument in whole or in part. Disallowance will not be effective until that House passes a disallowance resolution within 12 sitting days of the disallowance notice.

The Committee must also comply with the 18 sitting day requirement if it is to make a report to Parliament recommending disallowance. This means that the Subcommittee must review and consider all statutory rules and legislative instruments within strict time limits.

The Subcommittee did not make any recommendations for disallowance in relation to the 2025 subordinate legislation.

Chapter 2

Review of Statutory Rules in 2025

2.1 Overview

This Chapter provides an overview of the Subcommittee's scrutiny of statutory rules in the 2025 Series, including the key substantive and procedural issues encountered.

The Subcommittee scrutinises statutory rules pursuant to the terms of section 21 of the SLA, which is set out:

- 21 Review of statutory rules by the Scrutiny Committee**
- (1) The Scrutiny Committee may report to each House of the Parliament if the Scrutiny Committee considers that any statutory rule laid before Parliament—
- (a) does not appear to be within the powers conferred by the authorising Act;
 - (b) without clear and express authority being conferred by the authorising Act—
 - (i) has a retrospective effect; or
 - (ii) imposes any tax, fee, fine, imprisonment or other penalty; or
 - (iii) purports to shift the legal burden of proof to a person accused of an offence; or
 - (iv) provides for the sub-delegation of powers delegated by the authorising Act;
 - (c) appears to be inconsistent with the general objectives of the authorising Act;
 - (d) makes unusual or unexpected use of the powers conferred by the authorising Act having regard to the general objectives of that Act;
 - (e) contains any matter or embodies any principles which should properly be dealt with by an Act and not by subordinate legislation;
 - (f) unduly trespasses on rights and liberties of the person previously established by law;
 - (g) makes rights and liberties of the person unduly dependent upon administrative and not upon judicial decisions;
 - (ga) 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*;
 - (gb) 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*;
 - (h) is inconsistent with principles of justice and fairness;
 - (ha) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities;
 - (i) requires explanation as to its form or intention;
 - (j) has been prepared in contravention of any of the provisions of this Act or of the guidelines with respect to the statutory rule and the contravention is of a substantial or material nature;
 - (k) is likely to result in administration and compliance costs which outweigh the likely benefits sought to be achieved by the statutory rule.
- (2) A report of the Scrutiny Committee under this section may contain any recommendations that the Scrutiny Committee considers appropriate, including a recommendation that a statutory rule should be—
- (a) disallowed in whole or in part; or
 - (b) amended as suggested in the report.

Section 21(1) provides the grounds on which the Committee may report to the Parliament, also referred to variously in the literature as 'scrutiny grounds', 'heads of review' or 'grounds for parliamentary review'. The Committee may report to the Parliament if it considers a statutory rule offends any of the criteria set out in paragraphs (a) to (k).

Section 21(2) provides that a report to the Parliament may contain any recommendations the Committee considers appropriate. This may be a recommendation that the statutory rule be disallowed in whole or in part, or a recommendation to amend the statutory rule. However, the permissive wording of subsection (2) makes it clear the Committee's reporting function is not confined solely to making these two types of

recommendations, and the Committee has long considered ‘a report may simply be for the information of the Parliament’.¹¹

2.1.1 History of the grounds for review

As noted in Chapter 1, the scrutiny of statutory rules has been performed in Victoria since 1956. This includes by the Subordinate Legislation Committee until 1982, followed by the Legal and Constitutional Committee until 1992.

The majority of the grounds for the current review of statutory rules under section 21(1) of the SLA, with the exception of paragraphs (ga), (gb) and (ha), were previously in place under section 14(1) of the *Subordinate Legislation Act 1962* as introduced by the *Subordinate Legislation (Review and Revocation) Act 1984*.¹² Several – such as paragraphs (a), (c), (e), (f), (g) and (i) – remake even earlier provisions of the *Subordinate Legislation Committee Act 1956*, *Parliamentary Committees Act 1968* and *Subordinate Legislation Act 1962*.¹³

Substantive and procedural review

Prior to 1 July 1985, the Legal and Constitutional Committee was ‘essentially confined’ to ‘consideration of questions relating to the legality of statutory rules’ according to the terms of the six scrutiny grounds which were then in operation.¹⁴ Its role may broadly be considered to have been substantive as opposed to procedural review.

The amendments introduced by the *Subordinate Legislation (Review and Revocation) Act 1984*, however, significantly expanded the parliamentary committee’s responsibilities, including to expressly require the committee to undertake review of statutory rules for non-compliance with the procedural requirements of the *Subordinate Legislation Act 1962*.¹⁵ What was then ‘new’ section 14(1)(j) of the *Subordinate Legislation Act 1962* directed the committee to consider whether a statutory rule ‘has been prepared in contravention of any of the provisions of this Act or of the guidelines prepared under section 11 and the contravention is of a substantial or material nature’. In subsequent annual reports, the committee generally noted: ‘The procedural review of statutory rules is performed by the Committee under s 14(1)(j).’¹⁶

The commencement of the SLA in 1995 cemented these responsibilities in respect of the current Committee. The SLA introduced a comprehensive framework regulating the preparation, making, publication and scrutiny of subordinate legislation and remade previous section 14(1)(j) as section 21(1)(j) of the SLA. Upon introduction of the Subordinate Legislation Bill 1994 into Parliament, the Premier described the Committee’s continued responsibility to perform both procedural and substantive review of subordinate legislation:

The role of scrutinising subordinate legislation now rests with the Scrutiny of Acts and Regulations Committee. It is the committee’s task to ensure that those responsible for making statutory rules comply with prescribed procedural requirements and do not in any way exceed the authority conferred upon them by the Parliament.¹⁷

Overlap of parliamentary review and judicial review

Several of the core grounds for parliamentary review of statutory rules are cast in such terms as reflect the grounds for judicial review of subordinate legislation under which the courts may consider a statutory rule *ultra vires* and consequently invalid.¹⁸

¹¹ Scrutiny of Acts and Regulations Committee, *Ninth Report on Subordinate Legislation—Annual Report Concerning Statutory Rules Series 1995 and 1996* (May 1997) p. 2.

¹² Ibid, p. 1: ‘the heads of scrutiny remain unaltered’. This was the first annual report of the Committee describing the scrutiny of statutory rules under the ‘new’ *Subordinate Legislation Act 1994* (Vic).

¹³ See also *Parliamentary Committees (Joint Investigative Committees) Act 1982* (Vic); *Subordinate Legislation (Review and Revocation) Act 1984* (Vic).

¹⁴ Legal and Constitutional Committee, *Sixteenth Report to Parliament on Subordinate Legislation—Scrutiny of Subordinate Legislation: Principles and Practice* (1988) p. 7.

¹⁵ Ibid, pp. 5 and 7.

¹⁶ Legal and Constitutional Committee, *Twenty-Fourth Report to Parliament on Subordinate Legislation—Annual Report Concerning Statutory Rules Series 1990* (1991) p. 22.

¹⁷ Victoria, *Parliamentary Debates*, Legislative Assembly, 10 November 1994, p. 1685 (Jeffrey Gibb Kennett, Premier).

¹⁸ See Dennis Pearce and Stephen Argument, *Delegated Legislation in Australia* (Butterworths, 2nd ed, 1999) p. 98.

The approach to the overlap between parliamentary review and judicial review can be seen in the following summary by the Legal and Constitutional Committee, in a general report on its principles and practices in 1988:

Finally, the Committee endeavours to ensure, as far as possible, that statutory rules will not be judicially offensive to a court or tribunal. In this context, it notes that many of its grounds for review under s 14 of the Subordinate Legislation Act are identical to tests which the courts apply to determine the validity or otherwise of subordinate instruments. Scrutiny by this Committee is no substitute for judicial review. However, it can play a preventative role by identifying potential problems associated with statutory rules at an early stage and making appropriate recommendations for corrective action. As a result, judicial review may be resorted to less frequently.

The Committee therefore considers that it has a duty to inform the responsible Minister and, if necessary, report to the Parliament on any statutory rule which appears to be of questionable validity or is ambiguous in its terms. By highlighting the issue this way, it aims to encourage corrective action wherever possible.¹⁹

The Subcommittee accordingly has a long body of work to draw upon when assessing statutory rules against the grounds for parliamentary review, and may be assisted in its inquiries by the judicial review case law.

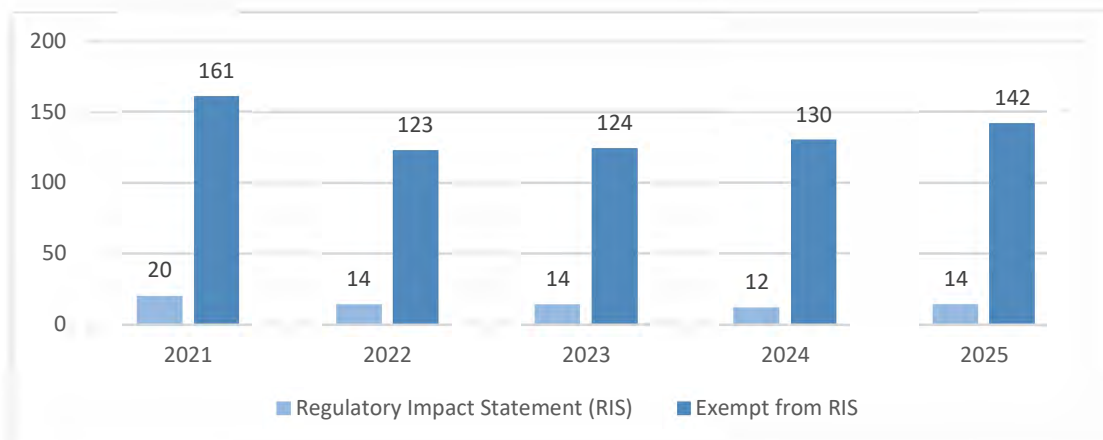
2.2 Statistics

2.2.1 Regulatory Impact Statements and exemptions

The 2025 Statutory Rules Series comprised 156 statutory rules. Of those statutory rules, 14 were accompanied by a RIS and 142 were exempt from the RIS process. These numbers were broadly consistent with previous years.

Figure 1 below outlines the proportion of statutory rules accompanied by RISs or exempt from the RIS process between 2021 and 2025.

Figure 1: RISs and Exemptions 2021–2025



The majority of exemptions from the RIS process in 2025 were issued by the responsible Minister under section 8 of the SLA.²⁰ Two statutory rules were National Law Regulations and exempt by the enabling legislation.

Table 1 below outlines the grounds on which statutory rules were exempt from the RIS process in 2025.

¹⁹ Legal and Constitutional Committee, *Sixteenth Report to Parliament on Subordinate Legislation—Scrutiny of Subordinate Legislation: Principles and Practice* (1988) p. 11.

²⁰ It is a requirement under section 7 of the SLA for a RIS to be prepared for all statutory rules, unless an exemption certificate is issued under section 8. Exemptions from the RIS process may also be issued by the Premier in special circumstances pursuant to section 9.

Table 1: Grounds for Exemptions 2025

Section	Exemption	Number Exempt
8(1)(a)	Would not impose significant economic or social burden	78
8(1)(a) and 8(1)(c)	Would not impose significant economic or social burden and fundamentally declaratory or machinery in nature	4
8(1)(b)	Is a rule which relates only to a court or tribunal	18
8(1)(c)	Fundamentally declaratory or machinery in nature	29
8(1)(c) and (d)	Fundamentally declaratory or machinery in nature and Only increases fees in respect of a financial year by an amount not exceeding the annual rate approved by the Treasurer	1
8(1)(c) and (f)	Fundamentally declaratory or machinery nature and is required under a National Uniform Legislation Scheme	1
8(1)(e)(iii)	Extension of time regulation	7
8(1)(e)(iv), (v) and (vi)	Prescribes under section 4A(1)(a), 4A(1)(b) or 4A(1)(c) an instrument to be a legislative instrument, to not be a legislative instrument, or to be exempt	1
9	Premier's certificate	1
N/A	National Law Regulations	2
Total		142

Generally, the Subcommittee considers this area of regulation review is working well. The Subcommittee appreciates the work undertaken by departments to complete each RIS process in a comprehensive and timely manner in 2025.

2.2.2 Reports to Parliament and correspondence with Ministers

The Subcommittee did not make any reports to Parliament during the 2025 Statutory Rules Series. However, the Subcommittee wrote to responsible Ministers in relation to 25 statutory rules, as follows:²¹

- SR No. 9 – Local Government (Governance and Integrity) Amendment Regulations 2025
- SR No. 26 – Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2025
- SR No. 31 – Meat Industry Regulations 2025
- SR No. 42 – Forests (Tour Operator Licence Fee) Amendment Regulations 2025
- SR No. 43 – Land (Tour Operator Licence Fee) Amendment Regulations 2025
- SR No. 47 – Mental Health and Wellbeing Amendment (Parkville Youth Mental Health and Wellbeing Service) Regulations 2025
- SR No. 48 – Subordinate Legislation (Road Management (Works and Infrastructure) Regulations 2015) Extension Regulations 2025
- SR No. 53 – Private Security Regulations 2025
- SR No. 58 – First Home Owner Grant and Home Buyer Schemes Amendment Regulations 2025
- SR No. 62 – Child Wellbeing and Safety (Information Sharing) Amendment Regulations 2025
- SR No. 69 – Assisted Reproductive Treatment Amendment Regulations 2025
- SR No. 72 – Country Fire Authority Regulations 2025

²¹ Correspondence is included in Appendix C.

- SR No. 73 – Powers of Attorney Regulations 2025
- SR No. 82 – Victorian Energy Efficiency Target (Project-Based Activities) Amendment Regulations 2025
- SR No. 87 – Borrowing and Investment Powers (Authority) Amendment Regulations 2025
- SR No. 94 – Serious Offenders Amendment Regulations 2025
- SR No. 105 – Surveillance Devices Amendment (Body-worn Cameras and Other Matters) Regulations 2025
- SR No. 107 – Child Wellbeing and Safety (Child Link) Amendment Regulations 2025
- SR No. 113 – National Electricity (Victoria) (VicGrid) Regulations 2025
- SR No. 118 – Corrections Amendment Regulations 2025
- SR No. 129 – Liquor Control Reform (Prohibited Supply) Regulations 2025
- SR No. 137 – Casino Control Amendment Regulations 2025
- SR No. 144 – Child Wellbeing and Safety (Information Sharing) Further Amendment Regulations 2025
- SR No. 145 – Gas Safety (Gas Installation) Amendment Regulations 2025
- SR No. 147 – Transport (Compliance and Miscellaneous) (Conduct on Public Transport) Regulations 2025

In instances in which the sole purpose of the Subcommittee's correspondence was to draw attention to a minor procedural error, the Subcommittee generally did not request a response from the responsible Minister.²²

In all other instances, the Subcommittee wrote to the responsible Minister and received satisfactory responses. Only one response was received after the expiry of the disallowance period, and the Subcommittee appreciates in that instance the responsible Minister informed the Subcommittee of the expected delay.²³ This allowed the Subcommittee to ensure its initial correspondence was published in the Alert Digest while the disallowance period for the statutory rule was ongoing, as a matter of public oversight and transparency.²⁴

The Subcommittee will continue to collaborate with Ministers and departments to ensure the timely resolution of scrutiny issues in the future. The Subcommittee wishes to thank departmental officers and ministerial advisers for their prompt and friendly manner of engagement in 2025.

2.3 Key Scrutiny Issues

In 2025, the Subcommittee scrutinised 156 statutory rules, 25 of which raised potential issues. The Subcommittee observed roughly the same number of scrutiny issues arising from the 2025 Series as the 2024 Series, although this remains an increase compared with previous years.²⁵

The Subcommittee considered substantive issues in relation to statutory rules under paragraphs (a), (ha), (i) and (j) of section 21(1) of the SLA. The Subcommittee also continued to monitor the preparation, making, tabling and publication of statutory rules more broadly, writing to Ministers in respect of procedural errors which may not meet the threshold of a 'substantial or material' contravention of the Act or the Guidelines

²² See, for example, the timeliness of documentation, discussed below at section 2.3.5 of this Chapter.

²³ This was in relation to SR No. 118 – Corrections Amendment Regulations 2025, discussed below at section 2.3.4 of this Chapter.

²⁴ See Scrutiny of Acts and Regulations Committee, *Alert Digest No. 5 of 2026*.

²⁵ In 2024, the Subcommittee wrote to responsible Ministers in relation to 24 statutory rules. In 2023, in comparison, the Subcommittee wrote to responsible Ministers in relation to only 13 statutory rules, although it noted another three statutory rules for which documentation was provided to the Scrutiny Committee outside the statutory timeframe: *Annual Review 2023: Statutory Rules and Legislative Instruments* (September 2024) pp. 9-10; *Annual Review 2024: Statutory Rules and Legislative Instruments* (May 2026) p. 9.

under section 21(1)(j), but which it nevertheless considers important to address to uphold the purposes of the SLA.²⁶

Examples of the substantive and procedural issues considered by the Subcommittee are outlined in the following sections.

2.3.1 Does not appear to be within the powers conferred by the authorising Act (s. 21(1)(a))

The Scrutiny Committee may report to the Parliament under section 21(1)(a) of the SLA if it considers any statutory rule laid before the Parliament does not appear to be within the powers conferred by its authorising Act. This reflects the ground for judicial review of subordinate legislation known as ‘simple *ultra vires*’, whereby the courts will hold subordinate legislation invalid if its meaning, scope or effect exceeds what is authorised by the wording of its empowering provision, properly construed.²⁷

The validity of subordinate legislation depends entirely on the extent of the power conferred by the Act pursuant to which it is made. If subordinate legislation purports to do something not expressly or impliedly authorised by its enabling Act (and therefore by the Parliament) it may be considered *ultra vires* or beyond power and consequently held to be invalid.

SR No. 144 – Child Wellbeing and Safety (Information Sharing) Further Amendment Regulations 2025

The Subcommittee raised an issue under this scrutiny ground in relation to only one statutory rule in 2025, which was SR No. 144 – Child Wellbeing and Safety (Information Sharing) Further Amendment Regulations 2025. The Regulations were made by the Governor in Council pursuant to sections 46ZC and 47 of the *Child Wellbeing and Safety Act 2005* (Act) in the context of reforms following the 2025 Rapid Child Safety Review.

Background

On 1 January 2026, the Victorian Early Childhood Regulatory Authority (VECRA) commenced operations as Victoria’s new independent early childhood regulator, overseeing safety, quality and compliance in early childhood education. The VECRA is established under the *Victorian Early Childhood Regulatory Authority Act 2025* (VECRA Act) as a body corporate constituted by the Early Childhood Regulator (ECR). The ECR – a person appointed by the Governor in Council on the recommendation of the Minister – has all the functions and powers of the VECRA and is responsible for undertaking its strategic leadership.²⁸

The Regulations amended the Child Wellbeing and Safety (Information Sharing) Regulations 2018 (Principal Regulations) to prescribe the VECRA as an information sharing entity for the purposes of Part 6A of the Act and to specify that the ECR can delegate to its staff any power, function or duty imposed on the VECRA as an information sharing entity under the Act and the Principal Regulations. Part 6A of the Act provides for information sharing entities to collect, use and disclose certain confidential information in certain circumstances for the purposes of promoting the wellbeing or safety of a child or managing a risk to a child’s safety.

Issue

The issue for the Subcommittee was whether proposed new regulation 5A(2A) permitting the ECR to delegate the VECRA’s information sharing powers, functions and duties was properly supported by sections 46ZC and 47 of the Act, which authorise the regulations which may be made by the Governor in Council.

Section 46ZC of the Act confers regulation-making powers in relation to information sharing under Part 6A of the Act, specifically. It commences with a general power in subsection (1) to make regulations for or with respect to any matter or thing necessary to be prescribed to give effect to Part 6A. It then continues in subsection (2) to enumerate a number of specific powers under which regulations may be made for this purpose, including, at paragraph (i), for or with respect to delegating an information sharing entity’s powers,

²⁶ SLA, section 1.

²⁷ See Dennis Pearce and Stephen Argument, *Delegated Legislation in Australia* (Butterworths, 2nd ed, 1999) pp. 97–98, citing *McEldowney v Forde* [1969] 2 All ER 1039 at 1068 (Lord Diplock); *Esmonds Motors Pty Ltd v Commonwealth* (1970) 120 CLR 463 at 466 (Barwick CJ); *Swan Hill Corporation v Bradbury* (1937) 56 CLR 746 at 757 (Dixon J).

²⁸ *Victorian Early Childhood Regulatory Authority Act 2025* (Vic) s 10.

duties or functions under Part 6A or the Principal Regulations. Subsection (2) is prefaced with the words, 'Without limiting subsection (1)'.

The Subcommittee considered two issues. First, whether the general power in section 46ZC(1) supports the specific subject matter of new regulation 5A(2A) or whether it is displaced by the specific power in section 46ZC(2)(i). Second, if the general power is displaced, whether the ECR is 'an information sharing entity that is a public sector body Head' within the meaning of section 46ZC(2)(i) in order that the specific power will apply to support the new regulation.

Regulation and Regulation-Making Powers

Regulation 5A(2A) is set out:

- (2A) The Early Childhood Regulator may delegate any power, function or duty conferred or imposed on the Victorian Early Childhood Regulatory Authority as an information sharing entity under Part 6A of the Act or under these Regulations, other than this power of delegation, to any person employed or engaged under section 15 of the *Victorian Early Childhood Regulatory Authority Act 2025*.

The provisions of section 46ZC of the Act relevant to making regulation 5A(2A) are set out:

46ZC Information sharing and Child Link regulation making power

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to Parts 6A and 7A.
- (2) Without limiting subsection (1), the Governor in Council may make regulations for or with respect to—
 - (a) prescribing a person to be an information sharing entity; and
 - (b) prescribing a body to be an information sharing entity; and
 - ...
 - (i) enabling an information sharing entity that is a public sector body Head or a restricted information sharing entity that is a public sector body Head—
 - (i) to delegate its powers, duties and functions under Part 6A or the regulations; and
 - (ii) to sub-delegate any powers, duties and functions under Part 6A or the regulations that have been delegated to the information sharing entity; and
 - (j) prescribing the persons and bodies to which powers, duties and functions may be delegated or sub-delegated by an information sharing entity that is a public sector body Head or a restricted information sharing entity that is a public sector body Head; ...

Subcommittee Consideration

The Subcommittee wrote to the responsible Minister on 31 March 2026, having first considered the Regulations at a meeting on 25 March 2026. It sought the Minister's opinion as to whether new regulation 5A(2A) is within the powers conferred by the authorising Act. The Minister for Children provided a comprehensive response to the Subcommittee's concerns on 23 April 2026.²⁹ The Subcommittee appreciates this response and makes specific reference to the Minister's opinion at several points in the below analysis. A copy of the complete correspondence is included in Appendix C.

Is the new regulation supported by the general power under section 46ZC(1) of the authorising Act?

Section 46ZC(1) provides a power not only to make regulations 'required or permitted' to be prescribed by the authorising Act, but also to make regulations 'necessary' to be prescribed to give effect to Part 6A of the authorising Act. The Minister's response referred to *Shanahan v Scott* as the leading authority that, where there is a power to make regulations 'necessary or convenient' for giving effect to an Act, this 'will authorise the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provisions.'³⁰ The Minister was of the opinion the word

²⁹ Details of correspondence are included in Appendix C.

³⁰ *Shanahan v Scott* (1957) 96 CLR 245 at 250. Details of correspondence are included in Appendix C.

‘necessary’ – in connection with the fact the specific power is expressed to operate ‘without limiting’ the general power – supports an interpretation that the general power is intended to be broad and flexible.³¹

The Subcommittee carefully considered the fact the general power uses the word ‘necessary’ as opposed to the standard formula of ‘necessary or convenient’ to confer regulation-making power on the Governor in Council.

Used on its own, ‘necessary’ may imply a narrower power than ‘necessary or convenient’, although it may not be an essentially narrow power *per se*.³² The meaning attributed to the word ‘necessary’ in Australia is not straightforward and depends on the legal context. The Macquarie Dictionary defines ‘necessary’ to mean something ‘that cannot be dispensed with’; ‘requisite’.³³ But although, on its ordinary natural meaning, ‘necessary’ may invoke the imperative, the courts have not interpreted the word in its strictest sense. In the High Court case of *Thomas v Mowbray*, Justices Gummow and Crennan noted with approval the United States Supreme Court’s observation in *McCulloch v Maryland* that ‘necessary’:

has not a fixed character, peculiar to itself. It admits of all degrees of comparison; and is often connected with other words, which increase or diminish the impression the mind receives of the urgency it imports.³⁴

These remarks were cited by the Supreme Court of Victoria in *Sabet v Medical Practitioners Board of Victoria* (Sabet). This case concerned the ‘necessary’ suspension of a medical licence due to serious risk to public health and safety arising from unprofessional conduct or professional misconduct. The Court construed the word ‘necessary’ in this context as meaning more than simply ‘convenient’ or ‘useful’ but less than ‘essential’.³⁵ It noted, ‘The meaning of “necessary” is a flexible one, and may vary according to the nature of the case.’³⁶

The decision of *Sabet* is consistent with an early judgment of Justice Higgins of the High Court in 1910, which also cited *McCulloch v Maryland*. In determining the proper construction of a power to make regulations ‘necessary for carrying out this Act or for the efficient administration thereof’, Justice Higgins concluded:

Now, the word “necessary” may be construed liberally, not as meaning absolutely or essentially necessary, but as meaning appropriate, plainly adapted to the needs of the Department—to “the carrying out” of the Act or its “efficient administration”: *McCulloch v Maryland*. But the power does not extend to everything which the Governor-General in Council *considers* to be necessary. The regulation must *be* necessary, in the sense which I have stated.³⁷

Consistent with the case law, the Subcommittee considers regulation 5A(2A) does not need to be ‘essential’ to giving effect to Part 6A in order to fall within the general regulation-making authority of section 46ZC(1). It might instead be ‘necessary’ in a lesser sense, such as being ‘appropriate, plainly adapted’ to carrying out the Act’s information sharing powers, functions and duties.

The VECRA is a body corporate and can only act through duly authorised individuals.³⁸ It is constituted by a single individual, being the ECR. As the VECRA can exercise its information sharing powers through the ECR, it is not strictly or absolutely ‘essential’ that its information sharing powers also be delegated to staff. However, a power to delegate may still be considered ‘necessary’ in the sense that it is ‘appropriate’ to giving effect to Part 6A of the Act – i.e. to facilitating the effective and efficient exercise of the VECRA’s information sharing powers, having regard to what this exercise demands in practice and the burden placed on the ECR as a single individual.³⁹ A power to delegate in this context may be considered more than ‘convenient’ or ‘useful’.

³¹ Details of correspondence are included in Appendix C.

³² See Dennis Pearce and Stephen Argument, *Delegated Legislation in Australia* (Butterworths, 2nd ed, 1999) p. 142: ‘there may well be a difference between the operation of what is necessary and what is convenient, with the latter word extending the scope of what might otherwise be regarded as a sufficiently wide general regulation-making power.’

³³ *Macquarie Concise Dictionary* (Macquarie University, 4th ed, 2008) p. 807.

³⁴ *Thomas v Mowbray* (2007) 233 CLR 307; [2007] HCA 33 at 37 (Gummow and Crennan JJ), quoting *McCulloch v Maryland* 4 Wheat 316 at 413-414.

³⁵ *Sabet v Medical Practitioners Board of Victoria* (2008) 20 VR 414 at 424-426.

³⁶ *Ibid* at 424.

³⁷ *The Commonwealth and the Postmaster-General v The Progress Advertising and Press Agency Co Pty Ltd* (1910) 10 CLR 457 at 469 (Higgins J) (emphasis in original).

³⁸ The Minister’s response noted: ‘The VECRA, as a body corporate, can only act through duly authorised individuals ...’. Details of correspondence are included in Appendix C.

³⁹ It seems clear there is nothing to prevent a power of delegation *per se* from falling within a ‘necessary or convenient’ power. In *Northern Land Council v Quall* [2020] HCA 3, a majority of the High Court held that the power in the establishing statute of the Northern Land

At the same time, there may be a question as to whether a power to delegate in the context of the corporate structure of the VECRA and of the scope expressed in regulation 5A(2A) – i.e. to *any* person employed or engaged under section 15 of the VECRA Act – can be said to be ‘appropriate, plainly adapted’ to giving effect to Part 6A of the Act. The VECRA may employ any employees necessary for the purposes of performing its functions, and engage any staff of a Department, statutory authority or other public body.⁴⁰

The Second Reading Speech which preceded the Act’s commencement makes some suggestion of an intention to confine the power to share information under Part 6A to specific staff within a prescribed information sharing entity, ‘depending on their position and expertise’, in order to ‘provide assurance that decisions to share information will promote wellbeing and safety’.^{41,42} This was discussed as an intention of the legislative scheme broadly, and not in the direct context of the power to make regulations delegating information sharing powers.

The Subcommittee notes an express purpose of the Act is ‘to enable specified entities to share confidential information in a timely and effective manner in order to promote the wellbeing and safety of children’.⁴³ A power to delegate may be considered a timely and effective manner of information sharing. At the same time, a construction of section 46ZC(1) which accounts for the fact the scheme deals with confidential information, and, therefore, the powers to share that information may be intended to be carefully managed, may better promote the purpose or object of child safety and wellbeing underlying the Act.⁴⁴

In this context the Subcommittee considers the related issue of whether the scope of the general power in section 46ZC(1) is limited by the existence of the specific power in section 46ZC(2)(i), such that the general power cannot be relied upon to support regulation 5A(2A). Prima facie, the fact section 46ZC(2) is prefaced by the words ‘without limiting subsection (1)’ would seem to prevent any such interpretation. This is the view taken by the Minister who asserts the expression emphasises a ‘clear intention not to limit the general power’.⁴⁵

However, Pearce & Argument note the effect a ‘without limiting’ expression will have ‘is not always clear’. These authors suggest a specific power prefaced in such a manner ‘will *usually* not limit the scope of the general regulation-making power’ – but:

The issue can best be approached by asking why the specific power was included. If it appears that it would have been covered by the general power and it is only out of caution that specific reference was made to the particular matter, it is unlikely that a court will regard the general power as limited. On the other hand, if the specific power appears intended to cover the possible field or is intended to exhaust the legislation to be made on the topic, the general power will not be able to be invoked.⁴⁶

Council for it to do ‘all things necessary or convenient to be done for or in connexion with the performance of its functions’ permitted it to delegate a function conferred on it by another Act, provided that the delegation was ‘necessary or convenient’.

⁴⁰ *Victorian Early Childhood Regulatory Authority Act 2025* (Vic) s 15. The scope of the power to delegate does not include contractors: see s 16.

⁴¹ Victoria, *Parliamentary Debates*, Legislative Assembly, 13 December 2017, pp. 4382-4383 (Martin Foley, Minister for Housing, Disability and Ageing). This Second Reading Speech on the Children Legislation Amendment (Information Sharing) Bill 2017 stated in part:
Professionals within a prescribed organisation may also have different roles, depending on their position and expertise. For example, through the provision of guidelines, tools and training, school teachers would be given clear guidance and base training on their role and obligations under the child information-sharing reforms. This will include their roles and responsibilities in identifying and responding to family violence risk. In addition, staff such as the principal, welfare officer, school nurse and leads in regional offices would have a deeper role and deeper level of training to allow them to act as the key points for assessment and information sharing between organisations. This will provide assurance that decisions to share information will promote wellbeing and safety.
In this way we can secure the benefits of mobilising the knowledge and efforts of the professionals who spend significant time working directly with children and families, while ensuring that there are more deeply trained and skilled people within those organisations to support rigorous and safe implementation of these important reforms.

⁴² See *Interpretation of Legislation Act 1984* (Vic) s 35(b)(iii).

⁴³ *Child Wellbeing and Safety Act 2005* (Vic) s 1(ea).

⁴⁴ See *Interpretation of Legislation Act 1984* (Vic) s 35(a). In interpreting a provision of an Act, a construction that would promote the purpose or object underlying the Act shall be preferred.

⁴⁵ Details of correspondence are included in Appendix C.

⁴⁶ Dennis Pearce and Stephen Argument, *Delegated Legislation in Australia* (Butterworths, 2nd ed, 1999) pp. 145-146 (emphasis added). Pearce & Argument’s approach is based on remarks made by Justice Aickin and Justice Mason in *Leon Fink Holdings Pty Ltd v Australian Film Commission* (1979) 141 CLR 672. In this case, the High Court was required to consider whether the Australian Film Commission had exceeded its statutory powers in making certain loan agreements. Specifically, whether a general necessary or convenient power could support loans made to persons who were not the producer of an Australian film, when, ‘without limiting the generality of the foregoing’, there was a specific power in paragraph (a) of the same section to make loans to producers of Australian films. Justice Mason, with

The Subcommittee considers the possibility that in this instance the inclusion of the specific power evinces an intention to carefully manage the sharing of confidential information as expressed above. The variety of persons and bodies prescribed as information sharing entities in the Principal Regulations may suggest the specific power is intended to cover the field to ensure delegation is only permissible within public sector bodies which have strict standards of conduct and lines of responsibility. On the other hand, it may be included simply to dispel any doubt about the matters permitted for regulation under the general power.

The Subcommittee notes the Minister's view that in this instance the specific power was included to clarify, not displace, the general power:

While section 46ZC(2)(i) specifically refers to regulations which provide for delegations to be given by an ISE [information sharing entity] that is a public sector body Head, it is prefaced with 'without limiting subsection (1)', emphasising the breadth of and the clear intention not to limit the general power. The clear purpose of section 46ZC(2) is to clarify that the general power is intended to be broad and flexible,⁴⁷ and to provide more specificity on the variety of matters that may be prescribed by regulations.⁴⁸

Is the new regulation supported by the specific power under section 46ZC(2) of the authorising Act?

On the possibility the general power cannot support the new regulation, the Subcommittee considered the nature and scope of the specific power under section 46ZC(2)(i). This specific power provides for regulations to be made for or with respect to enabling an information sharing entity that is a public sector body Head to delegate its powers, duties and functions under Part 6A or the Principal Regulations. The Subcommittee sought clarification from the responsible Minister as to whether and how the ECR is 'an information sharing entity that is a public sector body Head' within the meaning of section 46ZC(2)(i).

Information sharing entity:

The Act defines 'information sharing entity' as 'a person or body, or a class of person or body, prescribed to be an information sharing entity'.⁴⁹ The VECRA is prescribed by the Regulations as an information sharing entity. The ECR is not itself prescribed as an information sharing entity but constitutes and has all the functions and powers of the VECRA.⁵⁰

whom Chief Justice Barwick and Justice Aickin agreed, held that the general power in this particular instance was not restricted by the specific power and could support the loan agreements. Per Mason J at 679:

There are strong grounds for thinking that the specific power given by par. (a) of s. 21 was conferred in order to dispel any doubt that might be entertained as to the extent of the general power and to ensure the existence of a power to lend to producers of Australian films. In this case the words "without limiting the generality of the foregoing" evince an intention that the general power should be given a construction that accords with the width of the language in which it is expressed and that this construction is not to be restricted by reference to the more specific character of that which follows. The clause therefore operates to negative the restrictive implication which might otherwise have been derived from the presence of the specific power to lend contained in par. (a).

However both Justice Mason and Justice Aickin expressed the possibility that, in other instances, on the whole of the context and the precise wording of the relevant provisions, the specific power may be intended to limit the general power, notwithstanding the use of a 'without limiting' expression. Per Mason J at 679-680:

I do not wish to be taken as suggesting that a clause of this kind will always be effective to prevent the making of a restrictive implication derived from the presence of a specific power which is expressed to be subject to limitations, qualifications, restrictions or conditions. In every case it will depend on the precise character of the relevant provisions and on the context in which they are found. Here it is only the limitation on the specific power to lend which confines it to the making of loans to producers of Australian films that is relied upon to restrict the general power, or to inhibit resort to it, as authority for lending to others. To my mind this is not a sufficiently solid basis for restricting the general power or denying its availability, when it is followed by a clause whose purpose is to ensure that the presence of the particular powers does not erode the generality of the initial grant of power.

⁴⁷ The Minister's response cites *P T Garuda Indonesia Ltd v Australian Competition and Consumer Commission* (2012) 290 ALR 681 at [38]. In this case, the High Court was required to consider a definition of 'commercial transaction'. The relevant provision purported to set out a list of specific contracts, agreements and guarantees that would satisfy the definition of commercial transaction, 'without limiting the generality of the foregoing' definition. The majority judgment of French CJ, Gummow, Hayne and Crennan JJ, at [38], quoted Mason J in *Leon Fink Holdings Pty Ltd v Australian Film Commission* (1979) 141 CLR 672 at 679.

⁴⁸ Details of correspondence are included in Appendix C.

⁴⁹ *Child Wellbeing and Safety Act 2005* (Vic) ss 3(1) (definition of 'information sharing entity') and 41R.

⁵⁰ *Victorian Early Childhood Regulatory Authority Act 2025* (Vic) ss 5(2) and 10(3)(a).

Public sector body Head:

The Act defines 'public sector body Head' by reference to the *Public Administration Act 2004* (PA Act) as a public service body Head, public entity Head, or special body Head.⁵¹ The VECRA does not satisfy the definition of a special body, and thus the ECR is not a special body Head.⁵²

However, the Minister's response to the Subcommittee noted the VECRA does satisfy the definition of a public entity.⁵³ A public entity Head means the 'chief executive officer (by whatever name called) of a public entity'.⁵⁴ The Subcommittee notes the ECR is 'responsible for undertaking the strategic leadership' of the VECRA.⁵⁵ While the corporate structure of the VECRA includes a position titled 'chief executive officer' separate to the ECR,⁵⁶ the Subcommittee accepts as persuasive the following advice from the Minister as to how this corporate structure works in practice:

The Macquarie Dictionary defines 'CEO' as the highest-ranking executive or administrator in an organisation. In some organisations, the title of CEO is used even though the role is not necessarily the head of the organisation. ... The ECR bears ultimate strategic responsibility for VECRA, under section 10(3)(b), aligning with the definition of a CEO as the highest-ranking executive or administrator. Importantly, the CEO position is an executive role established administratively by VECRA as part of its corporate structure as opposed to being a statutory office under the VECRA's governing legislation. It is open to VECRA to decide whether to create, maintain or abolish that position from time to time. The existence of the CEO position does not change or effect the true character of the ECR's roles and responsibilities as enshrined by statute, which in my view satisfies the definition of 'public entity Head'.⁵⁷

The Minister's response also considered the fact the ECR is treated as a public service body Head by virtue of section 16(1)(kh) of the PA Act. The ECR is not a public service body Head *per se*.⁵⁸ However, section 16(1)(kh) of Part 3 of the PA Act provides:

16 Persons with functions of public service body Head

- (1) Despite anything to the contrary in this Act, the following office holders have all the functions of a public service body Head in relation to employees in the following offices or bodies—

...

- (kh) the Early Childhood Regulator appointed under section 10 of the *Victorian Early Childhood Regulatory Authority Act 2025* in relation to the Victorian Early Childhood Regulatory Authority; ...

The Minister considered that on a purposive interpretation of this provision, the ECR is a public service body Head and, therefore, a public sector body Head.⁵⁹ Reliance on section 16(1)(kh) of Part 3 of the PA Act is complicated, however, because section 10(4) of the VECRA Act provides: the PA Act, '*other than Part 3* of

⁵¹ *Child Wellbeing and Safety Act 2005* (Vic) s 3(1) (definition of 'public sector body Head'); *Public Administration Act 2004* (Vic) s 4(1) (definition of 'public sector body Head'): *public sector body Head* means— (a) in relation to a public service body, the public service body Head; (b) in relation to a public entity, the public entity Head; (c) in relation to a special body, the special body Head.

⁵² *Public Administration Act 2004* (Vic) ss 4(1) (definition of 'special body') and 4(1) (definition of 'special body Head') and 6. The VECRA is neither prescribed as a special body under s 6(1) nor has it been declared by the Minister to be a special body pursuant to s 6(2), and thus the ECR cannot be a special body Head.

⁵³ Details of correspondence are included in Appendix C. See *Public Administration Act 2004* (Vic) ss 4(1) (definition of 'public entity') and 5. As required by ss 5(1)(a)(i) and 5(1)(c) of the PA Act, the VECRA is established under statute as a body corporate which represents the Crown: *Victorian Early Childhood Regulatory Authority Act 2025* (Vic) ss 5 and 7. Section 5(1)(b) of the PA Act additionally requires that the right to appoint at least one half of VECRA's directors is vested in the Governor in Council or a Minister. The definition of 'Board' in section 4(1) of the PA Act means 'the members of the public entity, or in the case of a Commissioner entity, the person who comprises the Commissioner entity'. The definition of 'Commissioner entity' is 'a public entity that consists of, or the governing body of which consists of, only one person'. The VECRA is constituted solely by the ECR who may be appointed by the Governor in Council on the recommendation of the Minister: *Victorian Early Childhood Regulatory Authority Act 2025* (Vic) ss 5 and 10.

⁵⁴ *Public Administration Act 2004* (Vic) s 4(1) (definition of 'public entity Head').

⁵⁵ *Victorian Early Childhood Regulatory Authority Act 2025* (Vic) s 10(3)(b).

⁵⁶ Victorian Early Childhood Regulatory Authority, *About Us* (webpage) <<https://www.vic.gov.au/about-us-victorian-early-childhood-regulatory-authority>>.

⁵⁷ Details of correspondence are included in Appendix C.

⁵⁸ *Public Administration Act 2004* (Vic) s 4(1) (definition of 'public service body Head'). A 'public service body Head' means the Head of either a Department established under section 10 or an Administrative Office established under section 11, which require an Order of the Governor in Council.

⁵⁹ Details of correspondence are included in Appendix C.

that Act', applies to the ECR.⁶⁰ The Subcommittee notes section 16(1)(kh) was inserted into Part 3 of the PA Act by section 59 of the VECRA Act. It may be assumed Parliament did not intend to create inconsistency between these provisions and a construction which promotes their harmonious operation would be preferred.

The Subcommittee accepts the ECR likely satisfies the definition of a public entity Head and, therefore, a public sector body Head.

This leaves the issue that the ECR is not itself prescribed as an information sharing entity but rather constitutes and 'has all the functions and powers' of an information sharing entity.⁶¹ In effect, new regulation 5A(2A) enables delegation by a public sector body Head (i.e. the ECR) exercising the functions and powers of an information sharing entity (i.e. the VECRA). The specific wording of section 46ZC(2)(i), however, is for delegation by an information sharing entity that *is* a public sector body Head. The Minister's response considered that taking a literal approach to the use of 'is' would undermine the purpose of section 46ZC(2)(i).⁶² The Subcommittee notes the Minister's conclusion:

The ECR, in my view, is a public sector body Head and, by virtue of the ECR constituting the VECRA and having all the functions of the VECRA, including its functions as an ISE [information sharing entity] under the CWS Act [the Act], is also an ISE [information sharing entity].⁶³

The information provided by the responsible Minister does make it clear that if the ECR were itself prescribed as an information sharing entity, new regulation 5A(2A) of the Regulations would fall within the specific power conferred by section 46ZC(2)(i) of the authorising Act. To this end, the Subcommittee notes the final point in the Minister's correspondence:

I have asked the department to explore amendments to the Principal Regulations to remove any doubt that may be associated with regulation 5A(2A), such as prescribing the ECR directly as an ISE with a corresponding delegation power under section 46ZC(2)(i) based on the ECR's status as a public sector body Head under the PA Act.⁶⁴

The Subcommittee noted this undertaking by the responsible Minister and ultimately decided not to make a report to the Parliament. The Subcommittee observes the approach to whether a regulation is *intra vires* its authorising provision is a matter of statutory interpretation on which reasonable minds may differ.⁶⁵ It extends its appreciation again to the Minister for Children and relevant departmental officers for their careful and comprehensive consideration of this issue in respect of SR No. 144/2025.

2.3.2 Requires explanation as to form or intention (s. 21(1)(i))

Section 21(1)(i) provides a ground for parliamentary review where a statutory rule requires explanation as to its form or intention. The Subcommittee liaised with responsible Ministers on this ground in respect of the following two statutory rules from the 2025 Series.

SR No. 105 – Surveillance Devices Amendment (Body-worn Cameras and Other Matters) Regulations 2025

The Surveillance Devices Amendment (Body-worn Cameras and Other Matters) Regulations 2025 amended the Surveillance Devices Regulations 2016, which were the principal regulations in operation at the time. Among other matters, the amendments prescribed a new purpose for which information obtained from the

⁶⁰ *Victorian Early Childhood Regulatory Authority Act 2025* (Vic) s 10(4) (emphasis added): 'the Public Administration Act 2004 (*other than Part 3 of that Act*) applies to the Early Childhood Regulator in respect of that office.'

⁶¹ See *Victorian Early Childhood Regulatory Authority Act 2025* (Vic) ss 5(2) and 10(3)(a).

⁶² Details of correspondence are included in Appendix C. See *Interpretation of Legislation Act 1984* (Vic) s 35(a). In interpreting a provision of an Act, a construction that would promote the purpose or object underlying the Act shall be preferred.

⁶³ Details of correspondence are included in Appendix C.

⁶⁴ *Ibid.*

⁶⁵ Dennis Pearce and Stephen Argument, *Delegated Legislation in Australia* (Butterworths, 2nd ed, 1999) pp. 97-98, citing *McEldowney v Forde* [1969] 2 All ER 1039 at 1068 (Lord Diplock); *Esmonds Motors Pty Ltd v Commonwealth* (1970) 120 CLR 463 at 466 (Barwick C.J); *Swan Hill Corporation v Bradbury* (1937) 56 CLR 746 at 757 (Dixon J).

body-worn cameras or tablet computers of certain classes of persons may be used, communicated and published pursuant to sections 30F(1A)(b) and 30F(1B)(b) of the *Surveillance Devices Act 1999*.⁶⁶

The exemption certificate issued for the Regulations stated: 'The proposed Regulations will allow the information collected from body-worn cameras worn by an authorised IBAC officer, police officer or protective services officer, to be used, communicated or published for [the new purpose].'

The Subcommittee wrote to the Attorney-General seeking clarification as to this statement, given its view that the new purpose was only effectively prescribed by the Regulations in relation to information obtained from the devices of police officers and protective service officers, not authorised IBAC officers.⁶⁷ The Subcommittee noted that if information obtained from the device of an authorised IBAC officer had in fact been used for the new purpose, this would be outside the scope of the Regulations and unlawful.

The Attorney-General responded on 28 January 2026, clarifying that the statement made in the exemption certificate was erroneous and that information from IBAC officers' devices had not been used for the new purpose. The Attorney-General's response stated:

The statement made in the exemption certificate issued for the Regulations stating that purpose applied to authorised IBAC officers is erroneous, and I thank the Subcommittee for bringing it to my attention.

The Independent Broad-based Anti-corruption Commission has advised the Department of Justice and Community Safety that IBAC has not used any local protected information obtained from BWCs [body-worn cameras] used by an IBAC authorised officer for the new purpose, or for any other purpose, in the time since the Regulations commenced.

For completeness, I note that the Principal Regulations will sunset in June 2026. As part of developing the replacement regulations, the Department of Justice and Community Safety will consider and consult with IBAC about the purposes for which they can use information obtained from BWCs or tablets used by IBAC authorised officers.⁶⁸

The Subcommittee thanks the Attorney-General for promptly clarifying this important matter.

SR No. 129 – Liquor Control Reform (Prohibited Supply) Regulations 2025

The Liquor Control Reform (Prohibited Supply) Regulations 2025 prohibit the supply of certain classes of liquor where the Minister is satisfied that such prohibition is in the interest of the community.⁶⁹ The Regulations largely remake the previous regulations which sunset on 15 December 2025, but also introduce one new prohibition, regulation 9, which provides: 'A person must not supply liquor that is packaged in a container the appearance of which could reasonably be mistaken for a children's toy'. An offence against regulation 9 is punishable by a maximum fine of 30 penalty units.

The Regulations were exempt from the preparation of a RIS. The Minister for Casino, Gambling and Liquor Regulation issued an exemption certificate under section 8(1)(a) on the basis that the Regulations would not impose a significant economic or social burden on a sector of the public. Relevantly, the exemption certificate stated:

The reasons for forming this opinion are that the proposed statutory rule remakes prohibitions that relate to niche classes of liquor that have either never been available in Victoria or were only available from a small number of suppliers for a short time before being prohibited. The proposed statutory rule also makes one new prohibition which is also for a niche product, that has limited availability. The impact of remaking these prohibitions, and the additional prohibition, would not have a significant impact on the revenue of Victorian liquor licensees.

The Subcommittee observed the Minister's assessment that the Regulations would not impose a significant burden on the liquor industry was based on a characterisation of regulation 9 as prohibiting 'a niche product,

⁶⁶ The new purpose was as follows: 'The performance of functions or duties or the exercise of powers by the IBAC under the *Independent Broad-based Anti-corruption Commission Act 2011* or any other Act in relation to the investigation and prevention of corrupt conduct and police personnel misconduct, the collection and use of intelligence, the provision of education services and the compliance monitoring and oversight of Victoria Police.'

⁶⁷ Details of correspondence are included in Appendix C. The new purpose was inserted as new paragraph (ga) in regulation 11(1) and new subparagraph (vii) in regulation 11(2)(a) of the Principal Regulations, and therefore only applied where information was obtained from the use of a body-worn camera or tablet computer by a police officer or a protective services officer, respectively.

⁶⁸ A copy of this correspondence is included in Appendix C.

⁶⁹ *Liquor Control Reform Act 1998* (Vic) s 118B.

that has limited availability'. The explanatory memorandum also specified the regulation was made in response to one specific product, 'Emodka vodka':

This prohibition is in response to the availability of 'Emodka', a 50ml shot of vodka in a yellow ball-shaped bottle with a face emoji on it. The packaging of this product makes it look like a toy, and could reasonably be mistaken by both adults and children to be a toy.

However, the Subcommittee noted the wording of regulation 9 – 'liquor that is packaged in a container the appearance of which could reasonably be mistaken for a children's toy' – could permit the prohibition of products beyond Emodka.

Accordingly, the Subcommittee questioned whether the full scope and economic impact of regulation 9 had been taken into account when assessing whether the Regulations would impose a significant burden on liquor licensees for the purposes of exemption from the RIS process. The Subcommittee noted the extrinsic materials accompanying the Regulations did not address whether any liquor products in supply in Victoria other than Emodka had been identified by the Department of Justice and Community Safety as likely to come within the scope of the new prohibition. Nor was it clear from the extrinsic materials whether the specific wording of the new prohibition and its potential to extend to products beyond Emodka formed part of the Department's initial consultation with the liquor industry.

The Subcommittee considered the wording of regulation 9 was broader than the South Australian prohibition made in response to the same product, which applies to 'Emodka vodka' specifically and to 'any other spirit in a container purporting to be an emoji (however described)'.⁷⁰ It noted the statement in the explanatory memorandum suggesting the prohibition is directed at preventing 'a child accidentally consuming' a liquor product may shed light on how the prohibition should be interpreted and the types of products it would apply to.⁷¹ The Subcommittee observed several products in circulation in Australia as examples of types of products which, depending on the interpretation of the meaning and scope of the new prohibition, may be affected.

The Subcommittee resolved to write to the responsible Minister seeking explanation as to the intended meaning and scope of regulation 9, and the extent to which the prohibition is likely to apply to liquor products currently in supply in Victoria other than Emodka. In particular, the Subcommittee requested additional information from the Minister about the economic burden on liquor licensees in this context.

In a response dated 2 June 2026, the Minister for Casino, Gambling and Liquor Regulation confirmed that, while the new prohibition is intended to apply broadly to products beyond Emodka, there are currently no products on the market in Victoria other than Emodka which fall within its meaning and scope. The Minister's response included the following details as to the economic impact of the new prohibition:

I am advised that the only product on the market likely to fall within the scope of regulation 9 is Emodka. This product is only available in Victoria from one interstate supplier, Paul's liquor, via its website and some online platforms, such as Amazon and Cellars Market. Paul's Liquor is licensed in New South Wales and does not have a Victorian liquor licence. The regulations prohibit Victorian licensees from supplying this product. As there are no known suppliers of Emodka with a Victorian liquor licence, it is unlikely that prohibiting its sale will result in any economic impact in Victoria.

The Minister further noted the Department is developing guidelines in consultation with Liquor Control Victoria to provide details on the meaning and scope of the new regulation, and gave the following examples of characteristics that might contribute to a product reasonably being mistaken for a toy:

Characteristics that might contribute to the product reasonably being mistaken for a toy include, but are not limited to:

- It uses designs, pictures, images, logos, cartoons etc. that commonly appear on children's toys or are associated with children's toys
- It uses designs, pictures, images, logos, cartoons etc. that appeal to children
- The liquid inside the product's container is not visible or is difficult to see

⁷⁰ *Liquor Licensing (General) Regulations 2012* (SA) reg 20A, which prescribes classes of liquor for the purposes of the prohibition in section 131AA of the *Liquor Licensing Act 1997* (SA).

⁷¹ The explanatory memorandum provided: 'The Minister considers that it is in the interest of the community to prohibit any liquor product that could reasonably be mistaken for a children's toy, as it could lead to a child accidentally consuming the product.' See also *Interpretation of Legislation Act 1984* (Vic) s 35.

- The lid/opening is not easily visible (for example, is located at the back of the product where it cannot be seen from the front)
- The product's container is not a traditional shape (for example, a bottle that is not cylindrical with a narrow neck)
- There is no writing, or minimal non-descript writing, on the front of the product.

The Minister's response highlighted the new prohibition would apply to liquor products that 'resemble a children's toy', for example because they are designed to appeal to children and because the presence of liquor is not readily apparent on the face of the product. The response noted 'the characteristics of being miniature or being packaged in a non-traditional container are not enough on their own to bring a product within scope', as these may be products of 'a mature design that appeal to adults'. It also stated liquor products resembling a food product that may appeal to children are not within the intended scope of the regulation, based on the ordinary meaning of 'children's toy'.⁷²

The Subcommittee thanks the Minister and relevant departmental officers for this thorough response. On the basis of the information provided, including that no other products in known supply were caught by the regulation and that guidance would be developed for industry, the Subcommittee considered its concerns about the scope and economic burden of the regulation to have been adequately addressed.

2.3.3 Prepared in substantial or material contravention of the SLA or Guidelines (s. 21(1)(j))

The Scrutiny Committee may report to the Parliament under section 21(1)(j) of the SLA if it considers a statutory rule has been prepared in contravention of any of the provisions of the SLA and the contravention is of a substantial or material nature. There is no express guidance given in the SLA or in the Guidelines made under the SLA of what constitutes a 'substantial or material' contravention for the purpose of this ground of parliamentary review.

One implication which arises from the context of the statute as a whole is that the Subcommittee's reporting function includes but is not necessarily limited to contraventions that affect the operation or effect of a statutory rule.⁷³ To the extent that a substantial or material contravention is a contravention which affects the operation or effect of a statutory rule, section 21(1)(j) of the SLA mirrors the ground for judicial review of subordinate legislation known as 'procedural *ultra vires*'.⁷⁴ Under this judicial review ground, the courts may find subordinate legislation beyond power and invalid if its enabling legislation sets out procedural steps for its making and these are not complied with.⁷⁵ However, not every contravention of every procedural requirement will produce invalidity.⁷⁶

The leading approach to the legal effect of a breach of a statutory provision, including provisions imposing procedural requirements, was articulated in *Project Blue Sky Inc v Australian Broadcasting Authority* (Project Blue Sky).⁷⁷ The question is whether, having regard to the language of the provision, the subject matter and objects of the statute and the consequences of invalidity, the legislature intended breach of the procedural

⁷² Details of correspondence are included in Appendix C.

⁷³ See, eg, SLA, section 15(2): 'A failure to comply with subsection (1) or (1A) does not affect the operation or effect of the statutory rule but the Scrutiny Committee may report the failure to each House of the Parliament.'

⁷⁴ The term 'procedural *ultra vires*' is used in contrast to that of 'simple *ultra vires*' canvassed earlier in section 2.3.1 of this Chapter. Both terms reflect the general concept of subordinate legislation that is *ultra vires* (beyond power) as distinct from *intra vires* (within power). For a complete list of the grounds for judicial review of subordinate legislation, see Dennis Pearce and Stephen Argument, *Delegated Legislation in Australia* (Butterworths, 2nd ed, 1999) p. 98.

⁷⁵ Dennis Pearce and Stephen Argument, *Delegated Legislation in Australia* (Butterworths, 2nd ed, 1999) p. 98.

⁷⁶ Judicial review of subordinate legislation on this ground has most commonly arisen in respect of contraventions of local government by-laws: see, eg, Dennis Pearce and Stephen Argument, *Delegated Legislation in Australia* (Butterworths, 2nd ed, 1999) pp. 107-131. Pearce & Argument note these cases have encompassed three general matters of procedure, being the making, publication and tabling of the subordinate legislation, which 'give rise to slightly different approaches by the court on the question whether strict compliance is essential for the validity of the legislation': at p. 107. It can be seen that the approach in these cases produces a threshold as to the contraventions that will result in the invalidity of the subordinate legislation, with the courts recognising, 'Of course, not every procedural step will be regarded as a condition precedent to validity': *Kwiksnax Mobile Industrial & General Caterers Pty Ltd v Logan City Council* [1988] 1 Qd R 291 at 305.

⁷⁷ *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355.

requirement to invalidate the act done.⁷⁸ That inquiry may also require assessment of whether strict compliance, substantial compliance or no invalidating consequence was intended.⁷⁹

Judicial review in essence seeks to determine whether the nature of a procedural requirement and extent of its contravention is sufficiently serious to mean the decision made or act taken was done outside jurisdiction or beyond power (*ultra vires*).⁸⁰ The High Court issued the recent reminder that ‘jurisdictional error is an expression not simply of the existence of an error but of the *gravity* of that error’.⁸¹ Other legal minds have put the approach in similar general terms:

Jurisdictional error will amount to a failure to comply with an essential precondition or limit to the valid exercise of power ... But what is essential and what goes to the existence of power as opposed to the manner of its exercise? These are contestable, qualitative questions that turn upon the statute as a whole in its context. ... The principled way forward in a novel case is to turn to analyse the statute as a whole and in its context to determine the limits qualifying the conferral of power.⁸²

The ground of parliamentary review under section 21(1)(j) of the SLA may be broader than the ground of judicial review.⁸³ Nevertheless, the judicial review case law may assist in giving content to what would at minimum constitute a contravention of a substantial or material nature for the purposes of section 21(1)(j) of the SLA.

Additionally, the phrase ‘substantial or material’ is not uncommon in law. It is used in different legal contexts to convey a threshold of significance or consequence.⁸⁴ The words ‘substantial’ and ‘material’ are also used separately to similar effect. The Macquarie Dictionary defines ‘substantial’ to mean ‘of or relating to the essence of a thing; essential, material or important’.⁸⁵ It defines ‘material’ to mean ‘of substantial import and much consequence’.⁸⁶

The Scrutiny Committee has not previously reported to the Parliament under section 21(1)(j) of the SLA. However, reports were made by the Legal and Constitutional Committee throughout the late 1980s under section 14(1)(j) of the *Subordinate Legislation Act 1962*, which was the first iteration of this ground of parliamentary review. These reports were necessarily focused on contraventions of the requirements for the preparation and content of a RIS, which was a significant reform to the statutory scheme at the time.⁸⁷ The Legal and Constitutional Committee summarised its interpretation of a ‘substantial or material’ contravention of the RIS process under the *Subordinate Legislation Act 1962* as follows:

Needless to say [the parliamentary committee] considers that the failure to prepare a regulatory impact statement when required constitutes a substantial breach of the Guidelines. Similarly, the preparation of a regulatory impact

⁷⁸ Ibid at 389-391 (McHugh, Gummow, Kirby & Hayne JJ).

⁷⁹ DC Pearce and RS Geddes, *Statutory Interpretation in Australia* (Butterworths, 5th ed, 2001) p. 291:

In summary, the only guiding principles will be the statute and from it the court will have to glean one of three intentions in regard to procedure that is set out in it: (a) that strict compliance is necessary; (b) that substantial compliance is necessary together with the degree of ‘substantiality’; or (c) that compliance is not a precondition to the action taken. Breach of (a) or (b) will result in invalidity but no such consequences will flow if (c) is found to apply (unless some separately designated penalty is included in the legislation or an action can be brought independently of the statute).

⁸⁰ See Peter Cane and Leighton McDonald, *Principles of Administrative Law: Legal Regulation and Governance* (Oxford University Press, 2009) p. 100 in relation to the overlapping terminology of ‘*ultra vires*’ and ‘jurisdiction’.

⁸¹ *Hossain v Minister for Immigration and Border Protection* (2018) 264 CLR 123 at 133 (Kiefel CJ, Gageler & Keane JJ) (emphasis in original).

⁸² Mark Leeming, ‘The Riddle of Jurisdictional Error’ (2014) 38 *Australian Bar Review* 139, p. 152 (Leeming J, writing extrajudicially).

⁸³ See, eg, *Philip Morris Ltd v State of Victoria* [1986] VR 825; *Attorney-General (Tas) v Casimaty* [2024] HCA 31.

⁸⁴ For example, in contract law, a substantial or material breach is one which goes to the primary purpose of the contract, and either deprives the other party of the benefit they would expect to derive from that transaction or seriously affects that benefit. (The lesser threshold of ‘seriously affects’ was introduced in *Androvitsaneas v Members First Broker Network* [2013] VSCA 212). The courts in these instances have variously asked whether the breach in question was ‘a moment of significance, not merely trivial or inconsequential’ and ‘of a serious or substantial import’: *Vision Eye Institute Ltd v Kitchen* [2014] QSC 260; *Androvitsaneas v Members First Broker Network*, citing *Elders Ltd v EJ Knight Co Pty Ltd* (2009) NSWSC 1462. As another example, in civil procedure and in evidence law, the word ‘material’ generally describes a fact or evidence that is significant in the sense of being potentially determinative of an issue.

⁸⁵ *Macquarie Concise Dictionary* (Macquarie University, 4th ed, 2008) p. 1220.

⁸⁶ Ibid, p. 742. Additionally, it states that in ‘Law (of evidence, etc)’, material means ‘likely to influence the determination of a cause’.

⁸⁷ See, eg, Legal and Constitutional Committee, *Second Report to Parliament on Subordinate Legislation* (April 1986) p. 4. This report included consideration of a bundle of occupational health and safety regulations made in the 1985 Statutory Rules Series (SR No.’s 382 to 387 of 1985). Upon a suggestion from the responsible Department that consultation with relevant interest groups obviated the need to prepare a regulatory impact statement with respect to these statutory rules, the parliamentary committee stated: ‘The Subordinate Legislation Act lays down the procedure for the making of subordinate legislation, and it is these procedures which must be followed, rather than any process of a more or less similar nature.’

statement which is merely a token gesture and therefore not a genuine attempt to assess the costs and benefits of proposed regulations will also constitute a material contravention of the Guidelines.⁸⁸

In the 2025 Series, the Subcommittee considered section 21(1)(j) of the SLA in relation to three statutory rules prepared in contravention of the procedural requirements set out in sections 11, 5A and 14 of the SLA. These procedural requirements are each considered separately below.

Notice inviting public comments or submissions (s. 11): SR No. 147 – Transport (Compliance and Miscellaneous) (Conduct on Public Transport) Regulations 2025

In 2025, the Subcommittee considered the adequacy of a notice issued under section 11 of the SLA in respect of SR No. 147 – Transport (Compliance and Miscellaneous) (Conduct on Public Transport) Regulations 2025.

Where a RIS is prepared in relation to a statutory rule, section 11(1) of the SLA requires the responsible Minister to ensure a notice in accordance with section 11(2) is published in the Government Gazette and on the Public Notices website.

Section 11 is set out:

11 Comments and submissions

- (1) If a RIS has been prepared, the responsible Minister must ensure that a notice in accordance with subsection (2) is published in—
 - (a) the Government Gazette; and
 - (b) a daily newspaper circulating generally throughout Victoria; and
 - (c) if the responsible Minister considers it appropriate, in such trade, professional or public interest publications as the responsible Minister determines.
- (2) A notice must—
 - (a) state the reason for, and the objectives of, the proposed statutory rule;
 - (b) summarise the results of the RIS;
 - (c) specify where a copy of the RIS and of the proposed statutory rule can be obtained;
 - (d) invite public comments or submissions within such time (being not less than 28 days from the publication of the notice) as is specified in the notice.
- (3) The responsible Minister must ensure that all comments and submissions are considered before the statutory rule is made.

SR No. 147/2025 regulates the conduct of persons on and in relation to public transport vehicles and premises. The Regulations largely remake the previous regulations which were due to sunset, but also introduce certain changes, such as making it an offence to switch on, operate or charge electric transportation devices or to bring modified electric transportation devices in certain areas or on certain services.

During preparation of the Regulations, a notice under section 11 was published in the Government Gazette and on the Public Notices website on 22 July 2025.⁸⁹ The notice invited public comments and submissions on the proposed Regulations and corresponding RIS no later than 18 August 2025.

Section 11(2)(d) requires a notice to specify a minimum of 28 days from the publication of the notice for the public to make comments and submissions. In this instance, the given period – from 22 July 2025 to 18 August 2025 – was only 27 days.⁹⁰

⁸⁸ Legal and Constitutional Committee, *Sixteenth Report to Parliament on Subordinate Legislation—Scrutiny of Subordinate Legislation: Principles and Practice* (1988) p. 7. See also *Philip Morris Ltd v State of Victoria* [1986] VR 825.

⁸⁹ See *Interpretation of Legislation Act 1984* (Vic), section 38M(1)(a), which provides that if an Act, statutory rule or any other subordinate instrument requires notice (however described) to be published in a print newspaper circulating generally in Victoria, that requirement is taken to have been met, for all purposes, if the notice is published on an approved alternative publication Internet site. On 31 July 2022, the Assistant Treasurer declared <www.publicnotices.vic.gov.au> to be an approved alternative publication Internet site from 31 July 2022.

⁹⁰ See *Interpretation of Legislation Act 1984* (Vic) s 44(1): 'Where in an Act or subordinate instrument a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall not be included in the period.'

The issue for the Subcommittee was whether this was a substantial or material contravention.

The Subcommittee notes section 11 is silent as to the consequences of non-compliance. This is distinct from several other provisions of the SLA, including section 12 which requires publication of a notice of decision to make or not make a statutory rule, following consideration of the proposed statutory rule and RIS. Subsection (4) of section 12 expressly provides that a failure to comply with the notice requirements under subsections (1), (2) and (3) of section 12 will not affect the operation or effect of a statutory rule. As section 11 contains no such provision, a failure to comply with section 11 may render a statutory rule inoperative or invalid.

As noted above, the High Court in *Project Blue Sky* confirmed that whether invalidity will result from a breach of a statutory provision is primarily a matter of purposive statutory interpretation. The case provides the leading authority that:

An act done in breach of a condition regulating the exercise of a statutory power is not necessarily invalid and of no effect. Whether it depends upon whether there can be discerned a legislative purpose to invalidate any act that fails to comply with the condition. The existence of the purpose is ascertained by reference to the language of the statute, its subject matter and objects, and the consequences for the parties of holding void every act done in breach of the condition.⁹¹

Use of the word ‘must’ in section 11 prima facie imposes an obligation or lays down a condition. However, following *Project Blue Sky*, mandatory language is relevant to – but not decisive of – the inquiry into legislative purpose. Thus it was observed in *Ozone Manufacturing Pty Ltd v Deputy Commissioner of Taxation* that: ‘Plainly, the question whether “must” is a word of obligation and, if it is, the force of the obligation will depend on the statutory context and the nature of the obligation in the context in which the obligation is to be performed.’⁹²

The Subcommittee notes a court may consider the consequences of requiring strict compliance with a statutory provision in determining whether its contravention is intended to invalidate the statutory rule.⁹³ If strict compliance with a statutory provision would result in public inconvenience or injustice, courts have generally not held the provision to be mandatory even though it may be couched in mandatory terms.⁹⁴ By contrast, courts have held that provisions are mandatory where failure to strictly comply would negate the objectives of the statute.⁹⁵

Section 11 of the SLA is directed at providing members of the public the opportunity to submit feedback on regulatory proposals, including with the benefit of the analysis of options, costs and benefits contained in the RIS. The responsible Minister ‘must’ ensure all comments and submissions are considered before the statutory rule is made. The Subcommittee emphasises that providing for public participation in the preparation and scrutiny of subordinate legislation is an explicit purpose of the statute as a whole.⁹⁶

Extrinsic materials may assist in interpreting the purpose of the legislation, including the intended nature and force of the obligation in section 11 within the context of the broader statutory scheme.⁹⁷ The Subcommittee notes parliamentary statements to the effect that preparation of a RIS is ‘compulsory’⁹⁸ and a central part of the modern scheme for the preparation of subordinate legislation, providing ‘a tool to rigorously assess regulatory proposals’ and ‘improve the quality of regulation’.⁹⁹ In this context, the requirement to give public notice inviting comments and submissions, which facilitates the ‘opportunity for public feedback’, ‘will increase opportunities for identifying better regulation and will help to prevent the introduction of

⁹¹ *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at 388-389 (McHugh, Gummow, Kirby and Hayne JJ).

⁹² *Ozone Manufacturing Pty Ltd v Deputy Commissioner of Taxation* (2006) 94 SASR 269 at [35].

⁹³ DC Pearce and RS Geddes, *Statutory Interpretation in Australia* (Butterworths, 5th ed, 2001) p. 282.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*, p. 283.

⁹⁶ SLA, section 1(c).

⁹⁷ See *Interpretation of Legislation Act 1984* (Vic) s 35. In interpreting a provision of an Act, a construction that would promote the purpose or object underlying the Act shall be preferred. As an extrinsic aid to interpretation, consideration may be given to ‘any matter or document that is relevant’, including but not limited to parliamentary proceedings, tabled documents, explanatory memoranda, and reports of law reform commissions, parliamentary committees or similar bodies.

⁹⁸ Victoria, *Parliamentary Debates*, Legislative Assembly, 10 November 1994, p. 1683 (Jeffrey Gibb Kennett, Premier).

⁹⁹ Victoria, *Parliamentary Debates*, Legislative Council, 27 July 2010, p. 3245 (Justin Mark Madden, Minister for Planning).

unnecessary regulatory burden'.¹⁰⁰ Such provisions have the effect of 'facilitating public participation in the law-making process' by ensuring persons likely to be affected can comment on the regulatory proposal and the RIS and by requiring the government to publicly justify the impacts of the regulatory proposal through the RIS.¹⁰¹

These parliamentary statements are consistent with the following commentary in the Guidelines:

The public consultation process gives businesses and the wider community a chance to communicate to government any concerns it may have about proposed regulations which will affect its activities. One of the aims of the RIS and the public consultation process is to obtain information and comment from the widest set of possible sources. This helps identify any weaknesses in the reasoning in the RIS, test assumptions and methodology in the RIS, and ensure that competing interests are recognised and adequately considered.¹⁰²

The Subcommittee considers the possibility that one consequence of a defect in the public notice may be to deprive the consultation process of meaningful contributions, including objections. It would undermine the stated objective of a rigorous assessment of the regulatory proposal involving 'comment from the widest set of possible sources'.¹⁰³ Reading section 11 in light of the extrinsic material and in the context and order of the whole statute, the public consultation process is clearly intended to inform the decision to make or not make the statutory rule.¹⁰⁴

In the Second Reading Speech preceding the passage of the SLA in 1994, the Premier noted:

The government recognises that proper consultation is important in deciding whether a statutory rule should be made - and if so, in formulating that rule. That consultation may be within government, as between different agencies, and with the sectors of the business and the wider community potentially affected by the rule or in whose interests the proposed rule is directed.¹⁰⁵

The Second Reading Speech also distinguished the 'strict parameters in legislation' from the 'administrative' procedures set out in the Guidelines to assist ministers in ensuring 'that all affected and interested groups are consulted, that views provided as part of that consultation process are properly considered and that all relevant advice is sought'.¹⁰⁶ Accordingly, the Subcommittee considers the 28 days set down in legislation may more readily be construed as mandatory than other consultation procedures set out in the Guidelines, which relevantly provide:

Under the SL Act, consultation following publication of a RIS is required for at least 28 days from public notification. However, consultation for at least 60 days is best practice.¹⁰⁷

In *Philip Morris Ltd v State of Victoria*, the court held it had jurisdiction to enforce compliance with the procedural requirements of section 12 of the *Subordinate Legislation Act 1962* but not with the guidelines issued pursuant to that Act.¹⁰⁸ This section was the earlier iteration of section 11 of the SLA. It required notice

¹⁰⁰ Ibid, p. 3244. The Second Reading Speech on the Subordinate Legislation Amendment Bill 2010 noted the bill 'introduced a process for legislative instruments that parallels the existing process for statutory rules'. Further at p. 3245: 'The bill requires the RIS and the proposed legislative instrument to undergo a minimum public consultation period of 28 days. While this has been standard practice for statutory rules, in many cases this will be the first time that the public can comment on other types of proposed subordinate instruments. Public consultation on proposed legislative instruments will increase government accountability and transparency by exposing the merits of decisions, assumptions and analysis used to make those decisions.'

¹⁰¹ Ibid, p. 3242.

¹⁰² Guidelines, p. 45.

¹⁰³ Ibid.

¹⁰⁴ SLA, sections 11(3) and 12.

¹⁰⁵ Victoria, *Parliamentary Debates*, Legislative Assembly, 10 November 1994, pp. 1684-1685 (Jeffrey Gibb Kennett, Premier).

¹⁰⁶ Ibid:

The nature and degree of consultation that is appropriate for any particular rule may vary with the nature of that rule, and the government believes that the best way to ensure that appropriate consultation is effected is not by laying down strict parameters in legislation but by drawing up guidelines that can be reviewed and amended as necessary to ensure that the best outcomes are achieved. ... The administrative mechanisms the government should wisely adopt to assist ministers in the proper exercise of their responsibilities will be set out in guidelines issued by the minister administering the act. These guidelines, previously referred to, will set out the mechanisms to be adopted to ensure that all affected and interested groups are consulted, that views provided as part of that consultation process are properly considered and that all relevant advice is sought by ministers before certifying to the adequacy of a regulatory impact statement.

¹⁰⁷ Guidelines, p. 46.

¹⁰⁸ *Philip Morris Ltd v State of Victoria* [1986] VR 825 at 829 (King J): 'I think that it is also relevant that the public is, by the legally enforceable requirements of s. 12(1), involved in the procedures relating to regulatory impact statements, and that it is consistent with this that the courts should be given the task of ensuring that the interests of the public are safeguarded.'

of a proposed statutory rule and RIS to be published, 'inviting public comments and submissions within such time being not less than 21 days from the publication of the notice'.¹⁰⁹ The Subcommittee notes prior statutory provisions dealing with the same subject matter may legitimately aid in the interpretation of a current provision, although care should be taken to ensure this does not produce a strained result, 'particularly where there is a rational explanation of the change of wording in the later provision'.¹¹⁰

Assistance may also be gained from the case law generally. While in every instance a case will turn on the particular provision to be interpreted, there are general trends in approach which may provide guidance. The Subcommittee notes as a general proposition:

Provisions that are intended to allow persons to make representations relevant to a decision such as through consultations, inquiries or appeals will usually be interpreted as obligatory. So notice requirements and the giving of reasons will be strictly enforced.¹¹¹

The courts have previously enforced public consultation and notice requirements in the context of planning legislation. These planning provisions, while sector-specific, might be seen to mirror section 11 of the SLA in terms of their steps and underlying objectives, as well as the fact they 'leave much to officials to put them into operation'.¹¹² In *Scurr v Brisbane City Council* (Scurr), the High Court determined a local council provided inadequate public notice of a development application, and breach of these public notice requirements should render its consent to the development invalid.¹¹³ Justice Stephen, with whom the other justices agreed, considered that as the purpose of the provision was to provide for public participation in the decision-making process, the notice had to provide sufficient information to enable members of the public to determine whether they should object to the development and for the content of their objection to be meaningful. In coming to this decision, His Honour observed a 'consequence' of an inadequate notice 'will be that the council will be deprived of the benefit of worthwhile objections when considering an application'.¹¹⁴

Contravention of a minimum time period for notice and consultation was specifically considered in the case of *Kwiksnax Mobile Industrial & General Caterers Pty Ltd v Logan City Council* (Kwiksnax).¹¹⁵ Similar to *Scurr*, this case concerned a provision for the passage of by-laws relating to town planning schemes. The presiding judge observed:

Of course not every procedural step will be regarded as a condition precedent to validity ... But the requirement of giving fair notice to the public of the general purport of by-laws so that proper objections may be made and so that fair consideration can be given to the objections is an integral part of the system which s. 31(27) [the statutory provision for the passage of by-laws] establishes. That is an important requirement and its importance, even in the limited context of an advertisement for a change of use of a particular property, was recognised by Stephen J in *Scurr v Brisbane City Council* (1973) 133 CLR 242, 252. Denial to citizens of an adequate right to object to a by-law which affects commerce generally, and which imposes penalties for non-compliance, is a serious matter. If it is breached, it cannot be said that the local authority has substantially complied with the statutory requirements.¹¹⁶

Accordingly, the fact the local council 'gave notice for a period of 24 days only when 90 days was required' constituted a 'serious' or 'substantial' failure to comply with the procedural requirement.¹¹⁷ The court found the by-law invalid.

¹⁰⁹ *Subordinate Legislation Act 1962* (Vic) s 12.

¹¹⁰ DC Pearce and RS Geddes, *Statutory Interpretation in Australia* (Butterworths, 5th ed, 2001) p. 73.

¹¹¹ *Ibid*, p. 285, citing *Sandvik Australia Pty Ltd v Commonwealth* (1989) 89 ALR 213 at 277.

¹¹² See Andrew Edgar, 'Judicial review of public consultation processes: A safeguard against tokenism?' (2013) 24 *Public Law Review* 209, p. 211:

There are two types of legislation that provide for public consultation – general legislation such as the various subordinate legislation statutes and sector-specific legislation. ... The public consultation case law has developed nearly exclusively in the context of challenges to consultation under sector-specific legislation. There are four primary elements of public consultation processes. The first relates to the threshold requirements that establish when public consultation is required or if there can be an exemption. The second is that the administrator is required to issue a public notice of the proposed rule or decision in a newspaper or on the internet. The third is that "any person" may make a submission on the proposed rule or decision. The fourth is that the submissions are to be considered. The legislative provisions setting out these four requirements have traditionally been brief. They leave much to officials to put them into operation and for debate as to whether they have been complied with or not.

Additionally, at p. 214: 'They are intended to enable participants to provide the decision-maker with opposing or critical views of the proposal, thus assisting the decision-maker to make a decision that is informed by possible objections.'

¹¹³ *Scurr v Brisbane City Council* (1973) 133 CLR 242.

¹¹⁴ *Ibid*, p. 252. See also Andrew Edgar, 'Public and Private Interests in Australian Administrative Law' (2013) 36(1) *UNSW Law Journal* 202.

¹¹⁵ *Kwiksnax Mobile Industrial & General Caterers Pty Ltd v Logan City Council* (1994) 1 Qd R 291.

¹¹⁶ *Ibid* at 305 (Thomas J).

¹¹⁷ *Ibid* at 302 and 305 (Thomas J).

The language of the *Kwiksnax* decision suggests substantial compliance with the 90-day consultation period was necessary as a condition of validity, but strict compliance may not have been required. Justice Stephen similarly seemed to suggest in passing in *Scurr* that certain formalities of time in statutory procedure may necessitate only substantial as opposed to strict observance.¹¹⁸ In comparison to the factual circumstances in *Kwiksnax*, a deficiency of one day between what was given and what was required might not be serious or substantial.

On the other hand, by-laws have previously been found invalid on the basis that public notice of the intention to make the by-law was advertised for two days less than what was required by the enabling legislation.¹¹⁹

The Subcommittee notes that at minimum a consultation period should provide sufficient time for a member of the public to access relevant information, analyse it, and prepare a meaningful submission – and that the periods set in legislation for this purpose ‘tend to range between 21 and 30 days’.¹²⁰

The Subcommittee wrote to the Minister for Public and Active Transport on 31 March 2026 to express its concern that the failure to strictly comply with section 11 may affect the operation or effect of the Regulations. The Subcommittee requested additional information from the Minister as to the material effect in this instance of specifying 27 days rather than 28 days for public comments and submissions, including:

- whether any public comments or submissions were able to be, and were, received after 18 August 2025;
- if so, whether these comments or submissions raised issues relevant to the proposed Regulations or RIS which were not raised in other comments or submissions received on or before 18 August 2025;
- if so, whether such issues were considered by the responsible Minister prior to the making of the Regulations.

The Minister’s response of 28 April 2026 confirmed that submissions were accepted after 18 August 2025 via a dedicated departmental inbox which the Department of Transport and Planning continued to monitor up to and including 21 August 2025. The Minister stated that the submissions received after 18 August 2025 ‘largely reflected matters that had been raised during the formal consultation period and did not raise new matters of significance relevant to the proposed Regulations or the RIS’.¹²¹ These matters were considered prior to the making of the Regulations.

The Subcommittee appreciates the Minister’s comprehensive response. On the basis of the information provided by the Minister, the Subcommittee considered that specifying a consultation period of 27 days rather than 28 days in the public notice may not have produced a materially different outcome in this instance. Submissions were received and considered over a period that was in fact 30 days, and 261 written submissions and 3077 survey responses were received and considered in total.

The Subcommittee observes that whether a failure to strictly comply with section 11 is intended to render a statutory rule invalid is a question of purposive interpretation on which reasonable minds may differ. This may be conclusively decided by the courts. In deciding not to make a parliamentary report in this instance, the Subcommittee followed its previous approach to contraventions of section 11 in the 2023 and 2024 Statutory Rules Series.¹²²

¹¹⁸ This is certainly the case where a decision-maker is granted broad discretion to determine the period of consultation. In *Wilderness Society Inc v Turnbull* (2007) 166 FCR 154, the Federal Court determined a provision conferring such discretion only required that the opportunity to comment was ‘not illusory or wholly unreasonable’: at 177. The Minister’s exercise of the discretion to set a consultation period of 20 days was sufficient.

¹¹⁹ See *The Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84 at fn 109: ‘In *Re Local Government Act 1874; Ex parte Taylor* (1885) 6 ALT 170 a by-law was held to be invalid because the by-law was made after a period of two days less than the required month in which the intention had to be advertised.’

¹²⁰ Andrew Edgar, ‘Judicial review of public consultation processes: A safeguard against tokenism?’ (2013) 24 *Public Law Review* 209, pp. 218–219.

¹²¹ Details of correspondence are included in Appendix C.

¹²² See *Annual Review 2023: Statutory Rules and Legislative Instruments* (September 2024) pp. 13–21; *Annual Review 2024: Statutory Rules and Legislative Instruments* (May 2026) pp. 12–15.

Extension certificate (s. 5A): SR No. 48 – Subordinate Legislation (Road Management (Works and Infrastructure) Regulations 2015) Extension Regulations 2025

Section 5 of the SLA provides for the automatic revocation of statutory rules after a period of ten years unless sooner revoked or unless an extension regulation is made under section 5A to extend the operation of the statutory rule.

SR No. 48/2025 was made by the Governor in Council under sections 5A and 28 of the SLA for the purpose of extending the Road Management (Works and Infrastructure) Regulations 2015 for a 12-month period. The Regulation was accompanied by a Premier's certificate under section 5A(3), along with an explanatory memorandum setting out the special circumstances and reasons why the extension was necessary. However, it was not accompanied by an extension certificate, and the Department of Transport and Planning subsequently confirmed that no extension certificate had in fact been issued by the responsible Minister under section 5A(1).

The Subcommittee considered whether the failure to issue an extension certificate was a substantial or material contravention.

Section 5A of the SLA provides:-

5A Extension regulations

- (1) Subject to subsection (3), the responsible Minister may issue an extension certificate if satisfied that—
 - (a) due to special circumstances, there is insufficient time to enable compliance with Part 2 in respect of a proposed statutory rule before the statutory rule it is intended to replace is to be revoked by section 5; and
 - (b) the statutory rule which would otherwise be revoked by section 5 should be extended for a specified period not exceeding 12 months by an extension regulation.
- (2) An extension certificate must specify the special circumstances, including the reasons why the extension is necessary.
- (3) Before issuing an extension certificate, the responsible Minister must obtain a certificate from the Premier which specifies that the Premier has agreed that the statutory rule which would otherwise be revoked by section 5 should be extended for the specified period by an extension regulation.
- (4) The Governor in Council may make an extension regulation extending the operation of a statutory rule that would otherwise be revoked by section 5 for a period specified in the extension regulation.
- (5) Only one extension regulation can be made in respect of the operation of a statutory rule.

The Subcommittee notes subsection (4) of section 5A is an empowering provision, which authorises the Governor in Council to make an extension regulation extending the operation of a statutory rule for a specified period. This power is subject to the limitation in subsection (5) that it may only be exercised once. Subsections (1), (2) and (3) set out procedural steps specific to extension regulations to precede the exercise of this power. The responsible Minister, having formed the prescribed views as to the special circumstances and need for the extension not exceeding 12 months, and having obtained a Premier's certificate agreeing to the extension, 'may' issue an extension certificate. The extension certificate 'must' specify the special circumstances that mean there is insufficient time to comply with Part 2 of the SLA in preparing a new statutory rule, including the reasons why the extension is necessary (i.e. why the existing statutory rule cannot be left to sunset without replacement).¹²³

(These procedural steps should also be read in the context of section 14(da) of the SLA, which provides that an extension regulation when submitted to the Governor in Council 'must' be accompanied by a copy of both the extension certificate and the Premier's certificate. Compliance with section 14 is considered in detail at the next subheading below.).

¹²³ Guidelines, pp. 59-60.

The Subcommittee notes the failure to issue an extension certificate would clearly be a substantial or material contravention if it were intended as an essential preliminary or mandatory condition precedent to the exercise of the power in subsection (4) to make an extension regulation.

The provision states the responsible Minister ‘may’ issue an extension certificate. The word ‘may’ is a permissive or facultative expression. Prima facie it is taken to operate according to its ordinary natural meaning to confer a discretion. On exception, however, it might be possible to show – as a matter of construction of the statute taken as a whole – that the word ‘may’ is intended to have a compulsory meaning.¹²⁴

The Subcommittee notes section 45 of the *Interpretation of Legislation Act 1984*, which provides for the construction of ‘may’. Section 45(1) states that ‘where ... the word ‘may’ is used in conferring a power, that word shall be construed as meaning that the power so conferred may be exercised, or not, at discretion.’ Section 45(3) purports to abrogate any rule of construction to the contrary. However, Pearce & Geddes observe this subsection has attracted criticism from the courts, which have attempted to read down its application.¹²⁵

The Subcommittee considers the use of ‘may’ in subsection (1) of section 5A should be read in its full context and alongside subsection (2). In the Subcommittee’s opinion, the responsible Minister *may* issue an extension certificate under subsection (1) in the sense that the Minister *can only* do so ‘if satisfied’ of the matters in paragraphs (a) and (b). The Minister’s discretion to issue an extension certificate is conditional upon the Minister forming this particular state of mind described in paragraphs (a) and (b) (as well as obtaining a Premier’s certificate pursuant to subsection (3)). Additionally, the use of ‘may’ in this context recognises the Executive Government is not compelled to make an extension regulation in every circumstance in which it would be possible for the Minister to form this particular state of mind; a statutory rule may simply be left to sunset despite there being, in point of fact, grounds for its extension. Once the Minister *does* form the particular state of mind required by paragraphs (a) and (b) of subsection (1), however, subsection (2) provides that an extension certificate ‘must’ specify the grounds on which the Minister came to this opinion. That is, the apparent discretion on the Minister to issue an extension certificate might at this point be rendered obligatory.¹²⁶

The history of the provision may assist in its interpretation.¹²⁷ Prior to the introduction of section 5A, the specific procedure for preparing and making extension regulations was set down in the following terms as part of section 5 of the SLA:¹²⁸

- (3) If the responsible Minister is satisfied that due to special circumstances there is insufficient time to enable compliance with Part 2 in respect of a proposed statutory rule before the statutory rule it is intended to replace is to be revoked by virtue of this section, the responsible Minister may so certify.
- (4) The Governor in Council may, on the certificate and recommendation of the relevant responsible Minister under subsection (3), make a regulation under this Act extending the operation of a statutory rule that would otherwise be revoked by virtue of this section for a period as is specified in the regulation not exceeding 12 months.

¹²⁴ *Ex Parte Gleeson* [1907] VLR 368 at 373; *Finance Facilities Pty Ltd v FCT* (1971) 127 CLR 106. See also DC Pearce and RS Geddes, *Statutory Interpretation in Australia* (Butterworths, 5th ed, 2001) pp. 274 and 284; Catriona Cook, Robin Creyke, Robert Geddes and David Hamer, *Laying Down the Law* (Butterworths, 7th ed, 2009) p. 302.

¹²⁵ DC Pearce and RS Geddes, *Statutory Interpretation in Australia* (Butterworths, 5th ed, 2001) p. 294.

¹²⁶ See generally *Finance Facilities Pty Ltd v FCT* (1971) 127 CLR 106. The case considered section 46(3) of the *Income Tax Assessment Act 1936* (Cth), which provided that the Commissioner ‘may allow’ a private company a rebate ‘if satisfied’ of certain circumstances. The Court found the Commissioner was obliged to allow the rebate once satisfied that the circumstances entitling the company to receive it had been established. Justice Windeyer reasoned at pp. 134-135: ‘This does not depend on the abstract meaning of the word ‘may’ but whether the particular context of words and circumstances make it not only an empowering word but indicate circumstances in which the power is to be exercised – so that in those events the ‘may’ becomes a ‘must’.’

¹²⁷ The Subcommittee notes prior statutory provisions dealing with the same subject matter may legitimately aid in the interpretation of a current provision, although care should be taken to ensure this does not produce a strained result, ‘particularly where there is a rational explanation of the change of wording in the later provision’: DC Pearce and RS Geddes, *Statutory Interpretation in Australia* (Butterworths, 5th ed, 2001) p. 73.

¹²⁸ This provision was in the first version of the *Subordinate Legislation Act 1994* (Vic), which commenced on 1 January 1995.

The Subcommittee notes the Governor in Council's power to make an extension regulation in this earlier iteration of subsection (4) was expressly, textually linked to the 'certificate and recommendation of the relevant responsible Minister'.

However, when section 5A was first introduced by the *Subordinate Legislation Amendment Act 2010*, the empowering provision in subsection (4) referred to the recommendation of the responsible Minister but not the certificate. It provided:¹²⁹

- (4) On the recommendation of the responsible Minister, the Governor in Council may make a regulation under this Act extending the operation of a statutory rule that would otherwise be revoked by section 5 for a period specified in the extension regulation.

At the same time, the explanatory memorandum couched the issue of the extension certificate in the mandatory language of 'must':

The new section 5A allows the Governor in Council to make a regulation that extends an existing statutory rule by up to 12 months. This may be done once, on the recommendation of the responsible Minister. The responsible Minister must issue an extension certificate specifying the special circumstances, including the reasons why the extension is necessary, after obtaining a certificate from the Premier specifying that the Premier agrees to the extension of the statutory rule. The Premier's agreement is a new requirement.¹³⁰

These prefacing words were then removed altogether by the *Subordinate Legislation Administrative Arrangements Amendment Act 2024*, which substituted the provision for what is now the current section 5A(4). The respective explanatory memorandum relevantly stated:

Subclause (3) amends section 5A(4) of the SL Act by providing that the Governor in Council may make an extension regulation for a statutory rule that would otherwise be revoked under section 5(1) of the SL Act. This removes the words "on the recommendation of the responsible Minister" to reflect that all regulations made by the Governor in Council are made on the recommendation of the responsible Minister, so those words are unnecessary. These amendments are intended to add clarity and do not make any changes to the operation of section 5A.¹³¹

The Subcommittee considers the removal of any express mention of the extension certificate from the empowering provision, and the explanation of similar changes as merely combatting a superfluity, may indicate it was never intended to operate as an essential preliminary or mandatory condition precedent to the power to make an extension regulation.

In light of this textual analysis and history, the Subcommittee turns to the purpose of section 5A in the context of the statute as a whole. As stated in the Guidelines, the SLA 'aims to ensure that outdated and unnecessary regulation is automatically repealed, with the automatic revocation of statutory rules ten years after they are made'.¹³² The power to extend a sunseting statutory rule is therefore an exception to the ordinary automatic revocation process, and, being exceptional, must by definition be limited to only certain circumstances and conditions. These circumstances and conditions are set out in paragraphs (a) and (b) of section 5A(1), and the Minister's satisfaction is the statutory mechanism used to impose this necessary limitation.

The Guidelines support this interpretation of an extension regulation as a limited exception to the general sunseting regime, by making it clear that extending a statutory rule is not justified in circumstances of mere administrative oversight or where there is insufficient time for a RIS to be prepared but no extenuating special circumstances.¹³³

The Subcommittee emphasises that if the circumstances and conditions in paragraphs (a) and (b) of section 5A(1) were not considered to be mandatory to the exercise of the power to make an extension regulation, the statutory scheme imposing automatic revocation after 10 years would be significantly undermined. It would

¹²⁹ *Subordinate Legislation Amendment Act 2010* (Vic) s 5.

¹³⁰ Explanatory Memorandum, *Subordinate Legislation Amendment Bill 2010*, p. 3.

¹³¹ Explanatory Memorandum, *Subordinate Legislation Administrative Arrangements Amendment Bill 2024*, p. 3.

¹³² Guidelines, p. 59, [259].

¹³³ *Ibid*, p. 60.

mean a sunset statutory rule might be extended in any circumstance and for any length of time, without needing to undergo another RIS. The Subcommittee notes the following statement from the 1994 Second Reading Speech in support of the purpose of the provision as allowing only a limited extension to facilitate compliance with the ordinary procedural requirements, particularly the RIS:

The 10-year sunset regime contained in the Subordinate Legislation Act is retained in the bill. However, in order to address the situation where regulations sunset before there has been time to complete a regulatory impact statement, the bill includes a provision in clause 5(3) and (4) to allow the relevant minister to extend the life of a sunset regulation for a further period of up to 12 months, during which time the regulatory impact statement will be completed.¹³⁴

This purposive context strongly suggests the power to make an extension regulation must be conditional upon the Minister forming the particular state of mind described in paragraphs (a) and (b) of section 5A(1). In the Subcommittee's opinion, the Minister's satisfaction of these matters is likely to be essential and mandatory to the Governor in Council exercising the power to make an extension regulation under section 5A(4).

The Subcommittee notes the courts have previously found the existence of a preliminary state of mind to be mandatory to the validity of legislation, and where it is required it must be formed properly.¹³⁵

It does not necessarily follow, however, that the Minister's issue of an extension certificate is also essential and mandatory to the validity of an extension regulation. The extension certificate is to provide evidence that the Minister has properly formed the particular state of mind prescribed by paragraphs (a) and (b) of section 5A(1).¹³⁶ However, the Subcommittee notes that in the absence of the extension certificate, the presumption of regularity will apply to assume the performance of conditions preliminary to the making of the extension regulation.¹³⁷ This presumption may be displaced by evidence to the contrary,¹³⁸ but it is not necessary *per se* to the validity of the extension regulation that an extension certificate be issued in respect of the regulation. The Minister's satisfaction of the circumstances and conditions in paragraphs (a) and (b) of section 5A(1) which go to the essential purpose and scope of the power may be presumed and subsequently established without certification.

On this basis, the Subcommittee formed the preliminary view that the failure to issue an extension certificate in respect of SR No. 48/2025 was not a contravention of a substantial or material nature. It went on to consider the purpose of certification requirements in further detail, in relation to the submission of certificates to the Governor in Council under section 14 of the SLA. The material effect of the failure to issue the extension certificate, and the potential consequences if it were found to be invalidatory were also considered in this context. This additional consideration of SR No. 48/2025 is outlined under the next sub-heading, alongside SR No. 107/2025.

Submission of certificates to Governor in Council (s. 14): SR No. 48 – Subordinate Legislation (Road Management (Works and Infrastructure) Regulations 2015) Extension Regulations 2025 and SR No. 107 – Child Wellbeing and Safety (Child Link) Amendment Regulations 2025

In 2025, the Subcommittee considered two instances where a proposed statutory rule submitted to the Governor in Council was not accompanied by copies of certain certificates as required under section 14 of the SLA.

¹³⁴ Victoria, *Parliamentary Debates*, Legislative Assembly, 10 November 1994, p. 1685 (Jeffrey Gibb Kennett, Premier).

¹³⁵ *Hollobone v Foley* (1980) 23 SASR 251; *Phillips' Oysters (Georges River) Pty Ltd v Brinsley* [1979] 1 NSWLR 436; *Foley v Padley* (1984) 54 ALR 609; *R v Connell*; *Ex parte Hetton Bellbird Collieries Ltd* (1944) 69 CLR 407 at 430 (Latham CJ). See Dennis Pearce and Stephen Argument, *Delegated Legislation in Australia* (Butterworths, 2nd ed, 1999) p. 115.

¹³⁶ SLA, section 5A(2).

¹³⁷ *Slade v Reichhold Chemicals Inc (Australia) Pty Ltd* (1954) 53 AR (NSW) 92; *McGregor v Australian Mortgage, Land and Finance Co* (1898) 15 WN (NSW) 128; *Leonard v Creswell* [1920] SALR 165. See Dennis Pearce and Stephen Argument, *Delegated Legislation in Australia* (Butterworths, 2nd ed, 1999) pp. 314–320 and 324.

¹³⁸ *Clugston v Montague* [1936] VLR 172. See Dennis Pearce and Stephen Argument, *Delegated Legislation in Australia* (Butterworths, 2nd ed., 1999) p. 315.

Section 14 of the SLA provides:

14 Submission of statutory rules to Governor in Council

A proposed statutory rule that is to be made by, or with the consent or approval of, the Governor in Council when submitted to the Governor in Council must be accompanied by—

- (a) 3 copies (or such other number as may be prescribed) of the proposed statutory rule;
- (b) a copy of the section 13 certificate;
- (c) if a regulatory impact statement was not required, a copy of the exemption certificate;
- (d) if a regulatory impact statement was required, a copy of the compliance certificate;
- (da) if the proposed statutory rule is an extension regulation, a copy of the extension certificate and a copy of the Premier's certificate under section 5A(3);
- (db) if consultation was required under section 6, a copy of the consultation certificate issued under that section;
- (e) if the proposed statutory rule provides for the enforcement of an offence against the statutory rule by an infringement notice, whether under the Infringements Act 2006 or otherwise, a copy of the certificate under section 6A;
- (f) if a human rights certificate was required, a copy of the human rights certificate;
- (g) if a human rights certificate was not required, a copy of the responsible Minister's certificate under section 12A(3).

The first instance in which the Subcommittee considered the effect of non-compliance with this provision was in relation to SR No. 48 – Subordinate Legislation (Road Management (Works and Infrastructure) Regulations 2015) Extension Regulations 2025. As noted above, no extension certificate was issued for this statutory rule under section 5A and therefore none was able to be submitted to the Governor in Council.

The second instance concerned SR No. 107 – Child Wellbeing and Safety (Child Link) Amendment Regulations 2025. An exemption certificate under section 8(1)(a) was issued for this statutory rule but not submitted to the Governor in Council, which the Department of Education noted was an administrative oversight.

Section 14 provides that a statutory rule, when submitted to the Governor in Council, 'must' be accompanied by the requisite certificates. There was clearly a failure to comply with section 14(da) in relation to SR No. 48/2025 and section 14(c) in relation to SR No. 107/2025, as follows—

- As SR No. 48 is an extension regulation, the failure to submit an extension certificate was clearly contrary to paragraph (da). It is irrelevant at this stage of the inquiry that a Premier's certificate was submitted; use of the word 'and' requires both certificates to be submitted in order to satisfy the terms of the provision.
- As SR No. 107 is a statutory rule, which, by virtue of the issue of a section 8(1)(a) exemption certificate, did not require a regulatory impact statement,¹³⁹ the failure to submit the exemption certificate was clearly contrary to paragraph (c).

The Subcommittee considered SR No. 48/2025 at a meeting on 20 August 2025 and SR No. 107/2025 at a meeting on 8 December 2025. In each instance the Subcommittee resolved to seek the responsible Minister's opinion on the nature of the failure to submit a copy of the relevant certificate to the Governor in Council. It wrote to the Minister for Roads and Road Safety in respect of SR No. 48/2025 on 21 August 2025 and the Minister for Children in respect of SR No. 107/2025 on 15 December 2025. It received responses dated 17 September 2025 and 26 January 2026, respectively.

The issue for the Subcommittee is whether the failure to provide certificates to the Governor in Council is a substantial or material contravention.

¹³⁹ SLA, section s 7(2).

As noted above, use of the word 'must' prima facie imposes an obligation or lays down a condition. However, following *Project Blue Sky*, the courts will take a purposive approach to determine whether it was an intention of the legislation that a failure to strictly comply with a provision would be invalidatory.

Section 14 concerns the submission to the Governor in Council of copies of a proposed statutory rule and of any certificates required to be issued in respect of that statutory rule. The section does not impose an obligation on any particular person. This is distinct from multiple other provisions drafted in terms such as 'the responsible Minister must ensure'. By contrast, section 14 is in the passive voice: 'a proposed statutory rule ... must be accompanied by ...'. The fact the section requires a certain number of copies of a proposed statutory rule to be submitted to the Governor in Council may suggest its purpose is to prescribe matters relating to the formalities of the official execution of subordinate legislation, whereby multiple identical copies of a statutory rule are processed and signed by the Governor acting on the advice of the Executive Council.¹⁴⁰

The heading to section 14 reads 'submission of statutory rules to Governor in Council', not certificates, which supports an interpretation of the section as concerned with the manner or form in which a proposed statutory rule is sent to the Governor in Council, as opposed to the provision of certificates being an essential preliminary or condition which goes to the power to make the statutory rule.

The Subcommittee considers the role and composition of the Governor in Council relevant in determining whether invalidity is intended to flow from a failure to submit certificates. The Governor in Council refers to a meeting of the Executive Council over which the Governor presides in accordance with section 87C of the *Constitution Act 1975*. This body is part of the Executive Government.^{141,142,143} The Subcommittee notes the courts are generally reluctant to strictly enforce the internal processes of public authority, particularly where to do so would work inconvenience on private individuals.¹⁴⁴

The Subcommittee further notes the Second Reading Speech of the Subordinate Legislation Bill 1994, which included statements to the effect that the purpose of the certification requirements in the SLA is to enhance transparency and accountability of ministers in accordance with the system of responsible government:

In line with the theme of ensuring that it is the relevant minister who is responsible to the Parliament, it is that minister who must certify to the Governor in Council that the regulatory impact statement adequately assesses the likely impact of the proposed statutory rule.¹⁴⁵ ...

The bill I introduce today is not only clearer and more easily understood but sets out a clear line of responsibility in the minister recommending the making of the rule.¹⁴⁶

In this context, the Subcommittee notes *Attorney-General (Tas) v Casimaty* (Casimaty) as authority that statutory procedures within the control of parliament pursuant to the system of responsible government will

¹⁴⁰ See Government House Victoria, Governor's Role (webpage) <<https://www.governor.vic.gov.au/governors-role>>. See also Government House Victoria, Executive Council and Royal Assent (webpage) <<https://www.governor.vic.gov.au/executive-council-and-royal-assent>>:

In a meeting of the Executive Council, the Council advises the Governor on the use of their powers, known as 'Governor in Council'. These meetings deal with specific matters such as the making of regulations, the appointment of judges, and the determination of the use of Crown land, among others. ... Ahead of the meeting, recommendations from Ministers are delivered to the Governor by the Clerk of the Executive Council.

¹⁴¹ *Constitution Act 1975* (Vic), Part IV – The Executive.

¹⁴² The Governor in Council 'refers to the Governor acting on the advice of the Executive Council', that is, 'on the advice of relevant Ministers': Government House Victoria, *Governor's Role* (webpage) <<https://www.governor.vic.gov.au/governors-role>>. See also: [Th]e Governor is bound to act in accordance with the advice of either Cabinet or the Minister responsible for administering the statutory provision that confers the power. The Governor in Council is not a deliberative body but one that acts on the advice of the relevant Ministers. It follows therefore that the relevant Minister will be accountable to Parliament for any decision that is made. It is clear from this constitutional structure that the role of the Governor is not as a decision maker in the sense that the Governor does not formulate or decide upon Government policy. That role rests with the Executive Government, the members of which are accountable to the Parliament.

¹⁴³ See also *Kwiksnax Mobile Industrial & General Caterers Pty Ltd v Logan City Council* (1994) 1 Qd R 291 at 305:

The role of the Governor in Council ... is necessarily confined to a limited form of surveillance of the necessary procedural steps. In point of fact the Executive Council appears not to have received a copy of the published notices. It is not to be thought that it should personally check these details. ... any necessary checking is done departmentally. In the usual course, neither the Minister nor the Governor in Council would be involved with these details.

¹⁴⁴ DC Pearce and RS Geddes, *Statutory Interpretation in Australia* (Butterworths, 5th ed, 2001) pp. 284-285.

¹⁴⁵ Victoria, *Parliamentary Debates*, Legislative Assembly, 10 November 1994, p. 1684 (Jeffrey Gibb Kennett, Premier).

¹⁴⁶ *Ibid*, p. 1685.

not ordinarily be mandatory conditions enforceable by the courts.^{147,148} *Casimaty* concerned section 16(1) of the *Public Works Committee Act 1914* (Tas), which stipulated that ‘no public work ... shall be commenced [by the executive government] unless it has first been referred to and reported upon by [a parliamentary committee] in accordance with this section.’ In coming to its decision that strict compliance with this section was not a mandatory condition precedent to the executive government’s power to commence a public work, the High Court found:

Consonant with the Act being designed to strengthen political accountability in accordance with the conventions of responsible government, the statutory consequence of non-compliance...is best seen to lie exclusively within the province of that mechanism of political accountability. The consequence of non-compliance is political, such that compliance is to be enforceable by the House of Assembly and the Legislative Council, not legal, such that compliance is to be enforceable by a court.

The High Court considered it pertinent that the procedural steps required by the provision were ‘wholly intra-mural’, meaning ‘activities undertaken exclusively by Members of the Parliament’. It noted traditionally a court does not interfere in these activities,¹⁴⁹ and also considered it relevant that enforcement by a court would inconvenience private contractors engaged to carry out the works and other concerned parties.

The Subcommittee considers the possibility that the purpose of certification may be to assist in the effective and efficient scrutiny and parliamentary oversight of subordinate legislation, and its enforcement therefore a matter for the legislature not the judiciary.

The Subcommittee notes the response from the Minister for Children in relation to SR No. 107/2025 relied heavily on the reasoning in *Casimaty*.¹⁵⁰ Similarly, the Minister for Roads and Road Safety, responding in relation to SR No. 48/2025, referred to the abovementioned principle that breach of a statutory requirement which is internal to government should not invalidate dealings with innocent outsiders and affected parties.¹⁵¹ The Minister’s response emphasised the consequences for the parties if SR No. 48/2025 was held to be invalid:

The Extension Regulations provide exemptions from the requirement to obtain consent from the relevant road authority for the undertaking of works on public roads that would otherwise be required to be obtained by parties such as utility companies, public transport providers and fire authorities. If the exemptions do not apply, the providers of these important and at times safety-critical works would need to obtain prior consent from the relevant road authority before conducting that work, resulting in unnecessary delays and further safety risks.

Both Ministers provided information to the Subcommittee to the effect that the failure to submit the certificate did not materially affect the information ultimately provided to the Governor in Council.¹⁵²

In relation to SR No. 48/2025, the responsible Minister noted:

Both the explanatory memorandum to the Extension Regulations and the Premier’s certificate, which were submitted to the Governor-in-Council, explain the special circumstances which justified the making of the

¹⁴⁷ *Attorney-General (Tas) v Casimaty* [2024] HCA 31.

¹⁴⁸ The Subcommittee notes the presiding judge in the case of *Philip Morris Ltd v State of Victoria* dismissed an argument that section 12 of the *Subordinate Legislation Act 1962* was enforceable only by the Parliament and not by the Court. This was in relation to the public consultation and notice requirements following preparation of a RIS, considered under the earlier subheading above. The presiding judge emphasised the involvement of the public in this particular procedural provision: ‘I think that it is also relevant that the public is, by the legally enforceable requirements of s. 12(1), involved in the procedures relating to regulatory impact statements, and that it is consistent with this that the courts should be given the task of ensuring that the interests of the public are safeguarded.’ See *Philip Morris Ltd v State of Victoria* [1986] VR 825 at 829 (King J).

¹⁴⁹ *Attorney-General (Tas) v Casimaty* [2024] HCA 31 at fn 43: ‘*Western Australia v The Commonwealth* (1995) 183 CLR 373 at 482, citing *Cormack v Cope* (1974) 131 CLR 432 at 454 and *Victoria v The Commonwealth and Connor* (1975) 134 CLR 81 at 184. See also *Clayton v Heffron* (1960) 105 CLR 214 at 234-235.’

¹⁵⁰ Details of correspondence are included in Appendix C.

¹⁵¹ The Minister’s response cited: *Kirkham v Industrial Relations Commission* (2015) 121 SASR 471 at 481 and 484; *Australian Broadcasting Corporation v Redmore Pty Ltd* (1989) 166 CLR 484 at 457; *Ko v Hall* [2020] VSCA 224 at [70].

¹⁵² In each instance, the responsible Minister referenced the case of *Hossain v Minister for Immigration and Border Protection* (2018) 264 CLR 123 at 134-135, which was followed in *MZAPC v Minister for Immigration and Border Protection* (2021) 390 ALR 590 at 598. The High Court in this case determined that not every breach of a statutory condition results in a jurisdictional error, particularly ‘if complying with the condition could have made no difference to the decision that was made in the circumstances in which the decision was made’. The Subcommittee notes this case was concerned with procedural errors in administrative decisions and its application may be limited to these factual circumstances. However, the issue of materiality is also relevant to the broader meaning of a ‘substantial or material contravention’ under section 21(1)(j) of the SLA, beyond its minimum content of jurisdictional error.

Extension Regulations. This information would also have been included in the extension certificate under the SLA. Accordingly, material sufficient for the Governor-in-Council to make a decision, albeit not as technically required under the SLA, was provided to the Governor-in-Council to support the making of the Extension Regulations. On this basis, I am advised that the omission of the certificate is not substantial or material in nature.

In relation to SR No. 107/2025, the responsible Minister noted:

The aims and purposes of section 14(c), which is to ensure the GiC has the benefit of the exemption certificate as a relevant consideration when considering whether to make a proposed statutory rule, were not frustrated by the contravention. ... While the actual exemption certificate was not before the GiC when it considered the relevant submission and ultimately proceeded to make the Regulations, the GiC nevertheless had this information at its disposal as the explanatory memorandum to the Regulations makes reference to this certificate, specifically noting that a RIS was not prepared as the Regulations did not impose a significant burden. The GiC having this knowledge and state of mind when making the Regulations supports the conclusion that the non-compliance, in this case, was not material and weighs in favour of the GiC validly exercising their power to make the Regulations.

The Subcommittee appreciates this information and the comprehensive response it received from the responsible Minister in each instance. In these material circumstances and on the weight of the analysis outlined above, the Subcommittee did not consider it clear in either instance that a substantial or material contravention could necessarily be established for the purpose of reporting to the Parliament pursuant to section 21(1)(j) of the SLA.

2.3.4 Incompatible with the Charter of Human Rights and Responsibilities (s. 21(1)(ha))

The Subcommittee scrutinises statutory rules against section 21(1)(ha) of the SLA to ensure compatibility with the human rights set out in Part 2 of the Charter of Human Rights and Responsibilities.¹⁵³ In performing this function, the Subcommittee must consider the human rights certificate provided by the responsible Minister under section 12A of the SLA in respect of each statutory rule. When assessing the adequacy of a human rights certificate, the Subcommittee must consider whether there is any limitation on any human right and, if so:

- the nature of the human right limited;
- the importance of the purpose of the limitation;
- the nature and extent of the limitation;
- the relationship between the limitation and its purpose; and
- any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

Extended human rights issues arose only once in the 2025 Series, in relation to the following statutory rule.

SR No. 118 – Corrections Amendment Regulations 2025

SR No. 118 – Corrections Amendment Regulations 2025 is made under the *Corrections Act 1986*. The Regulations amend the Corrections Regulations 2019, which have the stated objectives of providing for the management, good order and security of prisons and locations, and the welfare and discipline of prisoners and offenders.

Among other matters, the Corrections Regulations 2019 set out the circumstances in which the Governor of a prison may direct a prison officer to apply instruments of restraint to a prisoner, and the circumstances in which a prison officer may apply instruments of restraint to a prisoner without such a direction.

The Regulations introduce new regulation 14(1A) to the effect that the Governor must direct a prison officer to apply an instrument of restraint to a prisoner if the Governor reasonably believes the prisoner has committed an assault on a prison worker of the kind specified by the Commissioner of Corrections under new regulation 14(1C), unless 'exceptional circumstances' make this 'unnecessary'. Further, the Governor's

¹⁵³ These human rights include: recognition and equality before the law; right to life; protection from torture and cruel, inhuman or degrading treatment; freedom from forced work; freedom of movement; privacy and reputation; freedom of thought, conscience, religion and belief; freedom of expression; peaceful assembly and freedom of association; protection of families and children; and taking part in public life.

direction may include that an instrument of restraint is to be applied in specified circumstances, times or places, and by a specified prison officer or class of prison officer.

The Subcommittee observed new regulation 14(1A) requires, rather than merely permits, the application of an instrument of restraint to a prisoner. It may also differ from other provisions of the Principal Regulations as it is not expressed to be subject to regulation 14(7) which requires, if reasonably practicable before an instrument of restraint is applied to a child, consideration of the prisoner's age, best interests and vulnerability. The Subcommittee further observed new regulation 14(1C) permits the Commissioner to specify a kind of assault that, in the Commissioner's opinion, would make a direction 'necessary' for safety, security or good order.

The Subcommittee wrote to the Minister for Corrections on 13 February 2026, having first considered the Regulations at a meeting on 11 February 2026. It sought further information from the responsible Minister in relation to the compatibility of the Regulations with the human rights set out in the Charter.

In total, the Subcommittee asked 12 separate questions of the responsible Minister. These questions and the Minister's complete response of 18 May 2026 may be accessed in full at Appendix C.

In particular, the Minister's response clarified that the purpose of requiring rather than permitting restraint in these circumstances is to mitigate the risk of injury and harm to staff (or other people in prison) posed by prisoners who have used violence against staff and demonstrate a further risk of violence to staff. The Minister clarified the Governor will consider whether exceptional circumstances exist on a case-by-case basis before directing the application of restraints. The Corrections Victoria operational policy provides that regulation 14(1A) will apply to assaults against staff resulting in hospitalisation or medical treatment, which the Minister considers an appropriately high threshold. It also provides a non-exhaustive list of what might constitute exceptional circumstances. Further in the Minister's opinion, the amendments do not impose restraints as punishment for assaults but rather to respond to the risks posed by persons who commit these types of serious assaults. The framework also allows for individualised risk assessments. The Minister's response stated the existing provisions permitting rather than requiring restraints were not a reasonable alternative to achieve the intended purpose of mitigating the risk of harm to staff.

The Subcommittee thanks the Minister for Corrections and relevant departmental officers for this response.

2.3.5 Timeliness of documentation (s. 15A)

Section 15A of the SLA requires the responsible Minister to ensure copies of certificates and other documents issued for a statutory rule are given to the Subcommittee within 10 working days after the making of the statutory rule.¹⁵⁴ While failure to comply with this requirement does not affect the operation or effect of the statutory rule,¹⁵⁵ it may undermine the Subcommittee's ability to properly consider the statutory rule within the 18 sitting-day disallowance period. The Subcommittee considers timely delivery of documentation to be important in facilitating effective parliamentary oversight of subordinate legislation.

Documentation for four statutory rules from the 2025 Series was provided to the Subcommittee outside the legislative timeframe.¹⁵⁶ This is a small number of instances of late documentation and an improvement from 2024.¹⁵⁷ The Subcommittee thanks departments for generally being prompt in the provision of documentation and responsive to its requests.

2.3.6 Consultation (s. 6)

Section 6 of the SLA sets out the requirements relating to consultation regarding statutory rules.¹⁵⁸ Where the Guidelines require consultation, the responsible Minister must ensure consultation is undertaken in

¹⁵⁴ SLA, section 15A(2).

¹⁵⁵ Ibid, section 15A(3).

¹⁵⁶ These four statutory rules were: SR No. 58 – First Home Owner Grant and Home Buyer Schemes Amendment Regulations 2025; SR No. 62 – Child Wellbeing and Safety (Information Sharing) Amendment Regulations 2025; SR No. 69 – Assisted Reproductive Treatment Amendment Regulations 2025; and SR No. 113 – National Electricity (Victoria) (VicGrid) Regulations 2025.

¹⁵⁷ In 2024, documentation for six statutory rules was provided to the Subcommittee outside the legislative timeframe. There were three instances of delayed documentation in 2023, eight instances in 2022, and 14 instances in 2021.

¹⁵⁸ Note that sections 6(2) and 6(3) of the SLA did not commence until 1 March 2025.

accordance with the Guidelines with any other Minister identified under section 6(1)(a) and any sector of the public identified under section 6(1)(b), and a certificate of consultation is issued pursuant to section 6(1)(c).

Section 6 provides in full:

6 Consultation—statutory rules

- (1) The responsible Minister must ensure that where the guidelines require consultation—
 - (a) there is consultation in accordance with the Guidelines with any other Minister whose area of responsibility may be affected by a proposed statutory rule so as to avoid any overlap or conflict with any other existing or proposed statutory rule or legislation;
 - (b) there is consultation in accordance with the Guidelines with any sector of the public on which a significant economic or social burden may be imposed by a proposed statutory rule so that the need for, and the scope of, the proposed statutory rule is considered;
 - (c) a certificate of consultation in accordance with the guidelines is issued for that statutory rule.
- (2) Without limiting subsection (1) or the guidelines, the responsible Minister may consult with any relevant public sector body Head whose area of responsibility may be affected by a proposed statutory rule.
- (3) The operation or effect of a statutory rule is not affected by—
 - (a) a failure to comply with subsection (1); or
 - (b) consultation under subsection (2) not occurring.

The Guidelines explain that ‘initial consultation’ under section 6:

occurs in the early stages of policy development. This ensures the responsible Minister identifies other Ministers, agencies and stakeholders who may be affected by the proposed changes and considers the impact the proposed statutory rule or legislative instrument is likely to have on those groups...’¹⁵⁹

‘Generally, initial consultation is required for all proposed statutory rules and legislative instruments’, although not in relation to a sunseting statutory rule which is to be extended for 12 months or less under section 5A of the SLA.¹⁶⁰ The Guidelines provide a general explanation of how legislating agencies should approach consultation with Ministers under section 6(1)(a) and with sectors of the public on which a significant economic or social burden may be imposed by a proposed statutory rule under section 6(1)(b), including what is meant by ‘significant burden’ at this stage of preparing and assessing the impact of a statutory rule.¹⁶¹

For statutory rules that will be issued an exemption certificate under section 8 or 9 of the SLA, the Guidelines set out specific requirements for initial consultation under section 6(1)(a) and 6(1)(b) depending on exemption category.¹⁶² The specific requirements for section 8 exemptions can be found in the table at paragraph 138 of the Guidelines.¹⁶³ In many cases, initial consultation is not required or is only required for a specific purpose.

On occasions it may still be difficult to determine exactly what consultation should take place. The Subcommittee highlights that in such circumstances ‘[t]he responsible Minister should determine the level of initial consultation required depending on the nature of the proposed statutory rule’.¹⁶⁴

The Guidelines further require that consultation certificates issued under section 6(1)(c) ‘should provide details of who was consulted’,¹⁶⁵ and the Subcommittee considers it important that all stakeholders are individually listed on a certificate as far as reasonably practicable.

¹⁵⁹ Guidelines, p. 21.

¹⁶⁰ Ibid, pp. 21-22, [73].

¹⁶¹ Ibid, pp. 22-23.

¹⁶² Ibid, p. 22, [74]: ‘Part 3, Division 3 of these Guidelines sets out additional circumstances in which initial consultation will not be required for a proposed statutory rule or legislative instrument that will be exempted under sections 8 or 9 (statutory rules) or sections 12F or 12G (legislative instruments) of the SL Act.’

¹⁶³ Ibid, pp. 32-37. The specific requirements for section 9 exemptions are provided at paragraph 154: Ibid, p. 40.

¹⁶⁴ Ibid, p. 23, [87].

¹⁶⁵ Ibid, p. 24, [91].

A failure to comply with the requirements of section 6 does not affect the operation or effect of a statutory rule.¹⁶⁶ Neither does a failure to comply with the requirements for consultation certificates to be tabled in the Parliament pursuant to section 15 and provided to the Committee pursuant to section 15A (although the Committee may report any failure under section 15 to each House of the Parliament).¹⁶⁷

In 2025, the Subcommittee generally found that initial consultation was undertaken in accordance with the Guidelines and appropriately certified. The Subcommittee wrote to responsible Ministers in respect of six statutory rules, and on the types of issues set out in the following examples.¹⁶⁸ The Subcommittee appreciates the responses received in each instance.

Example: SR No. 9 – Local Government (Governance and Integrity) Amendment Regulations 2025

The Subcommittee considered SR No. 9/2025 at a meeting on 25 June 2025. No consultation certificate was issued for the Regulations. However, the explanatory memorandum stated the Attorney General had consulted the Minister for Local Government on the making of the Regulations as ‘the Minister for Local Government is jointly and severally responsible for section 325 of the Principal Act’. The Attorney General also issued an exemption certificate under section 8(1)(c) in respect of the Regulations.

The Subcommittee noted the Guidelines expressly provide in respect of the section 8(1)(c) exemption category that ‘consultation may still be required under section 6(a), and, if so, the responsible Minister should issue a consultation certificate under section 6(c)’.¹⁶⁹ As the statement in the explanatory memorandum evidenced that consultation was required in respect of the Regulations, a consultation certificate should have been issued.

The Subcommittee wrote to the Attorney General on 26 June 2025 to highlight this particular requirement of the Guidelines, while noting the omission does not affect the operation or effect of the Regulations. The Attorney General responded on 1 August 2025 to thank the Subcommittee for its review and advice.

**Example: SR No. 42 – Forests (Tour Operator Licence Fee) Amendment Regulations 2025
SR No. 43 – Land (Tour Operator Licence Fee) Amendment Regulations 2025**

The Subcommittee considered SR No. 42/2025 and SR No. 43/2025 at a meeting on 20 August 2025. The Subcommittee noted the body paragraphs of the consultation certificate issued for each statutory rule erroneously referred to the ‘Crown Land (Reserves) (Tour Operator Licence Fee) Amendment Regulations 2025’ and ‘Crown Land (Reserves) (Tour Operator Licence Fee) Regulations 2021’, instead of the relevant Regulations and Principal Regulations.

In this instance, the Subcommittee considered the errors to be merely typographical with no substantive effect. The Subcommittee’s conclusion may have been different if the incorrect reference had appeared in the title or formalities of the certificate, as this would challenge whether the certificate had in fact been issued ‘for that statutory rule’.¹⁷⁰ Even in such a case, however, the Regulations would be saved by force of section 6(3) of the SLA, which provides that a failure to comply with the consultation and certification requirements of section 6(1) does not affect the operation or effect of the statutory rule.

The Subcommittee wrote to the Minister for Environment on 21 August 2025 to highlight the importance of exercising care and avoiding typographical errors when preparing certificates, as addressed in its Practice Note. The Minister for Environment responded on 22 September 2025 acknowledging the importance of accuracy.

¹⁶⁶ SLA, section 6(3).

¹⁶⁷ SLA, sections 15(2) and 15A(3).

¹⁶⁸ These six statutory rules were: SR No. 9 – Local Government (Governance and Integrity) Amendment Regulations 2025; SR No. 42 – Forests (Tour Operator Licence Fee) Amendment Regulations 2025; SR No. 43 – Land (Tour Operator Licence Fee) Amendment Regulations 2025; SR No. 53 – Private Security Regulations 2025; SR No. 137 – Casino Control Amendment Regulations 2025; SR No. 145 – Gas Safety (Gas Installation) Amendment Regulations 2025. Details of correspondence are included in Appendix C.

¹⁶⁹ Guidelines, pp. 32-33.

¹⁷⁰ SLA, section 6(1)(c).

Example: SR No. 53 – Private Security Regulations 2025

The Subcommittee considered SR No. 53/2025 at a meeting on 1 October 2025. The consultation certificate issued for the Regulations only recorded consultation under section 6(1)(a) of the SLA. It did not address section 6(1)(b), although the Subcommittee noted extrinsic material confirming public sector consultation did in fact occur. The RIS accompanying the Regulations referred to engagement in mid-2024 with ‘key peak bodies and industry representatives’, including the Victorian Security Industry Advisory Council, the Australian Security Industry Association Limited, and the United Workers Union. The Subcommittee wrote to the Minister for Police on 9 October 2025 to note these details should have been included in the section 6 consultation certificate but did not require a response.

Example: SR No. 145 – Gas Safety (Gas Installation) Amendment Regulations 2025

The Subcommittee considered SR No. 145/2025 at a meeting on 25 March 2026. The consultation certificate issued for the Regulations recorded that consultation under section 6(1)(b) occurred with ‘16 stakeholder groups including the Master Plumbers Association, other unions, businesses, employer and trade associations’.

On 31 March 2026 the Subcommittee wrote to the Minister for Energy and Resources to seek individual details of the other stakeholders consulted alongside the Masters Plumbing Association. It noted the provision of sufficient detail in the consultation certificate is important to demonstrating there has in fact been compliance with section 6(1)(b), which section requires consultation with ‘any’ sector of the public on which a significant economic or social burden may be imposed by the statutory rule.

The Minister for Energy and Resources responded promptly and comprehensively on 4 April 2026. The Minister’s letter set out each of the 16 stakeholders who comprised the industry categories mentioned in the consultation certificate.

2.3.7 Infringements offence consultation certificates (s. 6A)

Pursuant to section 6A of the SLA, a statutory rule providing for the enforcement of an offence by an infringement notice must be prepared in consultation with the Department of Justice and Community Safety and take into account the *Attorney-General’s Guidelines to the Infringements Act 2006* (AG Guidelines).¹⁷¹ The responsible Minister must also certify whether the statutory rule meets the requirements of the AG Guidelines, and, if it does not, must specify the reasons why it should nevertheless be made.¹⁷²

The AG Guidelines require legislating agencies to have regard to principles of gravity, clarity, consequence and proportionality when creating infringement offences and setting infringement penalties.¹⁷³ In terms of proportionality, the AG Guidelines state an infringement penalty must be no more than 12 penalty units for an individual and no more than 60 penalty units for a body corporate.¹⁷⁴ This is a mandatory requirement. The AG Guidelines also state an infringement penalty should be set between 10 per cent and 25 per cent of the statutory maximum penalty for the offence, although ‘a higher proportion of the maximum penalty up to 50 per cent may be justified if there are public interest grounds for exceeding the 25 per cent limit’.¹⁷⁵ Whether the penalty is proportionate to the offending behaviour, consistent with comparable offences, and unlikely to have an undesirable financial impact on the fine recipient—balancing the aim of deterrence against creating situations of financial hardship—should also be taken into account.¹⁷⁶

The Subcommittee did not observe any issues arising from infringements offence consultation certificates in 2025, a marked improvement from the six issues encountered in the 2024 Statutory Rules Series.

¹⁷¹ *Attorney-General’s Guidelines to the Infringements Act 2006 (Legislating Agencies)* (October 2022) (‘AG Guidelines’) <<https://www.justice.vic.gov.au/justice-system/attorney-generals-guidelines-to-the-infringements-act-2006/for-Legislating-Agencies>>.

¹⁷² SLA, section 6A.

¹⁷³ AG Guidelines.

¹⁷⁴ *Ibid*, p. 23.

¹⁷⁵ *Ibid*, p. 24.

¹⁷⁶ *Ibid*, pp. 23-25.

2.3.8 Exemption certificates (s. 8)

Section 8 of the SLA sets out the grounds on which a responsible Minister may issue an exemption certificate for a statutory rule. Where an exemption certificate is issued, the responsible Minister is exempt by force of section 7(2) from the ordinary requirement to ensure a RIS is prepared for that statutory rule. The ordinary process of assessing the costs and benefits of the proposed statutory rule, alternative options, and the views of stakeholders through a formal consultation process, will no longer apply as a mandatory requirement. Accordingly, the Subcommittee carefully scrutinises section 8 certificates issued in respect of statutory rules to ensure the exemption is adequately made out.

Pursuant to section 8(3) of the SLA, certificates of exemption ‘must specify the reason for the exemption’. In accordance with the Guidelines, the Subcommittee expects all section 8 exemption certificates to contain ‘detailed reasons’ as to ‘why the proposed statutory rule ... falls within the relevant exemption’.¹⁷⁷ As the Guidelines emphasise, ‘[a]n assertion that the exemption ground applies is not sufficient’.¹⁷⁸ Certificates should also specify ‘the relevant paragraphs of sections 8(1) ... under which the exemption is made’.¹⁷⁹

The Subcommittee queried the adequacy of exemption certificates in relation to four statutory rules in the 2025 Series.¹⁸⁰ The Subcommittee thanks the responsible Minister and relevant departmental officers for their response in each instance.¹⁸¹ The types of issues encountered are illustrated in the examples below.

Example: SR No. 47 – Mental Health and Wellbeing Amendment (Parkville Youth Mental Health and Wellbeing Service) Regulations 2025

SR No. 47/2025 amends Schedule 1 of the Mental Health and Wellbeing Regulations 2023 to include Parkville Youth Mental Health and Wellbeing Service, with the effect being this service is prescribed as a designated mental health service for the purposes of the *Mental Health and Wellbeing Act 2022*.

The Subcommittee considered SR No. 47/2025 at a meeting on 20 August 2025. The exemption certificate purported to be issued under section 8(1)(c) but its wording appeared to conflate sections 8(1)(a) and 8(1)(c): ‘the proposed statutory rule introduces changes that are either mechanical and declaratory in nature, or do not impose a significant burden on the public’. It was also unclear whether the certificate’s final statement – ‘as Parkville Youth Mental Health and Wellbeing Service is a public sector body, this impact does not result in a significant burden for the public’ – was intended to introduce a further exemption ground of section 8(1)(da).¹⁸²

The Subcommittee wrote to the Acting Minister for Mental Health on 21 August 2025 seeking clarification as to the exact ground for exempting the Regulations from the RIS process. The Subcommittee noted it is possible for a particular set of factual circumstances to give rise to more than one exemption ground. In such a case, however, the exemption certificate should clearly set out each ground relied upon by the responsible Minister, using the correct statutory provision and providing specific reasons in support of each ground, in accordance with the Guidelines.

The Minister for Mental Health responded on 18 September 2025, clarifying the exemption certificate was issued under section 8(1)(c) on the basis that the Regulations are of a fundamentally declaratory or machinery nature. The Minister’s response explained the amendment made by the Regulations did not itself create new rights or obligations or impose a significant burden, and the additional wording included in the exemption certificate was not intended to provide evidence of additional grounds for exemption.

Example: SR No. 73 – Powers of Attorney Regulations 2025

SR No. 73/2025 replaced the sunseting Powers of Attorney Regulations 2015. The Regulations prescribe the forms required for the purposes of the *Powers of Attorney Act 2014*, in relation to executing or revoking an

¹⁷⁷ Guidelines, p. 38.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

¹⁸⁰ These four statutory rules were: SR No. 47 – Mental Health and Wellbeing Amendment (Parkville Youth Mental Health and Wellbeing Service) Regulations 2025; SR No. 73 – Powers of Attorney Regulations 2025; SR No. 87 – Borrowing and Investment Powers (Authority) Amendment Regulations 2025; SR No. 94 – Serious Offenders Amendment Regulations 2025.

¹⁸¹ Details of correspondence are included in Appendix C.

¹⁸² SLA, section 8(1)(da): ‘the proposed statutory rule would only impose a burden on a public sector body’.

enduring power of attorney, making or revoking a supportive attorney appointment, and resigning as an attorney or supportive attorney.

The Subcommittee considered SR No. 73/2025 at a meeting on 5 November 2025. An exemption certificate was issued under section 8(1)(a) on the basis that the Regulations would not impose a significant economic or social burden on a sector of the public. The reasons provided in support of the exemption were that 'the proposed statutory rule prescribes forms and is machinery in nature'.

The Subcommittee considered this was sufficient detail to satisfy the exemption ground under section 8(1)(c) that the proposed statutory rule is of a fundamentally declaratory or machinery nature. However, in the Subcommittee's opinion, the reasons did not engage in sufficient detail with the concept of significant burden that is central to section 8(1)(a).

The Subcommittee observed that identifying the most appropriate exemption ground for a statutory rule is important, as it will help ensure any decision not to prepare a RIS is satisfactorily explained and transparent. The Subcommittee wrote to the Attorney-General on 18 November 2025 on this basis. (The Subcommittee encountered the same issue in respect of exemption certificates issued for SR No.'s 87/2025 and 94/2025, and wrote in similar terms to each responsible Minister in these instances).¹⁸³

The Attorney-General responded on 30 November 2025, acknowledging the importance of identifying the most appropriate exemption ground for proposed regulations and undertaking to encourage relevant departmental and agency officers to review this issue for future reference.

2.3.9 Incorporating matters by reference to other documents

Section 32 of the *Interpretation of Legislation Act 1984* (ILA) sets out specific lodgement, notice, tabling and public availability requirements in relation to subordinate legislation which purports to apply, adopt or incorporate matters by reference to another document. The importance of compliance with these requirements is highlighted in Division 3 of Part 4 of the Guidelines.¹⁸⁴

Applying, adopting or incorporating any matter contained in a document – other than a document that is a Victorian or Commonwealth Act, a statutory rule made under a Victorian or Commonwealth Act, or a Code as defined in section 32(1) of the ILA – requires:

- a copy of the matter to be lodged with the Clerk of the Parliaments;¹⁸⁵
- notice of the documents containing the matter and of the fact that a copy of the matter has been lodged with the Clerk of the Parliaments, to be published in the Government Gazette;¹⁸⁶
- a copy of the notice published in the Government Gazette to be laid before each House of the Parliament;¹⁸⁷ and
- a copy of the matter to be kept available for public inspection during normal office hours without charge, either at the Department of the responsible Minister or at another public office specified by a notice published in the Government Gazette.¹⁸⁸

The *Subordinate Legislation Regulations 2024* also require the matter to be set out in a table at the end of the statutory rule.¹⁸⁹ Most importantly, the authorising Act under which a statutory rule is made must confer power to adopt, apply or incorporate material in regulations.¹⁹⁰

In the 2025 Series, the Subcommittee noted one statutory rule which purported to apply, adopt or incorporate material by reference but for which there had not been compliance with section 32 of the ILA,

¹⁸³ Details of correspondence are included at Appendix C.

¹⁸⁴ Guidelines, pp. 56–57.

¹⁸⁵ As soon as practicable after the statutory rule is required to be laid before each House of the Parliament: ILA, section 32(3)(a)(i).

¹⁸⁶ As soon as practicable after the copy of the matter has been lodged: ILA, section 32(3)(a)(ii).

¹⁸⁷ As soon as practicable after the notice is published: ILA, section 32(3)(a)(iii).

¹⁸⁸ ILA, section 32(3)(b).

¹⁸⁹ Reg 5.

¹⁹⁰ ILA, section 32(3) and 32(4).

nor, therefore, with the Guidelines.¹⁹¹ The Subcommittee alerted the responsible Minister who promptly undertook to rectify oversight.¹⁹²

¹⁹¹ This statutory rule was: SR No. 82 – Victorian Energy Efficiency Target (Project-Based Activities) Amendment Regulations 2025.

¹⁹² See Victorian Government Gazette, *Gazette No. G5*, 29 January 2026, p. 169. The correspondence is included in Appendix C.

Chapter 3

Review of Legislative Instruments in 2025

3.1 Overview

This Chapter provides an overview of the Subcommittee's scrutiny of legislative instruments published in the Victorian Government Gazette during the 2025 calendar year.

The Subcommittee scrutinises legislative instruments pursuant to the terms of section 25A of the SLA, which is set out:

25A Review of legislative instruments by the Scrutiny Committee

- (1) The Scrutiny Committee may report to each House of the Parliament if the Scrutiny Committee considers that any legislative instrument laid before Parliament—
 - (a) does not appear to be within the powers conferred by the authorising Act or the statutory rule under which it is made;
 - (b) without clear and express authority being conferred by the authorising Act or the statutory rule under which it is made—
 - (i) has a retrospective effect; or
 - (ii) imposes any tax, fee, fine, imprisonment or other penalty; or
 - (iii) purports to shift the legal burden of proof to a person accused of an offence; or
 - (iv) provides for the sub-delegation of powers delegated by the authorising Act or the statutory rule under which it is made;
 - (c) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities;
 - (d) has been prepared in contravention of any of the provisions of this Act or of the guidelines with respect to legislative instruments and the contravention is of a substantial or material nature.
- (2) A report of the Scrutiny Committee under this section may contain any recommendations that the Scrutiny Committee considers appropriate, including a recommendation that a legislative instrument should be—
 - (a) disallowed in whole or in part; or
 - (b) amended as suggested in the report.

This provision is substantially similar to the corresponding provision for the review of statutory rules discussed in Chapter 2.

Although section 25A provides fewer grounds for parliamentary review of legislative instruments than there are for statutory rules, there is no substantial difference in terms of how these grounds are expressed, nor the manner in which the Committee may report and make recommendations to the Parliament.

3.2 Statistics

3.2.1 Regulatory Impact Statements and Exemptions

There were 24 legislative instruments published in the Government Gazette during the 2025 calendar year. Of those instruments, two were accompanied by a RIS and 22 were exempt from the RIS process. The number of legislative instruments published in 2025 was significantly less than previous calendar years. However, the number of legislative instruments for which a RIS was prepared remained consistent.

Figure 2 below outlines the proportion of legislative instruments accompanied by RISs or exempt from the RIS process between 2021 and 2025.

Figure 2: Legislative Instruments – RISs and Exemptions 2021-2025



The Subcommittee did not observe any significant issues with the two RISs issued for legislative instruments in 2025. The Subcommittee appreciates the work undertaken by departments to complete each RIS process in a comprehensive and timely manner.

In the 2025 calendar year, 22 legislative instruments were accompanied by a certificate exempting them from the requirement to prepare a RIS. The majority of exemptions from the RIS process were issued by the responsible Minister under section 12F(1)(a) of the SLA. Eight legislative instruments were exempt from the requirement by their enabling legislation. Table 2 below displays the grounds on which exemptions were made in 2025.

Table 2: Legislative instruments – Grounds for Exemptions 2025

Section	Exemption	Number exempt
12F(1)(a)	Would not impose significant economic or social burden	10
12F(1)(c)	Only increases fees in respect of a financial year by an amount not exceeding the annual rate approved by the Treasurer	1
12F(1)(f)	National Uniform Legislation Scheme	1
N/A	Exempt by Enabling Act	8
N/A	Prescribed as exempt	1
N/A	Prescribed not to be a legislative instrument	1
Total		22

The Subcommittee was generally pleased with the adequacy of exemption certificates issued for legislative instruments in the 2025 calendar year, as discussed in more detail in section 3.3.5 of this Chapter.

3.2.2 Reports to Parliament and Correspondence with Ministers

The Subcommittee did not make any reports to Parliament in relation to legislative instruments published in the 2025 calendar year. However, the Subcommittee wrote to responsible Ministers in relation to three legislative instruments, as follows:¹⁹³

- Energy Retail Code of Practice (Energy Consumer Reforms) Amendment 2025
- Ministerial Order No. 1468 – Order Amending Ministerial Order No. 1125 – Procedures for Suspension and Expulsion of Students in Government Schools
- Notice to Fix Fees under Section 73 of the Victorian Energy Efficiency Target Act 2007

¹⁹³ Details of correspondence are included in Appendix C.

In each instance, the Subcommittee wrote to the responsible Minister and received a satisfactory response. The Subcommittee wishes to thank departmental officers and ministerial advisers for their prompt and friendly manner of engagement in 2025.

3.3 Key scrutiny issues

In 2025, the Subcommittee scrutinised 24 legislative instruments, 3 of which raised potential issues for consideration. Issues were observed in relation to fewer legislative instruments in 2025 than 2024.¹⁹⁴

The Subcommittee considered substantive issues in relation to legislative instruments under paragraph (d) of section 25A(1) of the SLA. The Subcommittee also continued to monitor the preparation, tabling and publication of legislative instruments more broadly, writing to Ministers in respect of procedural errors which may not meet the threshold of a 'substantial or material' contravention of the Act or the Guidelines under section 25A(1)(d), but which it nevertheless considers important to address to uphold the purposes of the SLA.

Examples of the substantive and procedural issues considered by the Subcommittee are outlined in the following sections.

3.3.1 Prepared in substantial or material contravention of the SLA or Guidelines (s. 25A(1)(d))

The Committee may report to the Parliament under section 25A(1)(d) of the SLA if it considers a legislative instrument has been prepared in contravention of any of the provisions of the SLA and the contravention is of a substantial or material nature. The meaning of a 'substantial or material' contravention is discussed in detail in section 2.3.3 of Chapter 2 of this report, in relation to the corresponding ground for parliamentary review of statutory rules.

The Subcommittee considered two legislative instruments under this ground for parliamentary review in 2025. The first was Ministerial Order No. 1468 – Order Amending 'Ministerial Order No. 1125 – Procedures for Suspension and Expulsion of Students in Government Schools. The second was the Energy Retail Code of Practice (Energy Consumer Reforms) Amendment 2025. Both concerned contraventions of the publication requirements for legislative instruments in section 16A of the SLA, which is set out:

16A Legislative instrument to be published in the Government Gazette

- (1) Subject to subsection (2), after the making of a legislative instrument, the instrument must be published in full—
 - (a) in the next general edition of the Government Gazette; or
 - (b) in a special edition of the Government Gazette within 10 working days after the making of the legislative instrument.
- (2) If, in accordance with the guidelines, a legislative instrument is unsuitable to be published in full, notice of the making of the legislative instrument and where it is available must be published—
 - (a) in the next general edition of the Government Gazette; or
 - (b) a special edition of the Government Gazette within 10 working days after the making of the legislative instrument.
- (3) Without limiting subsection (2), for the purposes of that subsection, a legislative instrument is unsuitable to be published in full if—
 - (a) the legislative instrument is incompatible with the format of the Government Gazette; or
 - (b) the size of the legislative instrument makes it impractical to be published in full in the Government Gazette; or
 - (c) any other circumstances specified in the guidelines exist.

The Subcommittee's consideration of each of the legislative instruments is outlined separately below.

¹⁹⁴ In 2024, the Subcommittee wrote to responsible Ministers or instrument makers in respect of seven legislative instruments.

Ministerial Order No. 1468 – Order Amending Ministerial Order No. 1125 – Procedures for Suspension and Expulsion of Students in Government Schools

The Subcommittee considered Ministerial Order No. 1468 – Order Amending ‘Ministerial Order No. 1125 – Procedures for Suspension and Expulsion of Students in Government Schools’ at a meeting on 20 August 2025.

The Order amends Ministerial Order No. 1125 to expand the grounds for suspension and expulsion in public schools. The amendments allow a principal to suspend a student for behaviour with a clear and close connection to the school which poses a significant danger, whether actual or threatened, to the health, safety or wellbeing of another student or staff member. The amendments further provide that a student may be expelled for this behaviour if the existing threshold for expulsion is met.¹⁹⁵

The Order was made on 20 May 2025 and published 11 working days later in a special edition of the Government Gazette on 4 June 2025. This publication was in contravention of section 16A(1)(b) of the SLA, which requires publication to occur ‘within 10 working days after the making of the legislative instrument’.¹⁹⁶

The issue for the Subcommittee is whether late publication of the Order by one working day is a ‘substantial or material’ contravention for the purposes of section 25A(1)(d) of the SLA. As discussed in Chapter 2, one example of a substantial or material contravention would be a contravention affecting the operation or effect of the legislative instrument. This inquiry asks whether it was a purpose of the legislation that a legislative instrument could not take effect unless there had been strict compliance with section 16A or whether substantial compliance with the section was intended to be sufficient.¹⁹⁷ Purpose in this context is ascertained from ‘the language of the relevant provision and the scope and object of the whole statute’, as well as the consequences that would flow from requiring strict compliance with the provision, such as any public inconvenience.¹⁹⁸

Section 16A requires legislative instruments to be published in full in the Government Gazette, or, alternatively in limited circumstances, for notification of their making and where they are available to be published in the same.

According to the terms of section 16A, publication ‘must’ occur either in the next general edition of the Gazette, which is issued weekly, or in a special edition within 10 working days after the making of the legislative instrument.¹⁹⁹ This form of words produces a maximum time limit which is clear and capable of precise application.²⁰⁰ If a statutory procedure has ‘a rule-like quality which can be easily identified and applied’, this may be a factor indicating strict compliance was the intended legislative purpose.²⁰¹ Additionally, section 16D provides for the time period in section 16A to prevail over any longer time period set down in the legislative instrument’s authorising Act.²⁰²

Extrinsic materials may assist in the interpretation of section 16A, which was first introduced by the *Subordinate Legislation Amendment Act 2010*. The Statement of Compatibility which accompanied the Subordinate

¹⁹⁵ The threshold for expulsion is that ‘the student’s behaviour is of such magnitude that, having regard to the need of the student to receive an education compared to the need to maintain the health, safety and wellbeing of other students and staff at the school and the need to maintain the effectiveness of the school’s educational programs, expulsion is the only available mechanism’: Ministerial Order No 1125 – Procedures for Suspension and Expulsion of Students in Government Schools, section 13(b).

¹⁹⁶ See *Morton v Hampson* [1962] VR 364 (emphasis added): ‘The modern rule in relation to a period of time fixed by statute *within* which an act is to be done *after* a specified event is that the day of the event is to be excluded; the next day is the first day of the stipulated period and the time expires on the last day of the period, counting from and of course including the first day.’

¹⁹⁷ *Project Blue Sky Inc. v Australian Broadcasting Authority* (1998) 194 CLR 355 at 390; *Watson v Lee* (1979) 144 CLR 374 at 384.

¹⁹⁸ *Project Blue Sky Inc. v Australian Broadcasting Authority* (1998) 194 CLR 355 at 390–391 and 392.

¹⁹⁹ Note that the general edition of the Government Gazette is a weekly publication. Thus, paragraph (a) of section 16A(1) does not permit any longer publication period than paragraph (b).

²⁰⁰ Cf other temporal expressions such as ‘as soon as possible’, ‘as soon as practicable’, ‘immediately’, which are less clear: DC Pearce and RS Geddes, *Statutory Interpretation in Australia* (Butterworths, 5th ed, 2001) pp. 301–302.

²⁰¹ See *Project Blue Sky Inc. v Australian Broadcasting Authority* (1998) 194 CLR 355 at 391.

²⁰² SLA, section 16D(3).

Legislation Amendment Bill 2010 briefly mentions: ‘the requirement for legislative instruments to be published in the Government Gazette ... enhances the public’s access to legislative instruments.’²⁰³

This is consistent with observations found in the case law on the purpose of requiring gazettal of subordinate legislation. Judges have commonly emphasised that publication – or even public notice of the making of subordinate legislation and where it is available – gives practical effect to the fundamental rule of law principle that the law must be readily known, certain and available to the persons to whom it applies.²⁰⁴

However the conclusions of the courts in these cases have been mixed. In *Watson v Lee*, the High Court was split on the effect of a failure to comply with a statutory provision requiring that copies of a statutory rule be available at a relevant place contemporaneously upon publication of the corresponding notice naming that place.²⁰⁵ Where individual judges have emphasised the importance of publication to upholding the rule of law, they have tended to find a failure to strictly comply with publication requirements will mean a subordinate instrument has not commenced to operate,^{206,207} or, in some cases, is invalid.²⁰⁸ In the instances in which individual judges have found only substantial compliance or no compliance with publication requirements necessary for the validity of a subordinate instrument, they have generally considered publication to be of less practical significance to the individual citizen’s knowledge of the law, and have placed greater weight on alternate consequences such as ‘grave inconvenience’.^{209,210}

The explanatory memorandum to the Subordinate Legislation Amendment Bill 2010 characterises procedural requirements for legislative instruments, including gazettal requirements, as ‘similar to those already in place for statutory rules’.²¹¹ Reading section 16A in the context of the statute as a whole, the Subcommittee notes the statute specifically provides the consequence for a failure to comply with certain publication requirements in respect of statutory rules, but is silent as to the consequence in respect of legislative instruments.

Unlike legislative instruments, statutory rules are not published in full in the Government Gazette. Instead, a statutory rule must be printed and published by the Government Printer under section 17(1) and a notice of where it can be obtained must be published in the Government Gazette under section 17(3). This gazetted notice is in addition to the gazetted notice of the making of the statutory rule under section 17(2).²¹² Under section 20(2), the responsible Minister must ensure a copy of the statutory rule is available to the public at the relevant department or entity’s office or internet site or at a gazetted public office.²¹³ The SLA provides that a person cannot be convicted, prejudicially affected, or made liable under a statutory rule if it is proved that, at the relevant time, the statutory rule had not been printed and published by the Government Printer under

²⁰³ Victoria, *Parliamentary Debates*, Legislative Council, 27 July 2010, p. 3243 (Justin Mark Madden, Minister for Planning).

²⁰⁴ See, eg, *Watson v Lee* (1979) 144 CLR 374 at 379 and 381 (Barwick CJ) and at 390-396 (Stephen J). See also EPA Moran, ‘The Commencement and Operation of Statutory Rules in Victoria’ (1981) 13 *Melbourne University Law Review* 54; Dennis Pearce and Stephen Argument, *Delegated Legislation in Australia* (Butterworths, 2nd ed, 1999) pp. 125-126.

²⁰⁵ *Watson v Lee* (1979) 144 CLR 374.

²⁰⁶ *Ibid* at 381 (Barwick CJ).

²⁰⁷ *Golden-Brown v Hunt* (1972) 19 FLR 438 at 447-448 (Fox J).

²⁰⁸ *Watson v Lee* (1979) 144 CLR 374 at 390-396 (Stephen J).

²⁰⁹ *Ibid* at 384-385 (Gibbs J).

²¹⁰ *Ibid* at 409 (Mason J):

Indeed, the very notion that notification of a regulation in the Gazette and of the place where a copy of it can be purchased is contributing in a substantial way to public awareness of the contents of the regulation is a fiction. It may be that commercial organizations make it their practice to subscribe to the Gazette, if that be possible, and to comb through it for matters of interest to them, but it is quite ludicrous to suggest that the arid information which it purveys is read by the ordinary citizen.

²¹¹ Explanatory Memorandum, Subordinate Legislation Amendment Bill 2010, p. 2. See also, p. 10. The Second Reading Speech of the Subordinate Legislation Amendment Bill 2010 similarly notes, ‘the bill introduces a process for legislative instruments that parallels the existing process for statutory rules’: Victoria, *Parliamentary Debates*, Legislative Council, 27 July 2010, p. 3244 (Justin Mark Madden, Minister for Planning).

²¹² SLA, section 17. Each of these procedural requirements has different timing relative to the making of the statutory rule: printing and publishing by the Government Printer must occur ‘forthwith’, section 17(2) gazettal must occur ‘within 10 working days’, and section 17(3) gazettal must occur ‘as soon as practicable’, after the making of the statutory rule.

²¹³ See also SLA, section 20(1), requiring the Government Printer to make every effort to ensure a copy of the statutory rule is available for purchase online or from an approved bookshop.

section 17(1) or notice under section 17(3) had not been published in the Gazette.²¹⁴ This is a lesser consequence than the statutory rule being invalid. Additionally, this consequence – which is essentially a partial effect on the operation of a statutory rule – may be avoided by substantial compliance: that is, if ‘reasonable steps’ were taken to bring the purport of the statutory rule to the notice of the public, persons likely affected, or persons concerned.²¹⁵ The SLA provides for the same consequence if the statutory rule had not been made available under section 20(2), but does not permit of substantial compliance in that circumstance.²¹⁶

The Subcommittee accordingly considers whether a failure to strictly comply with section 16A may be intended by the legislature to be treated in the same manner as a failure to strictly comply with sections 17(1), 17(3) and 20(2) of the SLA. On the one hand, the silence of the statute in relation to legislative instruments may be read according to the maxim of statutory interpretation that ‘where legislation includes provisions relating to similar matters in different terms, there is a deliberate intention to deal with them differently.’²¹⁷ On the other hand, this presumption is rebuttable and is applied with caution, particularly where a statute has faced significant amendment and discontinuities may be mere drafting oversights.²¹⁸

Section 16A deals with the publication of a legislative instrument or a notice of where a copy of the legislative instrument is available to the public. It is not aimed at providing notice of the mere making of a legislative instrument, but rather at ensuring the public also has access to the terms of that instrument. To this extent, however, it mirrors the objective of sections 17(1), 17(3) and 20(2) for statutory rules. The Subcommittee cannot readily ascertain why it might be the purpose of the legislation to impose a stricter consequence of invalidity in respect of legislative instruments that do not comply with section 16A than for statutory rules that do not comply with section 17(1), 17(3) or 20(2).

In this context, the Subcommittee turns its attention to the material effect of the delay in publication of the Order. The Order specified a commencement date of 21 July 2025. By the time the Order commenced operation on 21 July 2025, it had in fact been published in the Government Gazette. This meant the Order did not purport to adversely affect any person prior to them having an opportunity to be made aware of and have access to its terms.

The Subcommittee wrote to the Minister for Education on 21 August 2025, seeking the Minister’s opinion of the effect of publishing the legislative instrument outside the statutory timeframe.²¹⁹ The Minister responded on 22 September 2025 that, in his opinion, the failure to comply strictly with the 10-working-day timeframe for publication in section 16A was not materially significant. The Minister’s response provided the following information:

I do not consider that the late publication of the Order by one working day to have had any material effect in this case. This is because the Order did not commence until 21 July 2025 and was still published well in advance of this date. Further, there was extensive publicity that accompanied the publication of the Order, which formed part of the government’s overall public communications strategy to ensure the changes were adequately explained to and understood by the sector.

Therefore, I consider that there was adequate time for any member of the public to understand the amendments before they came into operation.

The Subcommittee observes that whether a failure to strictly comply with section 16A is intended to affect the operation or effect of a legislative instrument is a question of purposive interpretation on which reasonable minds may differ. This may be conclusively decided by the courts. Given the material circumstances in this

²¹⁴ SLA, section 16(2).

²¹⁵ Ibid, section 16(3).

²¹⁶ Ibid, section 20(3).

²¹⁷ DC Pearce and RS Geddes, *Statutory Interpretation in Australia* (Butterworths, 5th ed, 2001) p. 109. This is the maxim of *expressio unius est exclusio alterius*. In *Salemi v Minister for Immigration and Ethnic Affairs (No 2)* (1977) 14 ALR 1, for example, the court considered that differing procedures for the deportation of prohibited immigrants and for the deportation of aliens were intentional, even though the result was that aliens were not entitled to a hearing.

²¹⁸ Ibid, p. 110: the maxim is rebuttable and ‘is applied by the courts with extreme caution’.

²¹⁹ Details of correspondence are included in Appendix C.

instance, the Subcommittee considered it appropriate to follow its previous approach in the 2024 Statutory Rules Series to a similar contravention of section 16A and did not make a parliamentary report.²²⁰

Energy Retail Code of Practice (Energy Consumer Reforms) Amendment 2025

The Energy Retail Code of Practice (Energy Consumer Reforms) Amendment 2025 amends the Energy Retail Code of Practice, which sets out the rules electricity and gas licensees must comply with when selling energy to Victorian consumers.

The Subcommittee considered this legislative instrument at a meeting on 8 December 2025. The legislative instrument was made by the Essential Services Commission under the authority of the *Essential Services Commission Act 2001*. Notice of its making was published in a special edition of the Government Gazette on 30 September 2025, as follows:

Essential Services Commission Act 2001

NOTICE OF AMENDMENTS TO CODES OF PRACTICE

The Essential Services Commission (commission) gives notice under section 49 of the Essential Services Commission Act 2001 (Act) that, pursuant to section 47 of the Act, the commission has amended the Energy Retail Code of Practice (code) as published on the commission's internet site.

The reason for amending the code is to implement in Victoria the energy consumer reforms proposed by the Energy and Climate Change Ministerial Council. It is also to ensure that the code remains fit-for-purpose in addressing current or emerging challenges concerning the long-term interests of Victorian consumers.²²¹

Relying on the presumption of regularity in the absence of any evidence that the instrument was not made available on the Essential Services Commission's website, the Subcommittee accepted there was full compliance with the public notice requirements in section 49 of the authorising Act. However, the Subcommittee noted section 16D(4) of the SLA to the effect that compliance with the requirements of the authorising Act is not necessarily sufficient compliance with the SLA:

16D Compliance with this Part and requirements of authorising Act—publication in Government Gazette

... ..

- (4) Subject to section 16A(2), if the authorising Act for a legislative instrument requires publication in the Government Gazette of a notice of the making of the instrument, compliance with the requirements of that authorising Act is not sufficient compliance with section 16A(1).

Note

An authorising Act may require a notice of the making of a legislative instrument to be published in the Government Gazette. Publication of that notice of making under that Act does not relieve the instrument maker from the obligation to publish the legislative instrument in full in the Government Gazette to comply with section 16A(1), unless section 16A(2) applies.

The Subcommittee noted the authorising Act does not exclude the application of the SLA. The Essential Services Commission is accordingly obligated to publish the legislative instrument in full to comply with section 16A(1), unless, under section 16A(2), the legislative instrument is 'unsuitable' to be published in full.

Unsuitability includes if the legislative instrument is incompatible with the format of the Gazette or its size makes publication impractical.²²² The Guidelines add the example of a legislative instrument which contains detailed maps or diagrams.²²³

The Subcommittee noted the legislative instrument in this case is only 17 pages and does not contain pictures, maps or diagrams. In the Subcommittee's opinion, it is suitable to be published in full in the Gazette. The failure

²²⁰ *Annual Review 2024: Statutory Rules and Legislative Instruments* (May 2026) pp. 28-29.

²²¹ Victoria, *Government Gazette: Special*, No. S 528, 30 September 2025
<<https://www.gazette.vic.gov.au/gazette/Gazettes2025/GG2025S528.pdf>>.

²²² SLA, section 16A(3).

²²³ Guidelines, p. 48, [204].

to do so is therefore a contravention of section 16A(1) of the SLA, and the same question addressed above in relation to the previous legislative instrument – whether this is a substantial or material contravention – arose for the Subcommittee’s consideration.

The Subcommittee refers to the analysis under the preceding subheading, which considers whether the legislature may have intended that a failure to strictly comply with section 16A(1) would affect the operation or effect of a legislative instrument. The Subcommittee took the same approach as in this preceding section.

The Subcommittee again turned to the materiality of the particular contravention. It observed that while the legislative instrument had not been published in full in the Gazette as was lawfully required, notice was published in the Gazette of the fact the Code had been amended and was available to access ‘on the commission’s internet site’.

The Subcommittee considered whether this could be sufficient compliance with section 16A(1) such that the essential purpose of the provision was fulfilled.

The Subcommittee considered whether this notice met the standard of section 16A(2), which in limited circumstances is considered sufficient as an alternative to complying with section 16A(1).²²⁴ Notice of the making of a legislative instrument under section 16A(2) must include ‘where it is available’. It may be contested whether the words ‘the commission’s internet site’ contain sufficient information to meet this standard; specific detail such as a URL address may be necessary to provide adequate notice for the purposes of section 16A(2).²²⁵

However, the Subcommittee also noted that, at least in the context of statutory rules, other ‘reasonable steps’ undertaken ‘for the purpose of bringing the purport of the [subordinate legislation] to the notice of the public, or persons likely to be affected or the person concerned’ may remedy any defect in this type of notice.²²⁶

The Subcommittee wrote to the responsible Minister on 15 December 2025 in respect of this issue.²²⁷ The Minister’s response of 29 January 2026 provided the following additional information for the Subcommittee’s consideration:

The amendment to section 49 of the Essential Services Commission Act 2001 (ESC Act) by the Regulatory Legislation Amendment (Reform) Act 2024 was intended to require the ESC only give notice of the making of an instrument in the Government Gazette and instead require publication of the full instrument on the ESC’s website. The website is more frequently used by industry participants and is therefore a more practical means of communicating with industry.

As the Committee’s letter highlights, compliance with the requirements of the authorising Act is not sufficient compliance with section 16A(1) of the SLA. Reflecting this, despite what was intended, it is possible that the ESC remains subject to the requirement to publish the legislative instruments in the Government Gazette.

The ESC has subsequently published the amendments to the Energy Retail Code of Practice in full in the Government Gazette on 9 January 2026.²²⁸ The ESC has advised me that they will continue to publish legislative instruments in full upon making unless a particular instrument is unsuitable.

Officers from DTF have advised they are working with the Office of Chief Parliamentary Counsel to develop further amendments to the ESC Act that will propose clarifying the approach intended by the 2024 amendments.

The Subcommittee appreciates the Minister’s response and the action taken by the Essential Services Commission to publish the legislative instrument in full in the Government Gazette on 9 January 2026. On the

²²⁴ SLA, sections 16A(2) and 16A(3).

²²⁵ See, eg, *Golden-Brown v Hunt* (1972) 19 FLR 438. In this case, the ACT Supreme Court found an Ordinance was not notified in the prescribed manner because the gazetted notice did not clearly and definitively describe where copies of the Ordinance could be purchased. This did not invalidate the Ordinance, but, as the statute also provided that the Ordinance ‘shall take effect from the date of notification’, it had the effect that the Ordinance was found not to have come into operation.

²²⁶ SLA, sections 16(3) and 17(3).

²²⁷ Details of correspondence are included in Appendix C.

²²⁸ Victoria, Government Gazette: Special, No. 511, 9 January 2026
<<https://www.gazette.vic.gov.au/gazette/Gazettes2026/GG2026S011.pdf>>.

basis of this subsequent publication, the Subcommittee did not consider it necessary to report to the Parliament.

3.3.2 Timeliness of documentation (s. 16C)

Section 16C of the SLA requires the responsible Minister to ensure a copy of the legislative instrument and applicable required documentation is given to the Subcommittee within 10 working days after the making of the legislative instrument.²²⁹ While failure to comply with this requirement does not affect the operation or effect of the legislative instrument,²³⁰ it may undermine the Subcommittee's ability to consider the legislative instruments within the disallowance period. The Subcommittee considers timely delivery of documentation important in facilitating effective parliamentary oversight of subordinate legislation.

In 2025, documentation for one legislative instrument was provided to the Subcommittee outside the legislative timeframe.²³¹ This was one less instance of delay than 2024.²³² It remains a significant improvement from the seven instances of delayed documentation in 2023.²³³ The Subcommittee thanks Ministers and relevant departmental officers for their promptness in providing documentation to the Subcommittee.

3.3.3 Notice of decision (s. 12J)

If a RIS has been prepared for a proposed legislative instrument, section 12J of the SLA requires that a notice advising of the decision to make or not make the legislative instrument must be published in the Government Gazette and on the Public Notices website.²³⁴

Notice of a decision to make the legislative instrument must be published before the proposed legislative instrument is made.²³⁵

A failure to comply with these requirements does not affect the operation or effect of the legislative instrument but the Scrutiny Committee may report the failure to each House of the Parliament.²³⁶

Example: Notice to Fix Fees under Section 73 of the Victorian Energy Efficiency Target Act 2007

The Notice to Fix Fees under Section 73 of the Victorian Energy Efficiency Target Act 2007 specifies the fees fixed by the responsible Minister in relation to accreditation to undertake energy efficiency activities, registration of energy efficiency certificates, and other matters for the purposes of the Victorian Energy Efficiency Target (VEET) scheme. The VEET scheme aims to promote the reduction of greenhouse gas emissions through the creation, sale and surrender of energy efficiency certificates.

The Subcommittee considered this legislative instrument at a meeting on 8 December 2025. In this instance, the notice of decision was published on the Public Notices website on 8 October 2025 but did not appear to have been published in the Government Gazette.

In considering the failure to gazette the notice, the Subcommittee noted there was still opportunity for those affected by the legislative instrument to be kept apprised of its progress via the Public Notices website. The Subcommittee also observed the instrument's delayed commencement date, which was chosen to ensure sufficient stakeholder awareness of the instrument prior to its operation. On this basis, the Subcommittee did not consider a parliamentary report necessary.

²²⁹ SLA, section 16C(2).

²³⁰ Ibid, section 16C(3).

²³¹ This legislative instrument was the Energy Retail Code of Practice (Energy Consumer Reforms) Amendment 2025.

²³² *Annual Review 2024: Statutory Rules and Legislative Instruments* (May 2026) p. 27.

²³³ *Annual Review 2023: Statutory Rules and Legislative Instruments* (September 2024) p. 37.

²³⁴ SLA, section 12J(1). See *Interpretation of Legislation Act 1984* (Vic), section 38M(1)(a), which provides that if an Act, statutory rule or any other subordinate instrument requires notice (however described) to be published in a print newspaper circulating generally in Victoria, that requirement is taken to have been met, for all purposes, if the notice is published on an approved alternative publication Internet site. On 31 July 2022, the Assistant Treasurer declared <www.publicnotices.vic.gov.au> to be an approved alternative publication Internet site from 31 July 2022.

²³⁵ SLA, section 12J(4).

²³⁶ Ibid, section 12J(5).

The Subcommittee wrote to the responsible Minister on 15 December 2025, outlining its deliberation and drawing attention to the requirements of section 12J of the SLA. The Minister for Energy and Resources responded on 2 February 2026, acknowledging the error and thanking the Subcommittee for its consideration of the issue.²³⁷

3.3.4 Consultation (s. 12C)

Section 12C of the SLA sets out the requirements relating to consultation regarding legislative instruments.²³⁸ Where the Guidelines require consultation, the responsible Minister must ensure consultation is undertaken in accordance with the Guidelines with any other Minister identified under section 12C(1)(a) and any sector of the public identified under section 12C(1)(b), and a certificate of consultation is issued pursuant to section 12C(1)(c).

Section 12C provides in full:

12C Consultation—legislative instruments

- (1) The responsible Minister must ensure that where the guidelines require consultation—
 - (a) there is consultation in accordance with the Guidelines with any other Minister whose area of responsibility may be affected by a proposed legislative instrument so as to avoid any overlap or conflict with any other existing or proposed statutory rule, legislative instrument or other legislation;
 - (b) there is consultation in accordance with the Guidelines with any sector of the public on which a significant economic or social burden may be imposed by a proposed legislative instrument so that the need for, and the scope of, the proposed legislative instrument is considered;
 - (c) a certificate of consultation in accordance with the guidelines is issued for the proposed legislative instrument.
- (2) Without limiting subsection (1) or the guidelines, the responsible Minister may consult with any relevant public sector body Head whose area of responsibility may be affected by a proposed legislative instrument.
- (3) The operation or effect of a legislative instrument is not affected by—
 - (a) a failure to comply with subsection (1); or
 - (b) consultation under subsection (2) not occurring.

The Guidelines explain that ‘initial consultation’ under section 6:

occurs in the early stages of policy development. This ensures the responsible Minister identifies other Ministers, agencies and stakeholders who may be affected by the proposed changes and considers the impact the proposed statutory rule or legislative instrument is likely to have on those groups...’²³⁹

‘Generally, initial consultation is required for all proposed statutory rules and legislative instruments’.²⁴⁰ The Guidelines provide a general explanation of how legislating agencies and other instrument makers should approach consultation with Ministers under section 12C(1)(a) and with sectors of the public on which a significant economic or social burden may be imposed under section 12C(1)(b), including what is meant by ‘significant burden’ at this stage of the process of preparing and assessing the impact of a legislative instrument.²⁴¹

For legislative instruments that will be issued an exemption certificate under section 12F or 12G of the SLA, the Guidelines set out specific requirements for initial consultation under section 12C(1)(a) and section 12C(1)(b) depending on exemption category.²⁴² The specific requirements for section 12F exemptions can be

²³⁷ Details of correspondence are included in Appendix C.

²³⁸ Note that sections 12C(2) and 12C(3) of the SLA did not commence until 1 March 2025.

²³⁹ Guidelines, p. 21.

²⁴⁰ Ibid, pp. 21-22, [73].

²⁴¹ Ibid, pp. 22-23.

²⁴² Ibid, p. 22, [74]: ‘Part 3, Division 3 of these Guidelines sets out additional circumstances in which initial consultation will not be required for a proposed statutory rule or legislative instrument that will be exempted under sections 8 or 9 (statutory rules) or sections 12F or 12G (legislative instruments) of the SL Act.’

found in the table at paragraph 138 of the Guidelines.²⁴³ In many cases, initial consultation is not required or is only required for a specific purpose.

On occasions it may still be difficult to determine exactly what consultation should take place. The Subcommittee highlights that in such circumstances '[t]he responsible Minister should determine the level of initial consultation required depending on the nature of the proposed statutory rule or legislative instrument'.²⁴⁴

The Guidelines further require that consultation certificates issued under section 12C(1)(c) 'should provide details of who was consulted',²⁴⁵ and the Subcommittee considers it important that all stakeholders are individually listed on a certificate as far as reasonably practicable.

A failure to comply with the requirements of section 12C does not affect the operation or effect of a legislative instrument.²⁴⁶ Neither does a failure to comply with the requirements for consultation certificates to be tabled in the Parliament pursuant to section 16B and provided to the Committee pursuant to section 16C (although the Committee may report any failure under section 16B to each House of the Parliament).²⁴⁷

The Subcommittee's experience is that initial consultation in relation to legislative instruments was thorough and appropriate during 2025. There was only one instance in 2025 in which the Subcommittee considered a consultation certificate issued for a legislative instrument may not contain sufficient information to satisfy the Guidelines.²⁴⁸

Example: Energy Retail Code of Practice (Energy Consumer Reforms) Amendment 2025

The Energy Retail Code of Practice (Energy Consumer Reforms) Amendment 2025 amends the Energy Retail Code of Practice, which sets out the rules electricity and gas licensees must comply with when selling energy to Victorian consumers.

The Subcommittee considered this legislative instrument at a meeting on 8 December 2025. The consultation certificate issued for the instrument recorded consultation with certain listed stakeholders as well as with the 'electricity and gas industry'. This level of generality, in the Subcommittee's opinion, did not accord with the requirement of the Guidelines that certificates 'should provide details of who was consulted'. The Subcommittee was able to obtain further details of the individual stakeholders comprising the 'electricity and gas industry' from the statement of reasons published for the legislative instrument. The statement of reasons listed several entities initially consulted as AGL, Alinta Energy, Australian Energy Council, EnergyAustralia Energy Locals, ENGIE, Flow Power, GloBird, Momentum, Origin Energy, Pacific Blue, Red and Lumo Energy, Shell, and Solstice. The Subcommittee considered these details, as far as practicable, should have been recorded in the consultation certificate. It resolved to bring this to the attention of the responsible Minister as part of its broader correspondence dated 15 December 2025.

The responsible Minister responded on 29 January 2026. The Minister's response noted advice received from the Essential Services Commission, as the instrument maker, in respect of this particular issue:

The ESC has advised me that the list of stakeholders provided were examples of entities consulted. When undertaking reviews, the ESC directly contacts hundreds of stakeholders, who may provide a formal written submission or attend meetings, forums and workshops.

The ESC has advised me it considers it unsuitable to include details of every individual organisation contacted. However, the ESC has further advised me that it will ensure that detail of the individual entities who respond and provide submissions and/or the types of entities consulted (e.g. retailers, exempt sellers, distributors etc.) is included in consultation certificates prepared in the future.

The Subcommittee appreciates the Minister's response. The Subcommittee encourages all responsible Ministers and instrument makers to include the details of who was consulted in certificates of consultation, as

²⁴³ Ibid, pp. 32-37. The specific requirements for section 12G exemptions are provided at paragraph [154]: Ibid, p. 40.

²⁴⁴ Ibid, p. 23, [87].

²⁴⁵ Ibid, p. 24, [91].

²⁴⁶ SLA, section 12C(3).

²⁴⁷ Ibid, sections 16B(3) and 16C(3).

²⁴⁸ Details of correspondence are included in Appendix C.

far as reasonably practicable, in order to satisfy the requirement of section 12C(1)(c) that certificates are ‘in accordance with the Guidelines’.

3.3.5 Exemption certificates (s. 12F)

Section 12F of the SLA sets out the grounds on which a responsible Minister may issue an exemption certificate for a legislative instrument. Where an exemption certificate is issued, the responsible Minister is exempt by force of section 12E(3) from the ordinary requirement to ensure a RIS is prepared for that legislative instrument. The ordinary process of assessing the costs and benefits of the proposed legislative instrument, alternative options, and the views of stakeholders through a formal consultation process, will no longer apply as a mandatory requirement. Accordingly, the Subcommittee carefully scrutinises section 12F certificates issued in respect of legislative instrument to ensure the exemption is adequately made out.

Pursuant to section 12F(3) of the SLA, certificates of exemption ‘must specify the reason for the exemption’. In accordance with the Guidelines, the Subcommittee expects all section 12F exemption certificates to contain ‘detailed reasons’ as to ‘why the proposed ... legislative instrument falls within the relevant exemption’.²⁴⁹ As the Guidelines emphasise, ‘[a]n assertion that the exemption ground applies is not sufficient’.²⁵⁰ Certificates should also specify ‘the relevant paragraphs of section ... 12F(1) under which the exemption is made’.²⁵¹

The Subcommittee considered the adequacy of exemption certificates in relation to one legislative instrument published in 2025.²⁵²

Example: Ministerial Order No. 1468 – Order Amending Ministerial Order No. 1125 – Procedures for Suspension and Expulsion of Students in Government Schools

Ministerial Order No. 1468 expands the grounds for suspension and expulsion in public schools. It allows a principal to suspend a student for behaviour with a clear and close connection to the school which poses a significant danger, whether actual or threatened, to the health, safety or wellbeing of another student or staff member. It provides that the student may be expelled for this behaviour if the existing threshold for expulsion is met.

The Subcommittee considered this legislative instrument at a meeting on 20 August 2025. The Order was accompanied by an exemption certificate issued under section 12F(1)(a) on the basis that it would not impose a significant economic or social burden on a sector of the public.

In the exemption certificate, the Minister for Education noted the fact the Order was expected to have a ‘positive impact on other school students and staff’ as a reason in support of his opinion it would not impose a significant economic or social burden on any sector of the public. The Subcommittee considered this ‘positive impact’ was not a relevant consideration in the assessment of a significant burden for the purposes of section 12F(1)(a) of the SLA. It referred to the Guidelines:

Whether a significant burden may be imposed should be assessed initially with reference only to the costs or negative impacts on a sector of the public. That is, potential costs should not be offset against potential benefits.²⁵³

The Guidelines further advise that all potential economic and social costs of a legislative instrument, regardless of how readily quantifiable those costs are, including any negative effect on human rights and access to services, should form part of the assessment.²⁵⁴ The Subcommittee sought clarification from the Minister as to the significance of the burden imposed by the Order when the costs to suspended and expelled students are not offset against the benefits to other students and staff.

The Minister for Education responded on 22 September 2025. The Minister noted the Order would only affect a ‘small proportion of students who engage in inappropriate and harmful behaviour’, as such behaviour must

²⁴⁹ Guidelines, p. 38.

²⁵⁰ Ibid.

²⁵¹ Ibid.

²⁵² Details of correspondence are included in Appendix C.

²⁵³ Guidelines, p. 26.

²⁵⁴ Ibid, p. 27.

reach a high threshold to satisfy the grounds for suspension and expulsion. The Minister clarified the reference to a 'positive impact on other school students and staff' was 'intended to provide additional context' and 'was not netted off or offset against the economic or social burden that was identified and calculated for the purposes of considering whether a regulatory impact statement was needed'.

The Subcommittee thanks the Minister for supplying this additional context for the exemption.

The Subcommittee appreciates all the assistance and responses received from responsible Ministers, instrument makers and relevant departmental and agency officers, which allowed for the timely resolution of key scrutiny issues in 2025. The Subcommittee will continue to use its best endeavours to perform its role of scrutinising statutory rules and legislative instruments on behalf of the Parliament.

Appendix A

Statutory Rules Series 2025

S. 8(1)(a) – Would not Impose Significant Economic or Social Burden

- SR No. 1 – Food (Primary Production and Processing) Regulations 2025
- SR No. 2 – Conservation, Forests and Lands (Infringement Notice) Amendment Regulations 2025
- SR No. 4 – Surveying (Registration Fees) Regulations 2025
- SR No. 12 – Public Health and Wellbeing Amendment (Notifiable Conditions) Regulations 2025
- SR No. 13 – Heritage Amendment Regulations 2025
- SR No. 14 – Inquiries Regulations 2025
- SR No. 15 – Road Safety (Drivers) and (General) Amendment (Digital Driver Licence) Regulations 2025
- SR No. 16 – Bail Amendment (Electronic Monitoring) Regulations 2025
- SR No. 17 – Parliamentary Workplace Standards and Integrity Regulations 2025
- SR No. 18 – Wrongs (Part VBA Claims) Regulations 2025
- SR No. 21 – Road Safety Road Rules Amendment Rules 2025
- SR No. 23 – Audit (Public Bodies) Regulations 2025
- SR No. 25 – Marine (Drug, Alcohol and Pollution Control) Amendment Regulations 2025
- SR No. 28 – Road Safety (General) Amendment (No-Truck Zone) Regulations 2025
- SR No. 29 – Aboriginal Lands Regulations 2025
- SR No. 31 – Meat Industry Regulations 2025
- SR No. 32 – Freedom of Information (Access Charges) Regulations 2025
- SR No. 33 – Legal Profession Uniform Law Application Regulations 2025
- SR No. 35 – Surveying (Cadastral Surveys) Regulations 2025
- SR No. 39 – Partnership (Fees) Regulations 2025
- SR No. 41 – Crown Land (Reserves) (Tour Operator Licence Fee) Amendment Regulations 2025
- SR No. 42 – Forests (Tour Operator Licence Fee) Amendment Regulations 2025
- SR No. 43 – Land (Tour Operator Licence Fee) Amendment Regulations 2025
- SR No. 44 – National Parks (Tour Operator Licence Fee) Amendment Regulations 2025
- SR No. 45 – Wildlife (Tour Operator Licence Fee) Amendment Regulations 2025
- SR No. 46 – Cemeteries and Crematoria Regulations 2025
- SR No. 50 – Emergency Management (Critical Infrastructure Resilience) Regulations 2025
- SR No. 51 – Gene Technology Amendment Regulations 2025
- SR No. 58 – First Home Owner Grant and Home Buyer Schemes Amendment Regulations 2025
- SR No. 59 – Water (General) Amendment Regulations 2025
- SR No. 62 – Child Wellbeing and Safety (Information Sharing) Amendment Regulations 2025
- SR No. 64 – National Parks (Cape Otway Lightstation Precinct Fee) Regulations 2025
- SR No. 65 – Crime Statistics (Fees and Charges) Regulations 2025
- SR No. 69 – Assisted Reproductive Treatment Amendment Regulations 2025
- SR No. 70 – Marine and Coastal (Prescribed Consents) Regulations 2025
- SR No. 71 – Worker Screening Amendment (Risk of Harm to Children) Regulations 2025
- SR No. 73 – Powers of Attorney Regulations 2025
- SR No. 77 – Local Government (General) Regulations 2025

S. 8(1)(a) – Would not Impose Significant Economic or Social Burden (continued)

SR No. 78 – Spent Convictions Amendment Regulations 2025

SR No. 79 – Surveillance Devices Amendment Regulations 2025

SR No. 80 – Youth Justice Regulations 2025

SR No. 81 – Gambling Regulation (Pre-commitment Trial) Regulations 2025

SR No. 82 – Victorian Energy Efficiency Target (Project-Based Activities) Amendment Regulations 2025

SR No. 86 – Aged Care Restrictive Practices Substitute Decision-maker Regulations 2025

SR No. 87 – Borrowing and Investment Powers (Authority) Amendment Regulations 2025

SR No. 88 – Agricultural and Veterinary Chemicals (Control of Use) (Fertilisers) Regulations 2025

SR No. 89 – Improving Cancer Outcomes (Diagnosis Reporting) Regulations 2025

SR No. 91 – Victorian Energy Efficiency Target Amendment (Commercial and Industrial Solar, High Efficiency Motors and Other Matters) Regulations 2025

SR No. 93 – Traditional Owner Settlement (Negotiation Costs) Regulations 2025

SR No. 95 – Conservation, Forests and Lands (Infringement Notice) Further Amendment Regulations 2025

SR No. 96 – Food (Forms and Registration) Regulations 2025

SR No. 101 – Road Safety (Vehicles) Amendment (West Gate Tunnel) Regulations 2025

SR No. 104 – Criminal Procedure Amendment Regulations 2025

SR No. 106 – Gambling Regulation (Pre-commitment and Loyalty Scheme) Regulations 2025

SR No. 107 – Child Wellbeing and Safety (Child Link) Amendment Regulations 2025

SR No. 108 – Mineral Resources (Sustainable Development) (Mineral Industries) Amendment Regulations 2025

SR No. 109 – West Gate Tunnel (Truck Bans and Traffic Management) Regulations 2025

SR No. 114 – Cemeteries and Crematoria Amendment Regulations 2025

SR No. 115 – Charities Regulations 2025

SR No. 117 – Births, Deaths and Marriages Registration (Fees) Amendment Regulations 2025

SR No. 119 – Agricultural and Veterinary Chemicals (Control of Use) (Ruminant Feed) Regulations 2025

SR No. 120 – Agricultural and Veterinary Chemicals (Control of Use) (Infringement Notices) Amendment Regulations 2025

SR No. 121 – Funerals Regulations 2025

SR No. 122 – Retirement Villages (Records and Notices) Regulations 2025

SR No. 123 – Residential Tenancies Amendment (Housing Statement Reform and Part 4A Site Agreements) Regulations 2025

SR No. 124 – Drugs, Poisons and Controlled Substances Amendment (Aboriginal and Torres Strait Islander Health Practitioner and Worker) Regulations 2025

SR No. 129 – Liquor Control Reform (Prohibited Supply) Regulations 2025

SR No. 136 – Prevention of Cruelty to Animals Amendment Regulations 2025

SR No. 137 – Casino Control Amendment Regulations 2025

SR No. 139 – Human Tissue Regulations 2025

SR No. 142 – Public Administration (Review of Actions) Regulations 2025

SR No. 144 – Child Wellbeing and Safety (Information Sharing) Further Amendment Regulations 2025

SR No. 145 – Gas Safety (Gas Installation) Amendment Regulations 2025

SR No. 146 – Local Government (Planning and Reporting) Amendment Regulations 2025

SR No. 149 – Land Tax Regulations 2025

SR No. 150 – Water (Infringements) Amendment Regulations 2025

SR No. 152 – Australian Consumer Law and Fair Trading (Code of Practice and Infringements for Fuel Retailers) Amendment Regulations 2025

S. 8(1)(a) – Would not Impose Significant Economic or Social Burden (continued)

SR No. 154 – Commercial Passenger Vehicle Industry and Commercial Passenger Vehicle Industry (Infringements) Amendment Regulations 2025

S. 8(1)(a) and (c) – Would not Impose Significant Economic or Social Burden and Fundamentally Declaratory or Machinery Nature

SR No. 56 – Subordinate Legislation Amendment (Revocation of Prescribed Bookshop) Regulations 2025

SR No. 94 – Serious Offenders Amendment Regulations 2025

SR No. 113 – National Electricity (Victoria) (VicGrid) Regulations 2025

SR No. 118 – Corrections Amendment Regulations 2025

S. 8(1)(b) – Is a Rule which relates only to a Court or Tribunal

SR No. 6 – Supreme Court (Chapters I, V and VI Amendments) Rules 2025

SR No. 30 – Magistrates' Court (Occupational Health and Safety) Rules 2025

SR No. 61 – Court Security Regulations 2025

SR No. 75 – County Court (Chapter II Confiscation Amendment) Rules 2025

SR No. 84 – Supreme Court (Adoption) Rules 2025

SR No. 85 – Supreme Court (General Civil Procedure) Rules 2025

SR No. 110 – Victorian Civil and Administrative Tribunal Amendment (Schedule 1) Rules 2025

SR No. 111 – Magistrates' Court General Amendment Regulations 2025

SR No. 112 – County Court (Chapter III Interpreters and Filing of Documents Amendment) Rules 2025

SR No. 126 – Supreme Court (Chapter VI Judicial Registrar Powers Amendment) Rules 2025

SR No. 127 – Supreme Court (Chapter I Costs and Other Amendments) Rules 2025

SR No. 128 – Supreme Court (Chapter VI Unexplained Wealth Orders Amendment) Rules 2025

SR No. 131 – Children's Court Criminal Procedure Amendment (Committals) Rules 2025

SR No. 132 – Magistrates' Court (Judicial Registrars) Rules 2025

SR No. 133 – Magistrates' Court Criminal Procedure Amendment (Committals) Rules 2025

SR No. 134 – Magistrates' Court General Civil Procedure and Miscellaneous Civil Proceedings (Costs Amendment) Rules 2025

SR No. 135 – County Court (Chapter I Circuit Fees Amendment) Rules 2025

SR No. 143 – Victorian Civil and Administrative Tribunal Amendment Rules 2025

S. 8(1)(c) – Fundamentally Declaratory or Machinery Nature

SR No. 3 – Tobacco (Victorian Health Promotion Foundation) Amendment Regulations 2025

SR No. 5 – Confiscation Amendment (Unexplained Wealth) Regulations 2025

SR No. 7 – Freedom of Information Amendment Regulations 2025

SR No. 8 – Independent Broad-based Anti-corruption Commission Amendment Regulations 2025

SR No. 9 – Local Government (Governance and Integrity) Amendment Regulations 2025

SR No. 10 – Ombudsman Amendment Regulations 2025

SR No. 11 – Victorian Inspectorate Amendment Regulations 2025

SR No. 22 – Transport (Compliance and Miscellaneous) (Ticketing) Amendment (Prescribed Devices and Processes) Regulations 2025

SR No. 36 – Road Safety (General) and (Vehicles) Amendment Regulations 2025

SR No. 47 – Mental Health and Wellbeing Amendment (Parkville Youth Mental Health and Wellbeing Service) Regulations 2025

SR No. 49 – Major Crime (Investigative Powers) Regulations 2025

S. 8(1)(c) – Fundamentally Declaratory or Machinery Nature (continued)

- SR No. 52 – Tobacco (Victorian Health Promotion Foundation) Further Amendment Regulations 2025
- SR No. 55 – Transport (Safety Schemes Compliance and Enforcement) (Infringements) Amendment (Local Ports) Regulations 2025
- SR No. 66 – Rail Safety National Law (Victoria) (Drug and Alcohol Controls) Amendment Regulations 2025
- SR No. 67 – Road Safety Road Rules Further Amendment Rules 2025
- SR No. 76 – Plumbing Amendment Regulations 2025
- SR No. 90 – Confiscation Amendment (Tasmanian Unexplained Wealth Orders) Regulations 2025
- SR No. 92 – Births, Deaths and Marriages Registration Amendment Regulations 2025
- SR No. 97 – Accident Towing Services Amendment Regulations 2025
- SR No. 98 – EastLink Project Amendment Regulations 2025
- SR No. 99 – Melbourne City Link Amendment Regulations 2025
- SR No. 100 – Road Management (General) Amendment Regulations 2025
- SR No. 102 – Road Safety Road Rules (West Gate Tunnel) Amendment Rules 2025
- SR No. 105 – Surveillance Devices Amendment (Body-worn Cameras and Other Matters) Regulations 2025
- SR No. 125 – Building Amendment (Building Permit Application) Regulations 2025
- SR No. 141 – Mental Health and Wellbeing Amendment (Bayside Health) Regulations 2025
- SR No. 148 – Transport (Compliance and Miscellaneous) (Infringements) Amendment Regulations 2025
- SR No. 151 – Confiscation Amendment Regulations 2025
- SR No. 153 – Mental Health and Wellbeing Amendment Regulations 2025

S. 8(1)(c) and (d) – Fundamentally Declaratory or Machinery Nature and Only Increases Fees in Respect of a Financial Year by an Amount not Exceeding the Annual Rate Approved by the Treasurer

- SR No. 155 – Road Safety (General) and (Vehicles) Further Amendment Regulations 2025

S. 8(1)(c) and (f) – Fundamentally Declaratory or Machinery Nature and Is Required under a National Uniform Legislation Scheme

- SR No. 83 – Road Safety (Vehicles) Amendment (Fees) Regulations 2025

S. 8(1)(e)(iii) – Extension Regulation

- SR No. 19 – Subordinate Legislation (Casino Control (Fees) Regulations 2015) Extension Regulations 2025
- SR No. 20 – Subordinate Legislation (Architects Regulations 2015) Extension Regulations 2025
- SR No. 24 – Subordinate Legislation (Planning and Environment Regulations 2015) Extension Regulations 2025
- SR No. 37 – Subordinate Legislation (Gambling Regulations 2015) Extension Regulations 2025
- SR No. 48 – Subordinate Legislation (Road Management (Works and Infrastructure) Regulations 2015) Extension Regulations 2025
- SR No. 57 – Subordinate Legislation (Transport (Compliance and Miscellaneous) (Conduct on Public Transport) Regulations 2015) Extension Regulations 2025
- SR No. 138 – Subordinate Legislation (Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Regulations 2015) Extension Regulations 2025

S. 8(1)(e)(iv), (v) and (vi) – Prescribes under Section 4A(1)(a), 4A(1)(b) or 4A(1)(c) an Instrument to be a Legislative Instrument, to not be a Legislative Instrument, or to be Exempt

- SR No. 130 – Subordinate Legislation (Legislative Instruments) Amendment Regulations 2025

S.9 – Premier’s Certificate

- SR No. 40 – Electricity Safety (Electric Line Clearance) Interim Regulations 2025

S. 10 – Regulatory Impact Statements

SR No. 27 – Victorian Energy Efficiency Target Amendment (Targets and Shortfall Penalty Rates) Regulations 2025

SR No. 34 – Forests (Fire Protection) Regulations 2025

SR No. 38 – Tobacco Amendment (Retailer and Wholesaler Licensing Scheme) Regulations 2025

SR No. 53 – Private Security Regulations 2025

SR No. 54 – Port Management (Local Ports) Regulations 2025

SR No. 60 – Safe Drinking Water Regulations 2025

SR No. 63 – Residential Tenancies Amendment (Minimum Energy Efficiency Standards) Regulations 2025

SR No. 68 – Circular Economy (Waste Reduction and Recycling) (Waste to Energy Scheme) Amendment Regulations 2025

SR No. 72 – Country Fire Authority Regulations 2025

SR No. 74 – Australian Consumer Law and Fair Trading (Code of Practice for Fuel Price Reporting) Regulations 2025

SR No. 103 – Occupational Health and Safety (Psychological Health) Regulations 2025

SR No. 116 – Domestic Animals Regulations 2025

SR No. 140 – Building and Plumbing Amendment Regulations 2025

SR No. 147 – Transport (Compliance and Miscellaneous) (Conduct on Public Transport) Regulations 2025

National Law

SR No. 26 – Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2025

Education and Care Services National Amendment Regulations 2025

Appendix B

Legislative Instruments 2025

S. 12F(1)(a) – Would not Impose Significant Economic or Social Burden

Code of Practice for Bushfire Management on Public Land 2025

Dairy Food Safety Victoria Determination of Licence Classes and Fees for Dairy Businesses 2025

Ministerial Direction on the Preparation and Content of Green Wedge Management Plans

Ministerial Direction Under Section 3.8A.13A of the Gambling Regulation Act 2003

Ministerial Guidelines for Councils Relating to Payment of Rates and Charges

Ministerial Order No. 1468 – Order Amending Ministerial Order No. 1125 – Procedures for Suspension and Expulsion of Students in Government Schools Deferred

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

Order to fix the greenhouse gas reduction rates for 2026 under section 32(1) of the Victorian Energy Efficiency Target Act 2007

PrimeSafe Meat Industry Licensing and Fees Determination 2025

Primesafe Seafood Safety Licensing and Fees Determination 2025

S. 12F(1)(c) – Only Increases Fees in Respect of a Financial Year by an Amount not Exceeding the Annual Rate Approved by the Treasurer

Ministerial Order No. 1478 – Order amending Ministerial Order No. 1228 – Victorian Institute of Teaching Registration Fees

S. 12F(1)(f) – National Uniform Legislation Scheme

The Declaration of Gaseous Fuels 2025

S. 12H – Regulatory Impact Statements

Notice to Fix Fees under Section 73 of the Victorian Energy Efficiency Target Act 2007

Energy Retail Code of Practice (Energy Consumer Reforms) Amendment 2025

Exempt by Enabling Act

The Metal Casting Compliance Code

The Engineered Stone Compliance Code

The New South Wales Bar Association Professional Standards Scheme

The Western Australian Bar Association Professional Standards Scheme

The Chartered Accountants Australia and New Zealand Professional Standards Scheme

The CPA Australia Professional Standards Scheme

Order Approving the Psychological Health Compliance Code

Practitioner Remuneration Order 2026

Prescribed as exempt

The Victorian Bar Professional Standards Scheme

Prescribed not to be a legislative instrument

Order making declaration under section 12B(1) of the Prevention of Cruelty to Animals Act 1986

Appendix C

Ministerial Correspondence

This Appendix contains a list of correspondence sent to responsible Ministers by the Subcommittee regarding 2025 regulations and legislative instruments. The Appendix categorises correspondence in accordance with the nature of the issue raised by the Subcommittee. The Letters to the relevant Ministers and responses are published in the Alert Digest throughout the year and have also been reproduced below.

Regulation/ Legislative Instrument	Minister	Issue	Date of Correspondence – Sent / Response
SR No. 9 – Local Government (Governance and Integrity) Amendment Regulations 2025	Hon Sonya Kilkenny MP Attorney-General	SLA, s. 6 consultation certificate	26-06-25 01-08-25
SR No. 26 – Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2025	Hon Mary-Anne Thomas MP Minister for Health	SLA, s. 21(1)(i) clarification of effect of s. 17(4) and commencement date	26-06-25 07-08-25
SR No. 31 – Meat Industry Regulations 2025	Hon Ros Spence MP Minister for Agriculture	SLA, s. 15(1A) tabling of documents	21-08-25 16-10-25
SR No. 42 – Forests (Tour Operator Licence Fee) Amendment Regulations 2025 SR No. 43 – Land (Tour Operator Licence Fee) Amendment Regulations 2025	Hon Steve Dimopoulos MP Minister for Environment	SLA, s. 6 consultation certificate	21-08-25 22-09-25
SR No. 47 – Mental Health and Wellbeing Amendment (Parkville Youth Mental Health and Wellbeing Service) Regulations 2025	Hon Mary-Anne Thomas MP Minister for Health (as the Acting Minister for Mental Health)	SLA, s. 8 exemption certificate	21-08-25 18-09-25
SR No. 48 – Subordinate Legislation (Road Management (Works and Infrastructure) Regulations 2015) Extension Regulations 2025	Hon Melissa Horne MP Minister for Roads and Roads Safety	SLA, s. 21(1)(j) contravention of s. 5A extension certificate and s. 14 submission of certificates to Governor in Council	21-08-25 17-09-25
Ministerial Order No. 1468 – Order Amending Ministerial Order No. 1125 – Procedures for Suspension and Expulsion of Students in Government Schools	Hon Ben Carroll MP Minister for Education	SLA, s. 12F(1)(a) exemption certificate; SLA, s. 25A(1)(d) contravention of s. 16A publication of legislative instrument	21-08-25 22-09-25
SR No. 53 – Private Security Regulations 2025	Hon Anthony Carbines MP Minister for Police	SLA, s. 6 consultation certificate	09-10-25 N/A
SR No. 58 – First Home Owner Grant and Home Buyer Schemes Amendment Regulations 2025	Hon Jaclyn Symes MP Treasurer	SLA, s. 15A timeliness of documentation	09-10-25 N/A

Regulation/ Legislative Instrument	Minister	Issue	Date of Correspondence – Sent / Response
SR No. 62 – Child Wellbeing and Safety (Information Sharing) Amendment Regulations 2025	Hon Lizzie Blandthorn MP Minister for Children	SLA, s. 15A timeliness of documentation	09-10-25 N/A
SR No. 69 – Assisted Reproductive Treatment Amendment Regulations 2025	Hon Mary-Anne Thomas MP Minister for Health	SLA, s. 15A timeliness of documentation	09-10-25 N/A
SR No. 72 – Country Fire Authority Regulations 2025	Hon Vicki Ward MP Minister for Emergency Services	Guidelines, statement of reasons	09-10-25 28-11-25
SR No. 73 – Powers of Attorney Regulations 2025	Hon Sonya Kilkeny MP Attorney-General	SLA, s. 8 exemption certificate	18-11-25 30-11-25
SR No. 82 – Victorian Energy Efficiency Target (Project-Based Activities) Amendment Regulations 2025	Hon Lily D'Ambrosio MP Minister for Energy and Resources	ILA, s. 32 applying, adopting or incorporating matters by reference	18-11-25 15-12-25
SR No. 87 – Borrowing and Investment Powers (Authority) Amendment Regulations 2025	Hon Jaclyn Symes MP Treasurer	SLA, s. 8 exemption certificate	18-11-25 N/A
SR No. 94 – Serious Offenders Amendment Regulations 2025	Hon Enver Erdogan MP Minister for Corrections	SLA, s. 8 exemption certificate	15-12-25 14-04-26
SR No. 105 – Surveillance Devices Amendment (Body-worn Cameras and Other Matters) Regulations 2025	Hon Sonya Kilkeny MP Attorney-General	SLA, s. 21(1)(i) explanation of form or intention and s. 8 exemption certificate	15-12-25 28-01-26
SR No. 107 – Child Wellbeing and Safety (Child Link) Amendment Regulations 2025	Hon Lizzie Blandthorn MP Minister for Children	SLA, s. 21(1)(j) contravention of s. 14 submission of certificates to Governor in Council	15-12-25 26-01-26
Energy Retail Code of Practice (Energy Consumer Reforms) Amendment 2025	Hon Danny Pearson MP Minister for Finance Minister for Economic Growth and Jobs	SLA, s. 25A(1)(d) contravention of s. 16A publication of legislative instrument; SLA, s. 12J notice of decision; SLA, s. 12C consultation certificate; SLA, s. 16C timeliness of documentation	15-12-25 29-01-26
Notice to Fix Fees under Section 73 of the Victorian Energy Efficiency Target Act 2007	Hon Lily D'Ambrosio MP Minister for Energy and Resources	SLA, s. 12J notice of decision	15-12-25 02-02-26
SR No. 113 – National Electricity (Victoria) (VicGrid) Regulations 2025	Hon Lily D'Ambrosio MP Minister for Energy and Resources	SLA, s. 15A timeliness of documentation	13-02-26 N/A

Regulation/ Legislative Instrument	Minister	Issue	Date of Correspondence – Sent / Response
SR No. 118 – Corrections Amendment Regulations 2025	Hon Enver Erdogan MP Minister for Corrections	SLA, s. 21(1)(ha) compatibility with human rights	13-02-26 17-03-26 and 18-05-26
SR No. 129 – Liquor Control Reform (Prohibited Supply) Regulations 2025	Hon Enver Erdogan MP Minister for Casino, Gaming and Liquor Regulation	SLA, s. 21(1)(i) explanation of form or intention and s. 8 exemption certificate	31-03-26 02-06-26
SR No. 137 – Casino Control Amendment Regulations 2025	Hon Enver Erdogan MP Minister for Casino, Gaming and Liquor Regulation	SLA, s. 6 consultation certificate	31-03-26 N/A
SR No. 144 – Child Wellbeing and Safety (Information Sharing) Further Amendment Regulations 2025	Hon Lizzie Blandthorn MP Minister for Children	SLA, s. 21(1)(a) does not appear to be within powers conferred by authorising Act	31-03-26 23-04-26
SR No. 145 – Gas Safety (Gas Installation) Amendment Regulations 2025	Hon Lily D'Ambrosio MP Minister for Energy and Resources	SLA, s. 6 consultation certificate	31-03-26 04-05-26
SR No. 147 – Transport (Compliance and Miscellaneous) (Conduct on Public Transport) Regulations 2025	Hon Gabrielle Williams MP Minister for Public and Active Transport	SLA, s. 21(1)(j) contravention of s. 11 notice inviting comments and submissions following preparation of RIS	31-03-26 28-04-26



Scrutiny of Acts and Regulations Committee

26 June 2025

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

By email: attorney-general@justice.vic.gov.au

Dear Attorney-General

SR No. 9 – Local Government (Governance and Integrity) Amendment Regulations 2025

The Regulations Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee considered the above statutory rule at a meeting on 25 June 2025.

The Subcommittee approved the Regulations. However, the Subcommittee draws your attention to section 6 of the *Subordinate Legislation Act 1994* (SLA) and related Guidelines.¹

Section 6(1)(c) of the SLA provides that the responsible Minister must ensure that where the Guidelines require consultation, a certificate of consultation is issued for that statutory rule.

The Regulations were not accompanied by a section 6 consultation certificate.

The Regulations were issued a section 8(1)(c) exemption certificate and in relation to statutory rules to which a section 8(1)(c) exemption applies, Part 3 Division 3 of the Guidelines states that:

... consultation may still be required under section 6(a), and, if so, the responsible Minister should issue a consultation certificate under section 6(c).²

Section 6(1)(a) of the SLA relates to consultation with any other Minister whose area of responsibility may be affected by a statutory rule. The explanatory memorandum that accompanied the Regulations stated that:

¹ [Subordinate Legislation Act 1994 Guidelines](#) (September 2023).

² Ibid 32–33.

As the Minister for Local Government is jointly and severally responsible for section 325 of the Principal Act, she has been consulted on the making of the proposed Regulations.

Accordingly, as consultation was required with the Minister for Local Government, a section 6 consultation certificate should have been issued for the Regulations.

The Subcommittee notes that a failure to comply with section 6 of the SLA does not affect the operation of a statutory rule. However, the Subcommittee recommends processes are reviewed to ensure that, in future, consultation certificates are issued whenever consultation under section 6(1)(a) of the SLA is required in relation to statutory rules to which a section 8(1)(c) exemption applies.

Response

The Subcommittee would appreciate your response by Monday, 25 August 2025.

Thank you for your assistance. Please do not hesitate to contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au should you require further information.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



The Hon. Sonya Kilkenny MP

Attorney-General

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

Our ref: 25070067

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee

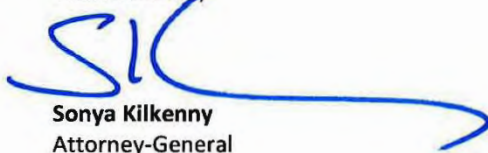
By email: SARC@parliament.vic.gov.au

Dear Chair

Thank you for your letter of 26 June 2025 regarding the Local Government (Governance and Integrity) Amendment Regulations 2025.

I thank the Committee for its review of the Regulations and associated certificates and note the Committee's advice in relation to the need for certificates of consultation when statutory rules or legislative instruments may affect another Minister's area of responsibility and they have been consulted. I will ensure such certificates are included in the future.

Yours sincerely



Sonya Kilkenny
Attorney-General

Date: 1/8/2025





Scrutiny of Acts and Regulations Committee

26 June 2025

The Hon. Mary-Anne Thomas
Minister for Health
Level 22, 50 Lonsdale Street
Melbourne
Victoria, 3000

By email: minister.health@health.vic.gov.au

Dear Minister

No. 26 – Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2025

The Regulations Review Subcommittee (the Subcommittee) of the Scrutiny of Acts and Regulations Committee considered the above subordinate legislation at a meeting on 25 June 2025.

The Subcommittee noted the making and operation of the Regulation.

Section 245(3) of the Health Practitioner Regulation National Law (the **National Law**) requires regulations ‘to be published by the Victorian Government Printer in accordance with the arrangements for the publication of the making of regulations in Victoria’, which arrangements are set out in section 17 of the *Subordinate Legislation Act 1994* (the **SLA**).

Notices meeting the requirements of section 17(2) and section 17(3) of the SLA were published in the Government Gazette. Accordingly, the Regulation appears to comply with section 245(3) of the National Law.

However, the Subcommittee is interested in the effect (if any) of section 17(4) of the SLA on the commencement date of the Regulation.

Commencement Date

The Regulation is said to commence on the day it is published by the Victorian Government Printer.¹

¹ Regulation 2. See also section 245(4) Health Practitioner Regulation National Law: ‘A regulation commences on the day or days specified in the regulation for its commencement (being not earlier than the date it is published).’

The notice that was published under section 245(3) of the National Law in accordance with the arrangements in section 17(3) of the SLA (the **Notice**) states that the Regulation:

- was published by the Victorian Government Printer on 13 May 2025; and
- is obtainable from TIMG Bookshop Melbourne from 14 May 2025.²

From the Notice alone it would appear that the commencement date of the Regulation is 13 May 2025.

However, section 17(4) of the SLA reads in full as follows:

A copy of the Government Gazette purporting to contain a notice published under subsection (3) with respect to any statutory rule is conclusive evidence that the statutory rule was printed and published by the Government Printer on the date specified in that notice as the date on which the statutory rule was first obtainable from the place specified in that notice.

Should section 17(4) of the SLA apply, it would raise the issue of whether 13 May 2025 or 14 May 2025 is to be taken as the date the Regulation was published by the Victorian Government Printer—and therefore commenced.

The Subcommittee would appreciate your advice on the effect of section 17(4) of the SLA, and your confirmation of the commencement date of the Regulation.

The Subcommittee understands that whether the Regulation commenced on 13 May 2025 or on 14 May 2025 will be of no practical significance, because either way the Regulation extends the transition period relating to professional indemnity insurance for private midwives well before the period is due to end on 1 July 2025.

Response

The Subcommittee would appreciate your response by Monday, 25 August 2025.

Please do not hesitate to contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au should you require further information.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee

² *Victoria Government Gazette: Special*, [No S 230](#), 14 May 2025.



The Hon Mary-Anne Thomas MP

Minister for Health
Minister for Ambulance Services

GPO Box 4057
Melbourne Victoria 3001
Telephone: +61 3 9096 8561
www.health.vic.gov.au

BAC-CO-57058

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

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

Dear Mr Maas

Thank you for your letter regarding the Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2025 (the Regulation).

The Health Practitioner Regulation National Law (National Law) establishes a national scheme for health workforce registration, including requiring registered health practitioners to maintain appropriate professional indemnity insurance, and is of vital importance to facilitate a consistent approach to the regulation of health professions across jurisdictions. The National Law is not a Commonwealth law, rather, it is implemented through the adoption of the host jurisdiction's (Queensland) law in all states and territories including Victoria.

The Regulation extends the transition period which provides a time limited exemption for privately practising midwives attending homebirths to hold professional indemnity insurance. The expiration date of this exemption has been extended from 1 July 2025 until 31 December 2026, to enable sufficient coverage for these midwives while a new insurance product is implemented nationally.

The Department of Health has consulted with the Office of the Chief Parliamentary Counsel (OCPC) on the issue raised in your letter regarding the commencement date of the Regulation. I can confirm that the Regulation should be taken to have commenced on 13 May 2025 in accordance with the terms of the National Law and section 2 of the National Law Regulation. This is because the Regulation was published online to the Legislation website by the Victorian Government Printer on 13 May 2025, as stated in the Victorian Government Gazette notice published on 14 May 2025.

In this instance, the Regulation was inadvertently published on the Legislation website ahead of the hard copy being made available the following day in the bookshop. The OCPC took the view that it needed to be transparent about this delay and noted the two dates in the Government Gazette notice of availability published on 14 May 2025.



The OCPC has confirmed that this was due to human error and not in accordance with their established processes, and that processes will be reviewed to ensure this does not happen again.

I share your understanding that this discrepancy in dates is of no practical significance, because the Regulation clearly commenced in time to extend the transition period for privately practising midwives before the end of the previous period (1 July 2025).

I hope this information is useful to the Regulations Review Subcommittee and thank you for bringing this matter to my attention.

Yours sincerely



The Hon Mary-Anne Thomas MP

7/8/2025



Scrutiny of Acts and Regulations Committee

21 August 2025

The Hon. Ros Spence
Minister for Agriculture
GPO Box 4509
Melbourne
Victoria, 3001

By email: ros.spence@parliament.vic.gov.au;
angela.brierley@agriculture.vic.gov.au;
roxanne.portolesi@agriculture.vic.gov.au

Dear Minister

SR No. 31 – Meat Industry Regulations 2025

The Regulations Review Subcommittee (**the Subcommittee**) of the Scrutiny of Acts and Regulations Committee considered the above statutory rule at a meeting on 20 August 2025.

The Subcommittee approved the Meat Industry Regulations 2025 (**the Regulations**). However, the Subcommittee has been unable to find any record that the necessary documents accompanying the Regulations were tabled in the Parliament.

Section 15(1A) of the *Subordinate Legislation Act 1994* (Vic) requires a copy of specific documents issued or given in respect of a statutory rule to be laid before each House of the Parliament. There is no specified timeframe for this to occur.

While a failure to comply with section 15(1A) does not affect the operation of the statutory rule, the Subcommittee considers that the tabling of documents in a timely manner is important to ensure effective parliamentary oversight of subordinate legislation.¹

The Subcommittee would appreciate if you could arrange for the following documents that accompanied the Regulations to be laid before each House of the Parliament as soon as possible, in accordance with section 15(1A):

¹ See also *Subordinate Legislation Act 1994* (Vic) s 15(2), which provides that the Scrutiny of Acts and Regulations Committee may choose to report a failure to comply with section 15(1A) to each House of the Parliament.

- the composite certificate comprising the section 6 consultation certificate and the section 8 exemption certificate;
- the section 12A human rights certificate;
- the section 13 certificate from the Chief Parliamentary Counsel; and
- the recommendation to the Governor in Council to make the Regulations.

Response

The Subcommittee would appreciate your response by Friday, 19 September 2025.

Thank you for your assistance with this matter. Please do not hesitate to contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au should you require further information.

Yours sincerely,

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

Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



The Hon. Ros Spence MP

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

GPO Box 1774
Melbourne, Victoria 3001 Australia
Telephone: 1300 622 308

MBR-250901788

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

Gary
Dear Mr Maas MP

Thank you for your letter of 21 August 2025 advising that the Regulations Review Subcommittee of the Scrutiny of Acts and Regulations Committee (SARC) was unable to find any record of the necessary documents to accompany the Meat Industry Regulations 2025 S.R. No. 31 being tabled in Parliament.

The Department of Energy, Environment and Climate Action (DEECA) has now provided the Clerks with the necessary documentation. DEECA received confirmation from the Clerks that the required documents were tabled on Tuesday 9 September 2025.

This administrative oversight has been investigated, and new processes have been put in place to avoid a future occurrence.

Thank you for contacting me and alerting me to this important matter.

Yours sincerely

The Hon. Ros Spence MP
Minister for Agriculture

16...110...125.



Official



Scrutiny of Acts and Regulations Committee

21 August 2025

The Hon. Steve Dimopoulos
Minister for Environment
PO Box 500
East Melbourne
Victoria, 8002

By email: steve.dimopoulos@parliament.vic.gov.au;
Victoria.Betts@deeca.vic.gov.au; vincent.lie@deeca.vic.gov.au;
nazdana.haidari@deeca.vic.gov.au

Dear Minister

SR No. 42 – Forests (Tour Operator Licence Fee) Amendment Regulations 2025 and SR No. 43 – Land (Tour Operator Licence Fee) Amendment Regulations 2025

The Regulations Review Subcommittee (**Subcommittee**) of the Scrutiny of Acts and Regulations Committee considered the above statutory rules at a meeting on 20 August 2025.

The Subcommittee approved the Regulations. However, the Subcommittee draws your attention to a minor issue with the section 6 consultation certificates that accompanied the Regulations.

The consultation certificates refer in the second and third paragraphs to the ‘Crown Land (Reserves) (Tour Operator Licence Fee) Regulations 2021’ and the ‘Crown Land (Reserves) (Tour Operator Licence Fee) Amendment Regulations 2025’, which appear to be typographical errors.

While in this instance the errors have no substantive or material consequence,¹ the Subcommittee respectfully reminds Departments of the importance of exercising care when preparing certificates to avoid triggering a

¹ Despite the typographical errors, the consultation certificates meet the consultation requirements under the *Subordinate Legislation Act 1994* (Vic) (SLA) and Guidelines. In addition, section 6(3) of the SLA provides that a failure to comply with the consultation requirements under section 6(1) of the SLA – which include issuing a consultation certificate in accordance with the Guidelines – does not affect the operation or effect of a statutory rule.

scrutiny issue. The Subcommittee has previously addressed this issue in its [Practice Note](#), which it recommends as a resource for all Departments.

Response

The Subcommittee would appreciate your response by Friday, 19 September 2025.

Thank you for your assistance with these matters. Please do not hesitate to contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au should you require further information.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Gary Maas', is displayed within a light blue rectangular box.

Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



Steve Dimopoulos MP

Minister for Environment
Minister for Tourism, Sport and Major Events
Minister for Outdoor Recreation

PO Box 500
East Melbourne VIC 8002

MIN-250806869

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee

SARC@parliament.vic.gov.au

Dear Mr Maas

Thank you for your letter of 21 August 2025 regarding minor typographical errors in the consultation certificates for:

- SR No. 42 – Forests (Tour Operator Licence Fee) Amendment Regulations 2025
- SR No. 43 – Land (Tour Operator Licence Fee) Amendment Regulations 2025.

I appreciate the reminder of the need for accuracy and will ensure we refer to the Practice Note.

Thank you once again for bringing this matter to my attention.

Yours sincerely

Steve Dimopoulos MP
Member for Oakleigh
Minister for Environment

22 / 09 / 2025



Official



Scrutiny of Acts and Regulations Committee

21 August 2025

The Hon. Mary-Anne Thomas MP
Minister for Health
Acting Minister for Mental Health
GPO Box 4057
Melbourne
Victoria, 3001

By email: mary-anne.thomas@parliament.vic.gov.au;
minister.health@health.vic.gov.au; connor.beattie@health.vic.gov.au

Dear Minister

SR No. 47 – Mental Health and Wellbeing Amendment (Parkville Youth Mental Health and Wellbeing Service) Regulations 2025

The Regulations Review Subcommittee (**Subcommittee**) of the Scrutiny of Acts and Regulations Committee considered the above statutory rule at a meeting on 20 August 2025.

The Subcommittee approved the Regulations. However, the Subcommittee draws your attention to an issue with the section 8 exemption certificate.

The ground/s on which the exemption certificate has been issued under subsection 8(1) and the specific reasons for the exemption under subsection 8(3) of the *Subordinate Legislation Act 1994* (Vic) (**SLA**) are unclear.¹

The Exemption Certificate

The exemption certificate makes direct reference to paragraph 8(1)(c) of the SLA.² However, the wording that follows this reference and the reasons that are subsequently provided in support of the Minister's opinion appear to

¹ An exemption certificate must specify the reasons for the exemption: *Subordinate Legislation Act 1994* (Vic) s 8(3).

² The exemption ground under paragraph 8(1)(c) is that, in the opinion of the Minister, 'the proposed statutory rule is of a fundamentally declaratory or machinery nature': *Subordinate Legislation Act 1994* (Vic) s 8(1)(c).

conflate the exemption grounds under paragraphs 8(1)(a) and 8(1)(c) of the SLA.³

The exemption certificate also states: 'As Parkville Youth Mental Health and Wellbeing Service is a public sector body, this impact does not result in a significant burden for the public'. It is unclear whether this reference to 'a public sector body' is intended to introduce a further exemption ground under paragraph 8(1)(da) of the SLA.⁴

The explanatory memorandum, on the other hand, refers to the exemption certificate as having been prepared pursuant to paragraph 8(1)(a) alone.

Statutory Requirements and Guidelines for Preparing Exemption Certificates

It is possible for a particular set of factual circumstances to support more than one exemption ground under subsection 8(1) of the SLA.⁵ In such a case, however, the exemption certificate should clearly specify each ground that is relied upon by the Minister, using the correct statutory provision, wording and reasoning for that ground.⁶

The [Subordinate Legislation Act 1994 Guidelines \(Guidelines\)](#) require an exemption certificate to include the relevant paragraphs of subsection 8(1) of the SLA under which the exemption is made, as well as the reasons why the proposed statutory rule falls within the relevant exemption.⁷

The reasoning for one ground should not be inconsistent with or invalidate the arguments expressed in support of another ground.⁸

³ The exemption ground under paragraph 8(1)(a) is that, in the opinion of the Minister, 'the proposed statutory rule would not impose a significant economic or social burden on a sector of the public': *Subordinate Legislation Act 1994* (Vic) s 8(1)(a).

⁴ The exemption ground under paragraph 8(1)(da) is that, in the opinion of the Minister, 'the proposed statutory rule would only impose a burden on a public sector body': *Subordinate Legislation Act 1994* (Vic) s 8(1)(da).

⁵ For example, a proposed statutory rule that is 'fundamentally declaratory or machinery in nature' (s 8(1)(c)) may also be a proposed statutory rule that would not impose a significant economic or social burden on a sector of the public' (s 8(1)(a)). Similarly, s 8(1)(a) and s 8(1)(da) are not necessarily mutually exclusive as exemption grounds, because 'a significant economic or social burden' is not necessarily the same as 'a burden', nor does 'a sector of the public' necessarily encompass a 'public sector body'.

⁶ Each exemption ground is distinct. The paragraphs in subsection 8(1) are separated by the coordinating conjunction 'or', which indicates a choice or alternative between two or more options.

⁷ *Subordinate Legislation Act 1994 Guidelines* (Department of Premier and Cabinet, September 2023) 38, [140].

⁸ It is unclear, for example, whether a proposed statutory rule that is 'fundamentally declaratory or machinery in nature' can simultaneously 'impose a burden on a public sector body'. It is common to justify a proposed statutory rule as 'machinery' because a burden is derived *not* from the proposed statutory rule itself but from obligations set

With this in mind, the Subcommittee would appreciate your clarification as to the relevant ground or grounds for the exemption from the requirement to prepare a Regulatory Impact Statement for these Regulations and the reasons in support of each ground.

Response

The Subcommittee would appreciate your response no later than Friday, 19 September 2025.

Thank you for your assistance with this matter. Please do not hesitate to contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au should you require further information.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee

out in the authorising legislation: *Subordinate Legislation Act 1994 Guidelines* (Department of Premier and Cabinet, September 2023) 26, [110].



Ingrid Stitt MP

Minister for Mental Health
Minister for Ageing
Minister for Multicultural Affairs

GPO Box 4057
Melbourne Victoria 3001
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www.health.vic.gov.au

BAC-CO-58653

Gary Maas MP
Chair, Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002
Via email: sarc@parliament.vic.gov.au

Dear Chair

Thank you for your letter addressed to The Hon. Mary-Anne Thomas MP seeking clarification regarding an issue raised by the Regulations Review Subcommittee of the Scrutiny of Acts and Regulations Committee (the Subcommittee) about the Mental Health and Wellbeing Amendment (Parkville Youth Mental Health and Wellbeing Service) Regulations 2025 (the Regulations).

Specifically, the Committee has requested clarification as to the relevant ground or grounds for the exemption from the requirement to prepare a Regulatory Impact Statement for the Regulations and the reasons in support of each ground. As the matter you raise falls within my portfolio responsibilities, your letter has been referred to me for my consideration and response.

I confirm that the exemption certificate was issued under section 8(1)(c) of the *Subordinate Legislation Act 1994* as stated in the certificate. The certificate has been published on the Parliament of Victoria website. The reference to section 8(1)(a) in the explanatory memorandum that accompanies the certificate to support SARC's consideration was erroneous.

Section 8(1)(c) of the Act enables the responsible Minister to issue an exemption certificate certifying that, in the opinion of the Minister, the proposed statutory rule is of a fundamentally declaratory or machinery nature.

The *Mental Health and Wellbeing Act 2022* establishes the authorising environment under which designated mental health services are established and treat patients. For the purposes of the definition of 'designated mental health service' in section 3(1) of the *Mental Health and Wellbeing Act 2022*, a designated mental health service includes a prescribed public health service within the meaning of section 3(1) of the *Health Services Act 1988*.

On 3 July 2024, Parkville Youth Mental Health and Wellbeing Service was established as a public health service within the meaning of section 3(1) of the *Health Services Act 1988* to



provide acute mental health services to young people aged 18-25 and community mental health services to young people aged 12-25 in the north-west metropolitan region.

On 1 July 2025, the Regulations came into operation and amended the Mental Health and Wellbeing Regulations 2023 to add Parkville Youth Mental Health and Wellbeing Service as a prescribed designated mental health service for the purposes of the *Mental Health and Wellbeing Act 2022*. Designating Parkville Youth Mental Health and Wellbeing Service as a designated mental health service was necessary to enable it to fulfil its purpose and enabled the transfer of services from Melbourne Health to Parkville Youth Mental Health and Wellbeing Service on 1 July 2025 under Part 13 of the *Health Services Act 1988*.

The establishment of a designated mental health service is provided for in the existing statutory framework under the *Mental Health and Wellbeing Act 2022*, with the addition of a new service in the Mental Health and Wellbeing Regulations 2023 being a declaratory or mechanical process which does not, in and of itself, create new rights or obligations nor does it impose a significant burden. The Subordinate Legislation Act 1994 Guidelines (Guidelines) note that a 'proposed statutory rule or legislative instrument that imposes a significant burden is, on its face, not machinery'. The additional wording included in the exemption certificate noting that the Regulations do not impose a significant burden for the public sought to address the matter of 'significant burden' in the context of section 8(1)(c) and not provide evidence for additional grounds for exemption.

I trust this information has been of assistance to the Subcommittee and thank you for bringing this matter to my attention.

Yours sincerely



Ingrid Stitt MP
Minister for Mental Health
Minister for Ageing
Minister for Multicultural Affairs

18/9/25



Scrutiny of Acts and Regulations Committee

21 August 2025

The Hon. Melissa Horne MP
Minister for Roads and Road Safety
PO Box 2392
Melbourne
Victoria, 3001

By email: minister.horne@minstaff.vic.gov.au; tim.v.lunn@transport.vic.gov.au

Dear Minister

SR No. 48 – Subordinate Legislation (Road Management (Works and Infrastructure) Regulations 2015) Extension Regulations 2025

The Regulations Review Subcommittee (**Subcommittee**) of the Scrutiny of Acts and Regulations Committee (**Committee**) considered the above statutory rule at a meeting on 20 August 2025. The Subcommittee has not yet approved the Regulations.

Section 5A(1) Extension Certificate

The *Subordinate Legislation Act 1994* (Vic) (**SLA**) authorises and sets out the formal procedure for making extension regulations. Under section 5A(1), if the responsible Minister has obtained a section 5A(3) Premier's certificate, the responsible Minister may issue an extension certificate if satisfied of the matters in paragraphs 5A(1)(a)–(b).

Subsection 5A(2) of the SLA provides that this extension certificate must specify the special circumstances referred to in paragraph 5A(1)(a), including the reasons why the extension is necessary.

Subsection 14(da) of the SLA then requires that a proposed extension regulation submitted to the Governor in Council must be accompanied by a copy of the section 5A(1) extension certificate and a copy of the section 5A(3) Premier's certificate.

The Subcommittee understands from correspondence with the Department of Transport and Planning (**Department**) that no section 5A(1) extension certificate was ever prepared in relation to the Regulations, and thus no copy was submitted to the Governor in Council. While the Department has

highlighted that the matters that should have been in the section 5A(1) extension certificate were detailed in the section 5A(3) Premier's certificate instead, this does not meet the exact requirements of subsections 5A(2) and 14(da) of the SLA.

Accordingly, the Subcommittee is concerned that the failure to comply with these provisions of the SLA will affect the operation or effect of the Regulations.

Report by Scrutiny Committee

Pursuant to section 21(1)(j) of the SLA, the Committee may report to each House of the Parliament if it considers that a statutory rule has been prepared in contravention of any of the provisions of the SLA and the contravention is of a substantial or material nature.

A report of the Committee under section 21 may contain any recommendations that the Committee considers appropriate, including a recommendation that a statutory rule be disallowed in whole or in part.

Response

The Subcommittee requests your opinion on the effect of the failure to prepare the section 5A(1) extension certificate and what steps may be taken to remedy the oversight.

The Subcommittee would appreciate your response no later than Friday, 19 September 2025, so that it can consider the Regulations again at its next meeting.

Thank you for your assistance with this matter. Please do not hesitate to contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au should you require further information.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



The Hon Melissa Horne MP

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

PO Box 2392
Melbourne, Victoria 3001 Australia

Ref: CMIN-1-25-S441

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002
gary.maas@parliament.vic.gov.au

Dear Mr Maas

Thank you for your letter of 21 August 2025 regarding SR No. 48 – Subordinate Legislation (Road Management (Works and Infrastructure) Regulations 2015) Extension Regulations 2025 (**Extension Regulations**).

I understand that the documents submitted to the Governor-in-Council in relation to the making of the Extension Regulations did not include an extension certificate signed by me as the responsible Minister under section 5A(1) of the *Subordinate Legislation Act 1994* (the **SLA**). I note that this was an administrative oversight, and I understand that the Department of Transport and Planning has previously acknowledged the oversight and apologised to the Committee.

You have sought advice as to the effect of the failure to provide the certificate and any steps which may be taken to remedy the oversight.

Both the Explanatory Memorandum to the Extension Regulations and the Premier's Certificate, which were submitted to the Governor-in-Council, explain the special circumstances which justified the making of the Extension Regulations. This information would also have been included in the extension certificate under the SLA. Accordingly, material sufficient for the Governor-in-Council to make a decision, albeit not as technically required under the SLA, was provided to the Governor-in-Council to support the making of the Extension Regulations. On this basis, I am advised that the omission of the certificate is not substantial or material in nature.



Further, I am also advised that in the case of *Hossain v Minister for Immigration and Border Protection* (2018) 264 CLR 123 at 134-5, the High Court held that ordinarily a decision will not be invalid 'if complying with the condition could have made no difference to the decision that was made in the circumstances in which the decision was made'. This was followed in *MZAPC v Minister for Immigration and Boarder Protection* (2021) 390 ALR 590 at 598.

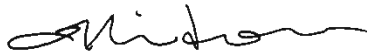
The Extension Regulations provide exemptions from the requirement to obtain consent from the relevant road authority for the undertaking of works on public roads that would otherwise be required to be obtained by parties such as utility companies, public transport providers and fire authorities. If the exemptions do not apply, the providers of these important and at times safety-critical works would need to obtain prior consent from the relevant road authority before conducting that work, resulting in unnecessary delays and further safety risks. In *Kirkham v Industrial Relations Commission* (2015) 121 SASR 471 at 481 and 484, *Australian Broadcasting Commission v Redmore Pty Ltd* (1989) 166 CLR 484 at 457 and *Ko v Hall* [2020] VSCA 224 at para 70, it was held that breach of a statutory requirement which is internal to government should not invalidate dealings with innocent outsiders and affected parties.

In light of the above analysis, I trust that you will agree that the oversight represents a technical non-compliance with the SLA, which is not substantial or material to the making of the Regulations.

To ensure that this situation does not occur in the future, the Department of Transport and Planning has reviewed its procedures to ensure that all required certificates for the making of Regulations under the SLA are provided to the Governor in Council.

Thank you again for bringing this matter to my attention.

Yours sincerely



Hon Melissa Horne MP
Minister for Health Infrastructure
Minister for Ports and Freight
Minister for Roads and Road Safety
17/09/2025



Scrutiny of Acts and Regulations Committee

21 August 2025

The Hon. Ben Carroll MP
Minister for Education
Level 3, 1 Treasury Place
East Melbourne VIC 3002

By email: reception.carroll@minstaff.vic.gov.au;
olivia.price@education.vic.gov.au

Dear Minister

Ministerial Order No. 1468 – Order Amending Ministerial Order No. 1125 – Procedures for Suspension and Expulsion of Students in Government Schools

The Regulations Review Subcommittee (**Subcommittee**) of the Scrutiny of Acts and Regulations Committee (**Committee**) considered the above legislative instrument at a meeting on 20 August 2025. The Subcommittee has not yet approved the legislative instrument.

The Subcommittee draws your attention to two scrutiny issues on which it requires further information.

Section 16A Publication

Section 16A(1)(b) of the *Subordinate Legislation Act 1994* (Vic) (**SLA**) provides that a legislative instrument must be published in full in a special edition of the Government Gazette within 10 working days after the making of the legislative instrument.¹

The legislative instrument was published in a special edition of the Government Gazette on 4 June 2025, which is 11 working days after the

¹ For interpretation of time periods that use the words 'within' and 'after', see *Morton v Hampson* [1962] VR 364 (emphasis added): 'The modern rule in relation to a period of time fixed by statute within which an act is to be done after a specified event is that the day of the event is to be excluded; the next day is the first day of the stipulated period and the time expires on the last day of the period, counting from and of course including the first day'. See also *Interpretation of Legislation Act 1984* (Vic) s 44 for interpretation of time periods generally.

making of the legislative instrument on 20 May 2025.² While only a short delay, this does not meet the time period for publication as set out in section 16A(1)(b) of the SLA.

Section 12F Exemption Certificate

The legislative instrument is accompanied by a section 12F(1)(a) exemption certificate on the basis that it would not impose a significant economic or social burden on a sector of the public.

In considering the meaning of a 'significant burden', regard may be had to the [Subordinate Legislation Act 1994 Guidelines \(Guidelines\)](#). The Guidelines explain that, in determining whether a legislative instrument imposes a 'significant burden' for the purposes of issuing an exemption certificate, a broad range of costs or negative impacts should be considered but benefits or positive impacts are not relevant:

Whether a significant burden may be imposed should be assessed initially with reference only to the costs or negative impacts on a sector of the public. That is, potential costs should not be offset against potential benefits.³

It is therefore not relevant for the exemption certificate to refer to the 'positive impact on other school students and staff' in specifying the reasons for the exemption pursuant to section 12F(3) of the SLA.

Conversely, all potential economic and social costs, regardless of how readily quantifiable those costs are, and including any negative effect of the legislative instrument on rights and access to services, should form part of the assessment of whether a significant burden may be imposed on a sector of the public.⁴

Accordingly, the exemption certificate does not appear to meet the requirements of the Guidelines with respect to compliance with section 12F of the SLA.

Report by Committee

Pursuant to section 25A(1)(d) of the SLA, the Committee may report to each House of the Parliament if it considers that any legislative instrument has

² Victoria, *Victoria Government Gazette: Special*, No. S 281, 4 June 2025 <<https://www.gazette.vic.gov.au/gazette/Gazettes2025/GG2025S281.pdf>>.

³ *Subordinate Legislation Act 1994 Guidelines* (Department of Premier and Cabinet, September 2023) 26.

⁴ *Subordinate Legislation Act 1994 Guidelines* (Department of Premier and Cabinet, September 2023) 27.

been prepared in contravention of any of the provisions of the SLA or of the Guidelines and the contravention is of a substantial or material nature.

A report of the Committee under section 25A may contain any recommendations that the Committee considers appropriate, including a recommendation that a legislative instrument be disallowed in whole or in part.

Response

The Subcommittee requests further information as to the effect of late publication of the legislative instrument and as to why the legislative instrument would not impose a significant economic or social burden on a sector of the public, focusing on all potential economic and social costs or negative impacts of the legislative instrument.

The Subcommittee would appreciate your response no later than Friday, 19 September 2025, so that it can consider the legislative instrument again at its next meeting.

Thank you for your assistance with these matters. Please do not hesitate to contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au should you require further information.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



The Hon. Ben Carroll MP

Deputy Premier
Minister for Education
Minister for WorkSafe and the TAC

1 Treasury Place
East Melbourne Victoria 3002
Telephone +61 3 7022 5600

COR25168522

Gary Maas MP

Chair

Scrutiny of Acts and Regulations Committee

By email: SARC@parliament.vic.gov.au; helen.mason@parliament.vic.gov.au

Dear Chair,

I refer to your letter of 21 August 2025 on behalf of the Scrutiny of Acts and Regulations Committee (**Committee**) in relation to Ministerial Order 1468 – *Order Amending Ministerial Order No. 1125 – Procedures for Suspension and Expulsion of Students in Government Schools (Order)*.

My response to the Committee's request for further information as to the effect of late publication of the legislative instrument and as to why the legislative instrument would not impose a significant economic or social burden on a sector of the public is provided below.

Publication

As noted in your letter, the Order was published in full in the Government Gazette on 4 June 2025, which is 11 working days after the making of the Order on 20 May 2025.

While I acknowledge that, under the *Subordinate Legislation Act 1994 (SLA)*, the Order should have been published on or before 3 June 2025, I do not consider that the late publication of the Order by one working day to have had any material effect in this case. This is because the Order did not commence until 21 July 2025 and was still published well in advance of this date. Further, there was extensive publicity that accompanied the publication of the Order, which formed part of the government's overall public communications strategy to ensure that the changes were adequately explained to and understood by the sector.

Therefore, I consider that there was adequate time for any member of the public to understand the amendments before they came into operation.

Exemption certificate

Section 12F(1)(a) of the SLA provides that the responsible Minister may issue an exemption certificate in writing certifying that, in the opinion of the Minister, the proposed legislative instrument would not impose a significant economic or social burden on a sector of the public. Section 12F(3) of the SLA provides that an exemption certificate must specify the reasons for the exemption.

The exemption certificate that accompanied the Order certifies that the Order is exempt from the requirement to prepare a regulation impact statement on the basis that the Order does not impose a significant economic or social burden on a sector of the public. The exemption certificate specifies the reason for the exemption, being that the Order only affects a small proportion of students who engage in inappropriate and harmful behaviour which satisfies the expanded grounds for suspension and expulsion as contained in the Order. That is, the burden imposed by the Order is limited to those students who behave in such a way as to pose a significant danger, whether actual or threatened, to another student or staff member, where the behaviour unreasonably impacts a student or staff member at the student's school in one or more ways. Importantly, this assessment does not consider the impact or effect of the principal Order (i.e. *Ministerial Order No. 1125 – Procedures for Suspension and Expulsion of Students in Government Schools*) as in force immediately prior to the Order coming into effect.

The view that the Order would not impose a significant economic or social burden on a sector of the public and the reasons for the exemption, as contained in the exemption certificate, are consistent with the Guidelines made under the SLA and is based on advice provided by Better Regulation Victoria.

I acknowledge that the exemption certificate states that the Order is likely to have a 'positive impact on other school students and staff'. However, I wish to clarify that this reference was intended to provide additional context on the overall impact the Order is likely to have, as opposed to being a reason for the exemption pursuant to section 12F(3) of the SLA. That is, I confirm that the positive impact was not netted off or offset against the economic or social burden that was identified and calculated for the purposes of considering whether a regulation impact statement was needed.

Thank you for raising these matters with me and I trust that this information will be of assistance to the Committee.

Should you wish to discuss this matter further, please contact Burton Reynolds, Director, Commercial and Legislation at the Department of Education on 03 7022 0952 or burton.reynolds@education.vic.gov.au.

Yours sincerely



The Hon. Ben Carroll MP
Deputy Premier
Minister for Education
Minister for WorkSafe and the TAC

22/9/25



Scrutiny of Acts and Regulations Committee

9 October 2025

The Hon. Anthony Carbines MP
Minister for Police
GPO Box 4057
Melbourne Victoria 3000

By email: minister.carbines@justice.vic.gov.au;
danielle.windley@justice.vic.gov.au

Dear Minister

SR No. 53 – Private Security Regulations 2025

The Regulations Review Subcommittee (**Subcommittee**) of the Scrutiny of Acts and Regulations Committee considered the above statutory rule at a meeting on 1 October 2025.

The Subcommittee approved the Regulations. However, the Subcommittee draws your attention to an issue of compliance with section 6(1) of the *Subordinate Legislation Act 1994* (Vic) (**SLA**).

Section 6(1) requires a responsible Minister to ensure that consultation in accordance with the Guidelines is undertaken, both with other Ministers pursuant to section 6(1)(a) and with sectors of the public pursuant to section 6(1)(b).

The Guidelines only provide exemptions from section 6(1) requirements in respect of statutory rules for which an exemption certificate or extension is issued.¹ For all other statutory rules, the Guidelines clarify that consultation under section 6(1)(a) and 6(1)(b) is an initial process which occurs with stakeholders prior to and separate from the formal consultation process following the public release of the proposed statutory rule and Regulatory Impact Statement (**RIS**).² The Guidelines further state that a consultation certificate issued under section 6(1)(c) of the SLA ‘should provide details of who was consulted’.³

¹ *Subordinate Legislation Act 1994 Guidelines* (Department of Premier and Cabinet, September 2023) 21-22, available at <https://www.parliament.vic.gov.au/4961ea/globalassets/tailed-paper-documents/tailed-paper-7465/subordinate-legislation-act-1994-guidelines-september-2023.pdf>.

² *Ibid* 21.

³ *Ibid* 24.

In the present instance, the consultation certificate issued for the Regulations only records consultation under section 6(1)(a) of the SLA. It does not address whether the consultation required pursuant to section 6(1)(b) was undertaken.

It may be the case that it was. The RIS that accompanied the Regulations details consultation that took place in mid-2024 with ‘key peak bodies and industry representatives’,⁴ including the Victorian Security Industry Advisory Council, the Australian Security Industry Association Limited, monitoring centres, private investigators, and the United Workers Union.⁵ If so, details should have been included in the consultation certificate.

The failure to comply with section 6(1) of the SLA does not affect the operation of the Regulations.⁶

Thank you for your time and attention to this matter. No response is required. Please do not hesitate to contact the Subcommittee’s secretariat at SARC@parliament.vic.gov.au should you have any questions.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee

⁴ Department of Justice and Community Safety, *Regulatory Impact Statement – Private Security Regulations 2025* (Deloitte Access Economics, February 2025) ix, available at <<https://engage.vic.gov.au/remaking-victorian-private-security-regulations-2025>>.

⁵ Ibid 39.

⁶ *Subordinate Legislation Act 1994* (Vic) s 6(3).



Scrutiny of Acts and Regulations Committee

9 October 2025

The Hon. Jaclyn Symes
Treasurer
GPO Box 4379
Melbourne Victoria 3001

By email: jaclyn.symes@parliament.vic.gov.au; neha.kasbekar@sro.vic.gov.au

Dear Treasurer

SR No. 58 – First Home Owner Grant and Home Buyer Schemes Amendment Regulations 2025

The Regulations Review Subcommittee (**Subcommittee**) of the Scrutiny of Acts and Regulations Committee considered the above statutory rule at a meeting on 1 October 2025.

The Subcommittee approved the Regulations. However, the Subcommittee draws your attention to section 15A of the *Subordinate Legislation Act 1994*. Section 15A requires the responsible Minister to provide specified documents to the Committee no later than 10 working days after a statutory rule is made.

The documents accompanying the Regulations were sent to the Committee on 22 July 2025, which is 25 working days after the Regulations were made on 17 June 2025. Pursuant to section 15A(3), this failure to comply with the statutory time limit does not affect the operation of the Regulations. However, the Subcommittee notes that timeliness in sending material to the Committee is important to facilitate effective parliamentary oversight of subordinate legislation.

Thank you for your time and attention to this matter. No response is required. Please do not hesitate to contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au should you have any questions.

Yours sincerely,

Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



Scrutiny of Acts and Regulations Committee

9 October 2025

The Hon. Lizzie Blandthorn MP
Minister for Children
GPO Box 1774
Melbourne Victoria 3001

By email: lizzie.blandthorn@parliament.vic.gov.au;
Petrea.Turner@education.vic.gov.au

Dear Minister

SR No. 62 – Child Wellbeing and Safety (Information Sharing) Amendment Regulations 2025

The Regulations Review Subcommittee (**Subcommittee**) of the Scrutiny of Acts and Regulations Committee considered the above statutory rule at a meeting on 1 October 2025.

The Subcommittee approved the Regulations. However, the Subcommittee draws your attention to section 15A of the *Subordinate Legislation Act 1994*. Section 15A requires the responsible Minister to provide specified documents to the Committee no later than 10 working days after a statutory rule is made.

The documents accompanying the Regulations were sent to the Committee on 24 July 2025, which is 17 working days after the Regulations were made on 1 July 2025. Pursuant to section 15A(3), this failure to comply with the statutory time limit does not affect the operation of the Regulations. However, the Subcommittee notes that timeliness in sending material to the Committee is important to facilitate effective parliamentary oversight of subordinate legislation.

Thank you for your time and attention to this matter. No response is required. Please do not hesitate to contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au should you have any questions.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Gary Maas'.

Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee

Scrutiny of Acts and Regulations Committee, Parliament of Victoria
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Parliament House, Spring Street, East Melbourne Victoria 3002, Australia

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Scrutiny of Acts and Regulations Committee

9 October 2025

The Hon. Mary-Anne Thomas MP
Minister for Health
GPO Box 4057
Melbourne Victoria 3001

By email: minister.health@health.vic.gov.au

Dear Minister

SR No. 69 – Assisted Reproductive Treatment Amendment Regulations 2025

The Regulations Review Subcommittee (**Subcommittee**) of the Scrutiny of Acts and Regulations Committee considered the above statutory rule at a meeting on 1 October 2025.

The Subcommittee approved the Regulations. However, the Subcommittee draws your attention to section 15A of the *Subordinate Legislation Act 1994*. Section 15A requires the responsible Minister to provide specified documents to the Committee no later than 10 working days after a statutory rule is made.

The documents accompanying the Regulations were sent to the Committee on 6 August 2025, which is 16 working days after the Regulations were made on 15 July 2025. Pursuant to section 15A(3), this failure to comply with the statutory time limit does not affect the operation of the Regulations. However, the Subcommittee notes that timeliness in sending material to the Committee is important to facilitate effective parliamentary oversight of subordinate legislation.

Thank you for your time and attention to this matter. No response is required. Please do not hesitate to contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au should you have any questions.

Yours sincerely,

Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee

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Parliament House, Spring Street, East Melbourne Victoria 3002, Australia

1



Scrutiny of Acts and Regulations Committee

9 October 2025

The Hon. Vicki Ward MP
Minister for Emergency Services
PO Box 500
East Melbourne Victoria 3002

By email: vicki.ward@parliament.vic.gov.au; oscar.bugaj@emv.vic.gov.au

Dear Minister

SR No. 72 – Country Fire Authority Regulations 2025

The Regulations Review Subcommittee (**Subcommittee**) of the Scrutiny of Acts and Regulations Committee considered the above statutory rule at a meeting on 1 October 2025.

The Subcommittee approved the Regulations. However, the Subcommittee draws your attention to an issue of compliance with the *Subordinate Legislation Act 1994 Guidelines* (**Guidelines**).

The Guidelines require the preparation and publication of a statement of reasons responding to feedback received during the public consultation on a proposed statutory rule and its Regulatory Impact Statement (**RIS**). The Guidelines state:

A statement of reasons summarising issues raised in submissions and explaining how the agency has responded must be prepared and published on a government website and available in request in hard copy. This allows those who have made submissions on a RiS to see how their comments have been addressed in the final version of the statutory rule or legislative instrument.¹

It appears that no statement of reasons was prepared or published for the Regulations. The Scrutiny Committee may exercise its discretion to report to the Parliament if it considers that any statutory rule has been prepared in contravention of a provision of the *Subordinate Legislation Act 1994* (**SLA**) or of the Guidelines; however, it can only do so if the contravention is 'substantial or material'.²

¹ Department of Premier and Cabinet, *Subordinate Legislation Act 1994 Guidelines* (September 2023) 46, [190].

² *Subordinate Legislation Act 1994* (Vic) s 21(1)(j). The High Court case of *Hossain v Minister for Immigration and Border Protection* [2018] HCA 34, [30]–[31] may provide authority on what may be meant by the term 'substantial or material':

Scrutiny of Acts and Regulations Committee, Parliament of Victoria
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Parliament House, Spring Street, East Melbourne Victoria 3002, Australia

In this context the Subcommittee notes section 12J of the SLA, which serves a purpose comparable or analogous to a statement of reasons as required under the Guidelines.

The Subcommittee appreciates that a notice of decision was published with respect to the Regulations in accordance with section 12J of the SLA.³ The notice of decision confirmed that a number of submissions were received and considered as part of the public consultation process and included reasons for the changes subsequently made to the proposed Regulations. The Subcommittee further notes that, in accordance with subsection (5) of section 12J of the SLA, a failure to comply with section 12J would not have affected the operation or effect of the Regulations.

The Subcommittee does, however, suggest that in future it would be best practice to publish a statement of reasons for each statutory rule for which a RIS is prepared, reflecting the commentary in the Guidelines that a statement of reasons ‘contributes to the transparency of the regulatory process’.⁴

Thank you for your time and attention to this matter. No response is required. Please do not hesitate to contact the Subcommittee’s secretariat at SARC@parliament.vic.gov.au should you have any questions.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee

Whilst a statute on its proper construction might set a higher or lower threshold of materiality, the threshold of materiality would not ordinarily be met in the event of a failure to comply with a condition if complying with the condition could have made no difference to the decision that was made in the circumstances in which the decision was made. The threshold would not ordinarily be met, for example, where a failure to afford procedural fairness did not deprive the person who was denied an opportunity to be heard of “the possibility of a successful outcome”, or where a decision-maker failed to take into account a mandatory consideration which in all the circumstances was “so insignificant that the failure to take it into account could not have materially affected” the decision that was made.

³ Victoria, *Victoria Government Gazette: Special*, No. S 384, 28 July 2025.

⁴ Department of Premier and Cabinet, *Subordinate Legislation Act 1994 Guidelines* (September 2023) 46.



Vicki Ward MP

Minister for Emergency Services
Minister for Natural Disaster Recovery
Minister for Equality

8 Nicholson St
East Melbourne Victoria 3002

Our ref: 25084035

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee

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

Dear Mr Maas 

Thank you for your correspondence dated 9 October 2025, which was received on 17 October 2025, regarding the Country Fire Authority Regulations 2025.

Thank you for bringing to my attention that a statement of reasons for the Country Fire Authority Regulations 2025 had not been published in accordance with the requirements of the *Subordinate Legislation Act 1994* Guidelines. I confirm that I have approved a statement of reasons in relation to these Regulations and it will be published on the Engage Victoria website shortly.

Should you require further information, please contact David Clavarino, Acting Executive Director, Emergency Management Victoria by email at david.clavarino@emv.vic.gov.au.

I trust this information has been of assistance to you and thank you again for taking the time to write to me.

Yours sincerely



Vicki Ward MP
Minister for Emergency Services
Minister for Natural Disaster Recovery
Minister for Equality

28 / 11 / 2025





Scrutiny of Acts and Regulations Committee

18 November 2025

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

By email: attorney-general@justice.vic.gov.au

Dear Attorney-General

SR No. 73 – Powers of Attorney Regulations 2025

The Regulations Review Subcommittee (**Subcommittee**) of the Scrutiny of Acts and Regulations Committee considered the above statutory rule at a meeting on 5 November 2025.

The Subcommittee approved the Regulations. However, the Subcommittee draws your attention to a minor issue with the exemption certificate issued under section 8 of the *Subordinate Legislation Act 1994* (Vic) (**SLA**).

Section 8 Exemption Certificate

The exemption certificate is issued under section 8(1)(a) of the SLA on the ground that the proposed statutory rule would not impose a significant economic or social burden on a sector of the public. The reasons given for the exemption are that ‘the proposed statutory rule prescribes forms and is machinery in nature’.

The Subcommittee considers the given reasons may not engage in sufficient detail with the concept of significant burden that is central to section 8(1)(a). The [Subordinate Legislation Act 1994 Guidelines](#) (**Guidelines**) note an exemption certificate should contain reasons of sufficient detail and relevance to the particular exemption ground being relied upon.¹

Based on the detail provided, the given reasons appear to more directly satisfy the ground under section 8(1)(c) that the proposed statutory rule is of a fundamentally declaratory or machinery nature. The Subcommittee’s [Practice Note](#) highlights the importance of identifying the most appropriate exemption

¹ Department of Premier and Cabinet, *Subordinate Legislation Act 1994 Guidelines* (September 2023) 38, [139]–[140] <<https://www.parliament.vic.gov.au/4961ea/globalassets/taled-paper-documents/taled-paper-7465/subordinate-legislation-act-1994-guidelines-september-2023.pdf>>.

ground for a proposed statutory rule.² It encourages departmental and agency officers to take care when determining which category to use when exempting regulations from a Regulatory Impact Statement, as the ability to provide sufficient justification relevant to the selected category is important to the transparency of the regulation-making process.

The Subcommittee hopes its Practice Note and the Guidelines continue to be useful resources with respect to any determinations on subordinate legislation in future.

Response

Thank you for your time and attention to this matter. The Subcommittee would appreciate your response by Monday, 15 December 2025.

Please do not hesitate to contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au should you require further information.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee

² Regulation Review Subcommittee of the Scrutiny of Acts and Regulations Committee, *Committee Practice Note* <<https://www.parliament.vic.gov.au/492473/globalassets/sections-shared/get-involved/inquiries/committees/la-committees/sarc/committee-practice-note.pdf>>.



The Hon. Sonya Kilkenny MP

Attorney-General

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

Our ref: EBC 25113479

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

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

Dear Mr Maas

Thank you for your letter of 18 November 2025 regarding the Regulations Review Subcommittee of the Scrutiny of Acts and Regulations Committee's consideration of the Powers of Attorney Regulations 2025 (the Regulations) on 5 November 2025.

I note the Subcommittee's approval of the Regulations. I also thank the Subcommittee for advising me of a minor issue with the exemption certificate issued under s8(1)(a) of the *Subordinate Legislation Act 1994* (SLA). In particular, that the reasons given for the Regulations not imposing a significant economic or social burden on a sector of the public because they prescribe forms and are machinery in nature, do not provide sufficient detail. Rather, the reasons appear to more directly satisfy the ground under section 8(1)(c) of the SLA – that the Regulations are of a fundamentally declaratory or machinery in nature.

I acknowledge the importance of identifying the most appropriate exemption ground for proposed Regulations and will encourage my departmental and agency officers to review the Subcommittee's Practice Note when determining which category to use when exempting Regulations from a Regulatory Impact Statement.



Thank you again for your consideration of the Regulations and for advising me about the issue with the exemption certificate.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'SK' followed by a long horizontal stroke and a small upward curve.

Sonya Kilkenny
Attorney-General

Date: 30-11-2025



Scrutiny of Acts and Regulations Committee

18 November 2025

The Hon. Lily D'Ambrosio
Minister for Energy and Resources
8 Nicholson Street
East Melbourne
Victoria, 3002

By email: lily.dambrosio@parliament.vic.gov.au;
chris.iape@deeca.vic.gov.au

Dear Minister

SR No. 82 – Victorian Energy Efficiency Target (Project-Based Activities) Amendment Regulations 2025

The Regulations Review Subcommittee (**Subcommittee**) of the Scrutiny of Acts and Regulations Committee considered the above statutory rule at a meeting on 5 November 2025.

The Subcommittee approved the Regulations. However, the Subcommittee draws your attention to the matter of the incorporated material.

Incorporating Matters by Reference

The Regulations are made under the *Victorian Energy Efficiency Target Act 2007* and amend the *Victorian Energy Efficiency Target (Project-Based Activities) Regulations 2017* (**Principal Regulations**).

The Regulations purport to apply, adapt or incorporate matters by reference.¹

The effect of regulation 7(7) of the Regulations is to substitute 'Part A6' in place of 'Part A3' in regulation 6(8)(a)(ii) of the Principal Regulations, in order that reference is made in the Principal Regulations to 'Part A6 of the Building Code'.²

¹ Section 75(2)(f) of the *Victorian Energy Efficiency Target Act 2007* authorises Regulations applying, adopting or incorporating any matter contained in any document.

² The Principal Regulations provide that *Building Code* means the Building Code of Australia within the meaning of section 3(1) of the *Building Act 1993*, which in turn states: *Building Code of Australia* means the Building Code of Australia comprising— (a) Volume One of the National Construction Code including any Victorian variations or additions set out in that Volume; and (b) Volume Two of the National Construction Code including any Victorian variations or additions set out in that Volume.

The Table of Applied, Adopted or Incorporated Matter³ in the endnote of the Regulations confirms that the specific matter being incorporated is Part A6 of the Building Code published on 1 May 2023.

The formal requirements for adopting, applying or incorporating matters by reference are set out in section 32 of the *Interpretation of Legislation Act 1984* (Vic) (ILA).

Under section 32(3) of the ILA, a copy of the matter to be incorporated into subordinate legislation must be lodged with the Clerk of the Parliaments, and notice published in the Government Gazette and tabled in each House of the Parliament, with another copy of the matter made available for public inspection.⁴ The matter may be incorporated ‘as in force at a particular time’ or ‘as in force from time to time’.⁵ If an incorporated matter as in force from time to time is later amended, then the requirements set out in section 32(4) apply. Essentially the previous lodgement, notice, tabling and public inspection steps are repeated but with respect to the matter as so amended.

The Subcommittee has not been able to find a record of compliance with either section 32(3) or 32(4) of the ILA in relation to the Regulations. The Subcommittee’s understanding is that a copy of Part A6 of the Building Code published on 1 May 2023 differs from any material of the Building Code that may have been previously lodged with the Clerk of the Parliaments in relation to the Principal Regulations, or else reflects an amendment of such material.⁶ The Building Code does not appear to be a ‘Code’ as defined in section 32(1) of the ILA and therefore it is not excluded on this basis from the application of section 32(3) or 32(4).⁷

While a failure to comply with section 32(3) or 32(4) of the ILA does not affect the validity, operation or effect of the relevant subordinate legislation,⁸ the Subcommittee considers it important that matters incorporated into legislation are brought to the notice of the Parliament and members of the public. It is a

³ The Subcommittee notes this complies with the requirements of regulation 5 of the *Subordinate Legislation Regulations 2014* (Vic).

⁴ Sections 32(3) and 32(4) of the ILA apply to the incorporation of matters contained in documents. They do not apply to the incorporation of provisions of ‘an Act, Commonwealth Act, Code, statutory rule or statutory rule made under a Commonwealth Act’. Note that ‘Code’ throughout section 32 means any of the codes listed in section 32(1), which prima facie does not appear to include the Building Code.

⁵ *Interpretation of Legislation Act 1984* (Vic) s 32(3)—provided the Act under which the subordinate legislation is made authorises or requires incorporation.

⁶ See the endnotes to the Principal Regulations, which state that ‘Clause A3.2’ of the ‘Building Code’ was incorporated in 2017. The Subcommittee has not been able to find a record of materials lodged or tabled in 2017. It is unable to confirm exactly what material was lodged or what process was followed with respect to the incorporation of Clause A3.2 of the Building Code in 2017, if any.

⁷ The provisions of a ‘Code’ as defined in section 32(1) of the ILA (or the provisions of an Act, Commonwealth Act, statutory rule or statutory rule made under a Commonwealth Act) may be incorporated into subordinate legislation in accordance with section 32(2)(a) of the ILA. All other documents can only be incorporated in accordance with section 32(3) or 32(4) of the ILA: see also *Interpretation of Legislation Act 1984* (Vic) s 32(2)(b).

⁸ *Interpretation of Legislation Act 1984* (Vic) s 32(5).

fundamental principle of the rule of law that laws are readily known and available.

The importance of compliance with section 32 of the ILA is noted in the *Subordinate Legislation Act 1994 Guidelines*.⁹

The Subcommittee would appreciate if you could confirm whether section 32 of the ILA applies in relation to the Regulations and, if necessary, arrange for the relevant lodgement, notice, tabling and public inspection requirements for Part A6 of the Building Code published on 1 May 2023 to be complied with as soon as practicable.

Response

The Subcommittee would appreciate your response by Monday, 15 December 2025.

Thank you for your assistance with this matter. Please do not hesitate to contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au should you require further information.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee

⁹ Department of Premier and Cabinet, *Subordinate Legislation Act 1994 Guidelines* (September 2023) <<https://www.parliament.vic.gov.au/4961ea/globalassets/taled-paper-documents/taled-paper-7465/subordinate-legislation-act-1994-guidelines-september-2023.pdf>> 56-57, [238]-[245].



Hon Lily D'Ambrosio MP

Minister for Climate Action
Minister for Energy and Resources
Minister for the State Electricity Commission

8 Nicholson Street
East Melbourne, Victoria 3002
Telephone: 03 9637 9504

MIN-251104855

Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
SARC@parliament.vic.gov.au

Dear Gary Maas MP

SR No. 82 – Victorian Energy Efficiency Target (Project-Based Activities) Amendment Regulations 2025

Thank you for your letter dated 18 November 2025, regarding the formal requirements for adopting, applying or incorporating matters by reference as set out in section 32 of the *Interpretation of Legislation Act 1984* (Vic) (ILA).

I note that the Regulations Review Subcommittee of the Scrutiny of Acts and Regulations Committee considered and approved the *Victorian Energy Efficiency Target (Project-Based Activities) Amendment Regulations 2025* (the Regulations) at its 5 November 2025 meeting.

I confirm that section 32 of the ILA applies to the Regulations and that the Department of Energy Environment and Climate Action DEECA will arrange for the relevant lodgement, notice, tabling and public inspection requirements for Part A6 of the Building Code of Australia published on 1 May 2023, to be complied with as soon as practicable.

If you have further questions, please contact Kirralee Tyndall, Director, Victorian Energy Upgrades, Department of Energy, Environment and Climate Action at kirralee.tyndall@deeca.vic.gov.au.

Thank you again for raising these matters with me.

Yours sincerely

Hon Lily D'Ambrosio MP
Minister for Climate Action
Minister for Energy and Resources
Minister for the State Electricity Commission

15/12/2025



Official



Scrutiny of Acts and Regulations Committee

18 November 2025

The Hon. Jaclyn Symes
Treasurer of Victoria
1 Treasury Place
Melbourne
Victoria, 3001

By email: Treasurer@dtf.vic.gov.au

Dear Treasurer

SR No. 87 – Borrowing and Investment Powers (Authority) Amendment Regulations 2025

The Regulations Review Subcommittee (**Subcommittee**) of the Scrutiny of Acts and Regulations Committee considered the above statutory rule at a meeting on 5 November 2025.

The Subcommittee approved the Regulations. However, the Subcommittee draws your attention to a minor issue with the exemption certificate issued under section 8 of the *Subordinate Legislation Act 1994* (Vic) (**SLA**).

Section 8 Exemption Certificate

The exemption certificate is issued under section 8(1)(a) of the SLA on the ground that the proposed statutory rule would not impose a significant economic or social burden on a sector of the public. The reasons given for the exemption are that:

the proposed statutory rule prescribes persons or bodies as ‘authorities’ for the purposes of the BIP Act, and the sections of the BIP Act which apply to those authorities. This process is declaratory only. For a prescribed authority to exercise any powers that have been granted to it under the Regulations, the Treasurer’s subsequent specific approval is required.

The Subcommittee considers the given reasons may not engage in sufficient detail with the concept of significant burden that is central to section 8(1)(a). The [Subordinate Legislation Act 1994 Guidelines](#) (**Guidelines**) note an exemption

certificate should contain reasons of sufficient detail and relevance to the particular exemption ground being relied upon.¹

Based on the detail provided, the given reasons appear to more directly satisfy the ground under section 8(1)(c) that the proposed statutory rule is of a fundamentally declaratory or machinery nature. The Subcommittee's [Practice Note](#) highlights the importance of identifying the most appropriate exemption ground for a proposed statutory rule.² It encourages departmental and agency officers to take care when determining which category to use when exempting regulations from a Regulatory Impact Statement, as the ability to provide sufficient justification relevant to the selected category is important to the transparency of the regulation-making process.

The Subcommittee hopes its Practice Note and the Guidelines continue to be useful resources with respect to any determinations on subordinate legislation in future.

Response

Thank you for your time and attention to this matter. The Subcommittee would appreciate your response by Monday, 15 December 2025.

Please do not hesitate to contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au should you require further information.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee

¹ Department of Premier and Cabinet, *Subordinate Legislation Act 1994 Guidelines* (September 2023) 38, [139]-[140] <<https://www.parliament.vic.gov.au/4961ea/globalassets/taled-paper-documents/taled-paper-7465/subordinate-legislation-act-1994-guidelines-september-2023.pdf>>.

² Regulation Review Subcommittee of the Scrutiny of Acts and Regulations Committee, *Committee Practice Note* <<https://www.parliament.vic.gov.au/492473/globalassets/sections-shared/get-involved/inquiries/committees/la-committees/sarc/committee-practice-note.pdf>>.



Scrutiny of Acts and Regulations Committee

15 December 2025

The Hon. Lily D'Ambrosio MP
Minister for Energy and Resources
8 Nicholson Street
East Melbourne
Victoria, 3002

By email: lily.dambrosio@parliament.vic.gov.au

Cc: nick.rintoul@deeca.vic.gov.au; nicole.odonnell@deeca.vic.gov.au;
ella.decesare@deeca.vic.gov.au

Dear Minister

Notice to Fix Fees under section 73 of the Victorian Energy Efficiency Target Act 2007

The Regulations Review Subcommittee (**Subcommittee**) of the Scrutiny of Acts and Regulations Committee (**Committee**) considered the above legislative instrument at a meeting on 8 December 2025.

The Subcommittee approved the legislative instrument. However, the Subcommittee draws your attention to the requirements in relation to the Notice of Decision under section 12J of the *Subordinate Legislation Act 1994* (Vic) (**SLA**).

Section 12J Notice of Decision

Section 12J of the SLA requires the instrument maker to ensure a notice advising of the decision to make the legislative instrument (**Notice of Decision**) is published in both the Government Gazette and on the Public Notices website.¹ This must occur before the legislative instrument is made,² and is separate to the requirement in section 16A of the SLA to publish the legislative instrument in full or a notice of its making.

¹ *Subordinate Legislation Act 1994* (Vic) s 12J(1). (The Public Notices website is an approved alternative publication internet site, held to meet the requirement of publication in a daily newspaper circulating generally throughout Victoria: *Interpretation of Legislation Act 1984* (Vic) ss 38M and 38N; Victoria, *Government Gazette: Special*, No S 381, 31 July 2022.)

² *Subordinate Legislation Act 1994* (Vic) s 12J(4).

In this instance, the Notice of Decision was published on the Public Notices website on 8 October 2025,³ but does not appear to have been published in the Government Gazette.

Failure to comply with the requirements in relation to the Notice of Decision under section 12J of the SLA does not affect the operation or effect of the legislative instrument, but the Committee may report the failure to each House of the Parliament.⁴

The Subcommittee decided it would not recommend to the Committee to report the matter to the Parliament in this instance, noting there was still opportunity for those affected by the legislative instrument to be kept apprised of its progress via the Public Notices website, consultation and delayed commencement date. However, the Subcommittee draws your attention to this publication error and the requirements of section 12J of the SLA for future reference.

Response

The Subcommittee would appreciate your response by Monday, 2 February 2026.

Thank you for your time and attention to this matter. Please do not hesitate to contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au should you require further information.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee

³ Available at: <https://www.vic.gov.au/notice-decision-victorian-energy-upgrades-program-fees-2026-onwards>.

⁴ *Subordinate Legislation Act 1994* (Vic) s 12J(5).



Hon Lily D'Ambrosio MP

Minister for Climate Action
Minister for Energy and Resources
Minister for the State Electricity Commission

8 Nicholson Street
East Melbourne, Victoria 3002
Telephone: 03 9637 9504

MIN-251204131

Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
Parliament of Victoria
Parliament House
Spring Street
East Melbourne 3002
SARC@parliament.vic.gov.au

Dear Gary Maas MP

NOTICE TO FIX FEES UNDER SECTION 73 OF THE VICTORIAN ENERGY EFFICIENCY TARGET ACT 2007

Thank you for your letter of 15 December 2025 regarding a failure to comply with the publication requirements following my decision to fix fees under section 73 of the *Victorian Energy Efficiency Target Act 2007*. This involved two documents: the Notice of Decision and the Notice to Fix Fees.

The Notice of Decision in relation to fixing fees was published on the Public Notices website on 8 October 2025. The Regulations Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee (Committee) identified that the Notice of Decision was, however, not published in the Government Gazette.

I am advised by the Department of Energy, Environment and Climate Action (DEECA) that the correct process was not followed and the requirement to also publish the Notice of Decision in the Government Gazette was overlooked. I apologise for what occurred. I am assured by the department that the oversight was inadvertent and that systems are in place to prevent this reoccurring.

The Notice to Fix Fees was published in the Government Gazette, on the Essential Services Commission's website, and on the Engage Victoria website as required on 8 October 2025. Thus, the publication requirements of the Act were met with regard to the Notice to Fix Fees.

I note that the Subcommittee has decided it will not recommend to the Committee that it report the matter to Parliament as there was opportunity for those affected by the decision to fix fees to be kept apprised of its progress via the Public Notices website, consultation, and delayed commencement date.



Official

Thank you for drawing my attention to the publication error and the requirements of the *Subordinate Legislation Act 1994* for future reference.

If you have further questions, please contact Kirralee Tyndall, Director, Victorian Energy Upgrades, DEECA at kirralee.tyndall@deeca.vic.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Lily D'Ambrosio', with a long, wavy horizontal line extending to the right.

Hon Lily D'Ambrosio MP
Minister for Climate Action
Minister for Energy and Resources
Minister for the State Electricity Commission

02/02/2026



Scrutiny of Acts and Regulations Committee

15 December 2025

The Hon. Danny Pearson MP
Minister for Economic Growth and Jobs
Minister for Finance
121 Exhibition Street
Melbourne Victoria 3000

By email: minister.finance@dtf.vic.gov.au; ministerpearson@dtf.vic.gov.au

Cc: reception@esc.vic.gov.au

Dear Minister

Energy Retail Code of Practice (Energy Consumer Reforms) Amendment 2025

The Regulations Review Subcommittee (**Subcommittee**) of the Scrutiny of Acts and Regulations Committee (**Committee**) considered the above legislative instrument at a meeting on 8 December 2025. The Subcommittee has not yet approved the legislative instrument.

The Subcommittee draws your attention to four scrutiny issues arising under the *Subordinate Legislation Act 1994* (Vic) (**SLA**),¹ in particular the matter of publication of the legislative instrument.

Section 16A Publication

The legislative instrument amends the Energy Retail Code of Practice (**Code of Practice**). The Subcommittee appreciates that a notice of the making or amendment of the Code of Practice was published in the Government Gazette on 30 September 2025,² pursuant to section 49 of the *Essential Services Commission Act 2001* (Vic). Where an authorising Act requires publication in the Government Gazette of the notice of the making of a legislative instrument,

¹ The Subcommittee's view is that the legislative instrument is not captured under Item 43.1 of Schedule 3 of the *Subordinate Legislation (Legislative Instruments) Regulations 2021* (Vic). (Therefore, for the purposes of section 4A(1)(c) of the SLA, it is not exempt from the operation of Part 2A, Part 5A, and sections 16B, 16C, 16E, and 16F of the SLA). The Subcommittee takes this view because the legislative instrument amends the Energy Retail Code of Practice which came into operation on 1 March 2022 rather than the document entitled the Energy Retail Code as deemed a code of practice pursuant to section 76(1)(f) of the *Essential Services Commission Act 2001* (Vic) on 1 December 2021 and amended from time to time.

² Victoria, *Government Gazette: Special*, No. S 528, 30 September 2025
<<https://www.gazette.vic.gov.au/gazette/Gazettes2025/GG2025S528.pdf>>.

however, compliance with the authorising Act is not necessarily sufficient compliance with the publication requirements of the SLA.³

Pursuant to section 16D(4) of the SLA, an instrument maker is not relieved of the obligation under section 16A(1) to publish the legislative instrument in full unless, under section 16A(2), the legislative instrument is unsuitable to be published in full. 'Unsuitability' includes if the legislative instrument is incompatible with the format of the Government Gazette or its size makes publication impractical.⁴ The [Subordinate Legislation Act 1994 Guidelines \(Guidelines\)](#) add as an example where the instrument contains detailed maps or diagrams, but are otherwise silent on what meets the threshold of unsuitable.⁵

The Subcommittee notes the legislative instrument in this instance is 17 pages and does not contain pictures, maps or diagrams.

If the legislative instrument is suitable to publish in the Government Gazette, the failure to do so would appear to be a contravention of section 16A(1) of the SLA.⁶ The effect of non-compliance with this section is unclear. For certain other provisions, the SLA expressly provides that non-compliance does not affect the operation or effect of a legislative instrument.⁷ The SLA is silent, however, as to the effect of failing to comply with the publication requirements set out in section 16A(1). Courts have previously found subordinate legislation invalid due to non-compliance with procedural requirements, particularly publication requirements.⁸

Pursuant to section 25A(1)(d) of the SLA, the Committee may report to each House of the Parliament if it considers a legislative instrument has been prepared in contravention of any provision of the SLA or of the Guidelines and the contravention is of a substantial or material nature. A report may contain any recommendations the Committee considers appropriate, including disallowance of the legislative instrument in whole or in part.

Accordingly, the Subcommittee requests further information on the decision not to publish the legislative instrument in full in the Government Gazette. It seeks your opinion on whether the legislative instrument was unsuitable for publication in full within the meaning of section 16A(2) of the SLA, and, if not,

³ *Subordinate Legislation Act 1994* (Vic) s 16D(4).

⁴ *Subordinate Legislation Act 1994* (Vic) s 16A(3).

⁵ Department of Premier and Cabinet, *Subordinate Legislation Act 1994 Guidelines* (September 2023) 48 [204].

⁶ The Subcommittee's view is the 'supremacy clause' in section 5 of the *Essential Services Commission Act 2001* (Vic) has no application in this context. 'Inconsistency' does not arise, because the express purpose of section 16D(4) of the SLA is to provide for the specific situation in which an authorising Act's publication requirements are less onerous than section 16A of the SLA.

⁷ See, eg, *Subordinate Legislation Act 1994* (Vic) ss 12C(3), 12J(5), 16B(3), 16C(3).

⁸ Dennis Pearce and Stephen Argument, *Delegated Legislation in Australia* (Butterworths, 2nd ed, 1999) 109.

the effect of non-compliance with section 16A(1) of the SLA including on the operation or effect of the legislative instrument.

Section 12J Notice of Decision

Section 12J of the SLA requires the instrument maker to ensure a notice advising of the decision to make the legislative instrument (**Notice of Decision**) is published in both the Government Gazette and on the Public Notices website.⁹ This must occur before the legislative instrument is made,¹⁰ and is separate to any requirement under section 16A of the SLA to publish either the legislative instrument in full or a notice of the making of the legislative instrument.

In this instance, the Notice of Decision was published on the Public Notices website on 1 October 2025.¹¹ This was after the legislative instrument was made.¹² The Notice of Decision also does not appear to have been published in the Government Gazette.

Failure to comply with the requirements in relation to the Notice of Decision under section 12J of the SLA does not affect the operation or effect of the legislative instrument, but the Committee may report the failure to each House of the Parliament.¹³

The Subcommittee notes a statement of reasons entitled 'Energy Consumer Reforms: Final Decision' was published on the Engage Victoria website following the Regulatory Impact Statement process, which document is dated 30 September 2025.¹⁴ **The Subcommittee seeks any further details of communications with industry participants advising of the decision to make the legislative instrument.**

Section 12C Consultation Certificate

Section 12C(1)(c) of the SLA requires the responsible Minister to ensure a certificate of consultation in accordance with the Guidelines is issued for a legislative instrument.¹⁵

⁹ *Subordinate Legislation Act 1994* (Vic) s 12J(1). (The Public Notices website is an approved alternative publication internet site, held to meet the requirement of publication in a daily newspaper circulating generally throughout Victoria: *Interpretation of Legislation Act 1984* (Vic) ss 38M and 38N; Victoria, *Government Gazette: Special*, No S 381, 31 July 2022.)

¹⁰ *Subordinate Legislation Act 1994* (Vic) s 12J(4).

¹¹ Available at: <<https://www.vic.gov.au/notice-amendments-energy-retail-code-practice>>.

¹² Notice of the making of the legislative instrument was published in the Government Gazette on 30 September 2025: Victoria, *Government Gazette: Special*, S 528, 30 September 2025.

¹³ *Subordinate Legislation Act 1994* (Vic) s 12J(5).

¹⁴ Essential Services Commission, *Energy Consumer Reforms: Statement of Final Decision* (30 September 2025) <<https://engage.vic.gov.au/energy-retail-code-of-practice-review>>.

¹⁵ The Guidelines require initial consultation under section 12C in situations where a Regulatory Impact Statement is to be prepared: Department of Premier and Cabinet, *Subordinate Legislation Act 1994 Guidelines* (September 2023) 21-20, [73]-[75].

The Subcommittee only notes a minor issue with the consultation certificate, which is the reference to consultation under section 12C(1)(b) of the SLA as including ‘the electricity and gas industry’. The Guidelines state a consultation certificate should provide details of who was consulted.¹⁶ Accordingly, the specific entities from ‘the electricity and gas industry’ that were part of the initial consultation process should have been listed in the consultation certificate.

In this instance, the Subcommittee was able to obtain these details from the statement of reasons, which listed the entities as AGL, Alinta Energy, Australian Energy Council, EnergyAustralia Energy Locals, ENGIE, Flow Power, GloBird, Momentum, Origin Energy, Pacific Blue, Red and Lumo Energy, Shell, and Solstice.¹⁷

A failure to comply with section 12C(1)(c) of the SLA does not affect the operation or effect of the legislative instrument.¹⁸ However, the Subcommittee draws your attention to this matter for future reference in preparing consultation certificates.

Section 16C Timeliness of Documentation

Section 16C of the SLA requires the responsible Minister to ensure specified documents are given to the Committee no later than 10 working days after a legislative instrument is made.

The legislative instrument and accompanying documents were sent to the Committee on 17 October 2025, which is at least 13 working days after the legislative instrument was made.¹⁹ This delay does not affect the operation or effect of the legislative instrument.²⁰ However, the Subcommittee notes timeliness in sending material to the Committee ensures scrutiny can occur within the period set aside for disallowance, which is important to facilitating effective parliamentary oversight of subordinate legislation.

Response

The Subcommittee would appreciate your response no later than Thursday, 29 January 2026, so that it can consider the Regulations again at its next meeting.

¹⁶ Department of Premier and Cabinet, *Subordinate Legislation Act 1994 Guidelines* (September 2023) 24, [91].

¹⁷ Essential Services Commission, *Energy Consumer Reforms: Statement of Final Decision* (30 September 2025) <<https://engage.vic.gov.au/energy-retail-code-of-practice-review>>.

¹⁸ *Subordinate Legislation Act 1994* (Vic) s 12C(3).

¹⁹ Notice of the making of the legislative instrument was published in the Government Gazette on 30 September 2025: Victoria, *Government Gazette: Special*, S 528, 30 September 2025.

²⁰ *Subordinate Legislation Act 1994* (Vic) s 16C(3).

Please note the Essential Services Commission is copied into this correspondence as the instrument-maker.

Thank you for your assistance with these matters. Please do not hesitate to contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au should you require further information.

Yours sincerely,

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

Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



The Hon Danny Pearson MP

Minister for Economic Growth and Jobs
Minister for Government Services
Minister for Finance

GPO Box 4509
Melbourne, Victoria 3001 Australia

Ref: 251200808

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

Alex.Kershaw@parliament.vic.gov.au

Cc: SARC@parliament.vic.gov.au

Dear Chair,

**ENERGY RETAIL CODE OF PRACTICE (ENERGY CONSUMER REFORMS)
AMENDMENT 2025**

Thank you for your letter of 15 December 2025 regarding scrutiny issues arising under the *Subordinate Legislation Act 1994* (SLA) with respect to the Energy Retail Code of Practice (Energy Consumer Reforms) Amendment 2025, the legislative instrument considered by the Regulations Review Subcommittee of the Scrutiny of Acts and Regulations Committee on 8 December 2025.

I provide the following information as requested in response to the issues raised in your letter following the receipt of advice from the Department of Treasury and Finance (DTF), and the Essential Services Commission (ESC).

Section 16A Publication

The amendment to section 49 of the *Essential Services Commission Act 2001* (ESC Act) by the *Regulatory Legislation Amendment (Reform) Act 2024* was intended to require the ESC only give notice of the making of an instrument in the Government Gazette and instead require publication of the full instrument on the ESC's website. The website is more frequently used by industry participants and is therefore a more practical means of communicating with industry.



OFFICIAL: Sensitive

As the Committee's letter highlights, compliance with the requirements of the authorising Act is not sufficient compliance with section 16A(1) of the SLA. Reflecting this, despite what was intended, it is possible that the ESC remains subject to the requirement to publish the legislative instruments in the Government Gazette.

The ESC has subsequently published the amendments to the Energy Retail Code of Practice in full in the Government Gazette on 9 January 2026.¹ The ESC has advised me that they will continue to publish legislative instruments in full upon making unless a particular instrument is unsuitable.

Officers from DTF have advised they are working with the Office of Chief Parliamentary Counsel to develop further amendments to the ESC Act that will propose clarifying the approach intended by the 2024 amendments.

I thank the Committee for bringing this issue to my attention.

Section 12J Notice of Decision

On 30 September 2025, the ESC published a notice of making in the Government Gazette (S 527), stating that it had amended the Energy Retail Code of Practice (Energy Consumer Reforms) Amendment 2025 in accordance with section 49 of the ESC Act. On the same day, the ESC published the decision paper on the ESC and Engage Victoria websites, one day before publication of the notice of decision on the Public Notices website.

I note the Committee's feedback regarding the need for a notice of decision before the amendments are made. The ESC has advised me that it will publish a notice of decision in the Government Gazette and the Public Notices website prior to the making of a legislative instrument to comply with the section 12J of the SLA.

Section 12C Consultation Certificate

I note the Committee's feedback on the contents of the Consultation Certificate.

The ESC has advised me that the list of stakeholders provided were examples of entities consulted. When undertaking reviews, the ESC directly contacts hundreds of stakeholders, who may provide a formal written submission or attend meetings, forums and workshops.

The ESC has advised me it considers it unsuitable to include details of every individual organisation contacted. However, the ESC has further advised me that it will ensure that detail of the individual entities who respond and provide submissions and/or the types of entities consulted (e.g. retailers, exempt sellers, distributors etc.) is included in consultation certificates prepared in the future.

¹No. S 11, 9 January 2026 <https://www.gazette.vic.gov.au/gazette/Gazettes2026/GG2026S011.pdf>.
Page 2

Section 16C Timeliness of Documentation

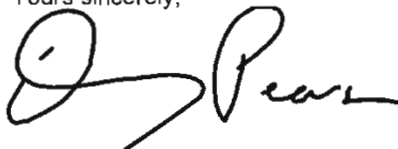
I note the Committee's feedback regarding the timeliness of the lodgement of documentation.

DTF and the ESC have advised they will ensure the appropriate documents are provided to the Committee in a timely manner going forward.

Should you wish to discuss this matter further, please contact Ms Chris Archer, Executive Director, Regulation Group at the Department of Treasury and Finance on 0437 746 966 or chris.archer@dtf.vic.gov.au.

I trust this information has been of assistance and thank you again for taking the time to write to me about this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D Pearson', with a stylized circular flourish at the beginning.

The Hon Danny Pearson MP
Minister for Economic Growth and Jobs
Minister for Government Services
Minister for Finance

29 / 01 /2026

cc: Mr Gerard Brody, Chairperson, Essential Services Commission



Scrutiny of Acts and Regulations Committee

15 December 2025

The Hon. Enver Erdogan MLC
Minister for Corrections
Level 16, 121 Exhibition Street
Melbourne
Victoria, 3000

By email: minister.erdogan@justice.vic.gov.au;

Cc: Kathleen.Sutton@justice.vic.gov.au

Dear Minister

SR No. 94 – Serious Offenders Amendment Regulations 2025

The Regulations Review Subcommittee (**Subcommittee**) of the Scrutiny of Acts and Regulations Committee considered the above statutory rule at a meeting on 8 December 2025.

The Subcommittee approved the Regulations. However, the Subcommittee draws your attention to a minor issue with the exemption certificate issued under section 8 of the *Subordinate Legislation Act 1994* (Vic) (**SLA**).

Section 8 Exemption Certificate

The exemption certificate is issued under sections 8(1)(a) and 8(1)(c) of the SLA on the grounds that the proposed statutory rule would not impose a significant economic or social burden on a sector of the public and is of a fundamentally declaratory or machinery nature. The reasons given for the exemption are that the Regulations ‘make minor amendments consequential to the enactment [of] the Corrections Legislation Amendments Act 2025’.

The Subcommittee considers the given reasons may not engage in sufficient detail with the concept of significant burden that is central to section 8(1)(a).

It is a requirement under section 8(3) of the SLA that an exemption certificate must specify the reasons for the exemption.

The [Subordinate Legislation Act 1994 Guidelines](#) (**Guidelines**) explain that this means an exemption certificate should contain ‘detailed reasons’ as to ‘why the proposed statutory rule or legislative instrument falls within the relevant exemption’, whereas ‘an assertion that the exemption ground applies is not

sufficient'.¹ The exemption ground under section 8(1)(c) may be more easily met by the level of detail provided in the exemption certificate in this instance than the ground under section 8(1)(a).

In addition, the Subcommittee's [Practice Note](#) highlights the importance of identifying the most appropriate exemption ground for a proposed statutory rule.² It encourages departmental officers to take care when making this selection, as being able to provide sufficient justification for avoiding a Regulatory Impact Statement is important to the integrity and transparency of the regulation making process.

The Subcommittee draws your attention to these aspects of the guidance materials for future reference. It hopes its Practice Note and the Guidelines are proving to be useful resources in interpreting the formal requirements under the SLA.

Response

The Subcommittee would appreciate your response by Monday, 2 February 2026.

Thank you for your time and attention to this matter. Please do not hesitate to contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au should you require further information.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee

¹ Department of Premier and Cabinet, *Subordinate Legislation Act 1994 Guidelines* (September 2023) 38, [139]-[140] <<https://www.parliament.vic.gov.au/4961ea/globalassets/taled-paper-documents/taled-paper-7465/subordinate-legislation-act-1994-guidelines-september-2023.pdf>>.

² Regulation Review Subcommittee of the Scrutiny of Acts and Regulations Committee, *Committee Practice Note* <<https://www.parliament.vic.gov.au/492473/globalassets/sections-shared/get-involved/inquiries/committees/la-committees/sarc/committee-practice-note.pdf>>.



The Hon. Enver Erdogan MLC

Minister for Casino, Gaming and Liquor Regulation
Minister for Corrections
Minister for Youth Justice

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Our ref: 25123368

Gary Maas
Chair, Scrutiny of Acts and Regulations Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002
Via email: SARC@parliament.vic.gov.au

SR. No. 94 – Serious Offenders Amendment Regulations 2025

Dear Mr Maas

Thank you and the Regulations Review Subcommittee for your consideration of the Serious Offenders Amendment Regulations 2025 and advice on the requirements for issuing a section 8 exemption certificate in your letter dated 15 December 2025.

I appreciate you drawing my attention to the *Subordinate Legislation Act 1994* Guidelines and the Subcommittee's Practice Note.

With regards to the exemption certificate for the Serious Offenders Amendment Regulations 2025, please see below for further detail specifying the reasons for the exemption.

The objectives of the Serious Offenders Amendment Regulations 2025 are to amend the Serious Offenders Regulations 2018 (Principal Regulations) to:

- Replace references to Department of Justice and Regulation with the Department of Justice and Community Safety; and
- make changes to prescribed persons and bodies for information sharing purposes under the *Serious Offenders Act 2018* (Principal Act), including amendments consequential to the enactment of the *Corrections Legislation Amendment Act 2025* (Amendment Act).

Updated references to the Department of Justice and Community Safety

Regulation 4 revokes an obsolete definition of 'Department' in the Principal Regulations. Regulations 6 and 8 also amend the Principal Regulations to update references to the old 'Department of Justice and Regulation' to the 'Department of Justice and Community Safety'.

I consider these changes to be machinery in nature under section 8(1)(c) of the *Subordinate Legislation Act 1994* (SLA) as they are not material or substantial in nature and merely clarify terminology without changing procedural requirements. I also consider that these changes do not impose a significant economic or social impact on a sector of the public under section

8(1)(a) of the SLA as there is no change to the status quo and no impact on any sector of the public.

Changes to prescribed persons and bodies for information sharing purposes

Regulation 23 of the Principal Regulations previously prescribed persons and bodies as 'relevant persons' for the purposes of using and disclosing information under section 284 of the Principal Act.

Regulations 5 and 7 revoke and re-enact regulation 23 of the Principal Regulations as new regulation 4A, subject to the following amendments and omissions:

- Regulation 5 updates references to 'relevant persons' to 'authorised persons'. This reflects the change in terminology in the Principal Act made by the Amendment Act in August 2025.
- Regulation 5 amends the reference to the 'National Disability Insurance Scheme Launch Transition Agency' to the 'Agency within the meaning of the National Disability Insurance Scheme Act 2013 of the Commonwealth'. This reflects the renaming of the Agency in 2022.
- Regulation 5 omits the previously prescribed employees and Head of the Administrative Office of Family Safety Victoria as 'authorised persons'. This reflects the abolition of the Administrative Office of Family Safety Victoria in 2021 and its transition into the Department of Families, Fairness and Housing. Current and former employees of Family Safety Victoria are already captured as 'authorised persons' under section 3 of the Principal Act.

These amendments and omissions have no material impact on who may use or disclose information under the Principal Act. Accordingly, I consider these changes do not impose a significant burden on a sector of the public and are fundamentally machinery in nature under section 8(1)(a) and (c) of the SLA.

Thank you again for bringing this matter to my attention. Should you require any further information, please do not hesitate to contact Kathleen Sutton, Senior Manager, Legal Policy, Corrections and Justice Services at kathleen.sutton@justice.vic.gov.au.

Yours sincerely



The Hon. Enver Erdogan MLC
Minister for Casino, Gaming and Liquor Regulation
Minister for Corrections
Minister for Youth Justice

14 / 04 / 2026



Scrutiny of Acts and Regulations Committee

15 December 2025

The Hon. Sonya Kilkeny MP
Attorney-General
GPO Box 4356
Melbourne
Victoria, 3000

By email: attorney-general@justice.vic.gov.au

Cc: Owen.Lodge@justice.vic.gov.au; Matthew.Read@justice.vic.gov.au

Dear Attorney-General

SR No. 105 – Surveillance Devices Amendment (Body-worn Cameras and Other Matters) Regulations 2025

The Regulations Review Subcommittee (**Subcommittee**) of the Scrutiny of Acts and Regulations Committee (**Committee**) considered the above statutory rule at a meeting on 8 December 2025. The Subcommittee has not yet approved the Regulations.

The Subcommittee seeks further information and explanation in relation to one aspect of the Regulations.

The Regulations amend the *Surveillance Devices Regulations 2016* (Vic) (**Principal Regulations**) made under the *Surveillance Devices Act 1999* (Vic) (**Act**).

Among other matters, the Regulations prescribe a new purpose for the permitted use of local protected information obtained from the body-worn cameras or tablet computers of certain persons in certain circumstances. This (**the new purpose**) reads as follows:

The performance of functions or duties or the exercise of powers by the IBAC under the Independent Broad-based Anti-corruption Commission Act 2011 or any other Act in relation to the investigation and prevention of corrupt conduct and police personnel misconduct, the collection and use of intelligence, the provision of education services and the compliance monitoring and oversight of Victoria Police.

Regulation 5 inserts the new purpose in the Principal Regulations as new regulations 11(1)(ga) and 11(2)(a)(vii).

Regulation 11(1) of the Principal Regulations prescribes the purposes for which local protected information may be used, communicated and published pursuant to section 30F(1A)(b) of the Act, *but only where that local protected information is obtained from a body-worn camera of a police officer.*

Regulation 11(2)(a) of the Principal Regulations prescribes the purposes for which local protected information may be used, communicated and published pursuant to section 30F(1B)(b) of the Act, *but only where that local protected information is obtained from a body-worn camera of a protective services officer.*

Accordingly, the effect of the Regulations is that local protected information cannot be used, communicated or published for the new purpose unless it comes from the body-worn camera of a police officer or a protective services officer.

However, the Subcommittee notes the following statement made in the exemption certificate issued for the Regulations:

The proposed Regulations will allow the information collected from body-worn cameras worn by an authorised IBAC officer, police officer or protective services officer, to be used, communicated or published for the performance of functions or duties or the exercise of powers by the IBAC under the Independent Broad-based Anti-corruption Commission Act 2011 or any other Act in relation to the investigation and prevention of corrupt conduct and police personnel misconduct, the collection and use of intelligence, the provision of education services, and the compliance monitoring and oversight of Victoria Police, in addition to any existing purposes for which local protected information may be used.

This excerpt refers to the new purpose. It lists three categories of persons – an authorised IBAC officer, police officer or protective services officer – from whose body-worn camera local protected information may be obtained and used for the new purpose.

The Subcommittee seeks clarification as to this statement, given its view that the new purpose has only been effectively prescribed in relation to information obtained from the cameras of police officers and protective service officers, not authorised IBAC officers. The Subcommittee requests further information as to whether local protected information obtained from the body-worn camera or tablet computer of any authorised IBAC officer has purportedly been used for the new purpose in the time since the Regulations commenced on 30 September 2025.

Under section 21(1)(i) of the *Subordinate Legislation Act 1994* (Vic), the Committee may report to the Parliament if it considers any statutory rule laid before the Parliament requires explanation as to its form or intention.

Response

The Subcommittee would appreciate your response no later than Thursday, 29 January 2026, so that it can consider the Regulations again at its next meeting.

Thank you for your assistance with this matter. Please do not hesitate to contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au should you require further information.

Yours sincerely,

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

Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



The Hon. Sonya Kilkenny MP

Attorney-General

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Our ref: 25123153

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

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

Dear Mr Maas

Thank you for your letter dated 15 December 2025, which seeks further information in relation to SR No. 105 – Surveillance Devices Amendment (Body-worn Cameras and Other Matters) Regulations 2025 (2025 Regulations).

Specifically, the Regulations Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee has sought clarification regarding the statement in the exemption certificate issued for the Regulations concerning when information collected from body-worn cameras (BWCs) worn by an authorised IBAC officer, a police officer or a protective services officer (PSO) may be used, communicated, or published under the changes made by the Regulations.

I am able to provide the following information in response to the Regulations Review Subcommittee's query.

The Subcommittee has identified that regulation 5 of the 2025 Regulations amends regulations 11(1) and (2) of the Surveillance Devices Regulations 2016 (Principal Regulations) to prescribe a new purpose for which local protected information obtained from the use of a BWC or tablet computer used by a police officer (or ambulance officer) or PSO, but that the new purpose does not apply to information obtained from BWCs or tablet computer used by an authorised officer within the meaning of the *Independent Broad-based Anti-corruption Commission Act 2011* (authorised IBAC officers). The statement made in the exemption certificate issued for the Regulations stating that purpose applied to authorised IBAC officers is erroneous, and I thank the Subcommittee for bringing it to my attention.

The Independent Broad-based Anti-corruption Commission has advised the Department of Justice and Community Safety that IBAC has not used any local protected information



obtained from BWCs used by an IBAC authorised officer for the new purpose, or for any other purpose, in the time since the Regulations commenced.

For completeness, I note that the Principal Regulations will sunset in June 2026. As part of developing the replacement regulations, the Department of Justice and Community Safety will consider and consult with IBAC about the purposes for which they can use information obtained from BWCs or tablets used by IBAC authorised officers.

I trust that this information is of assistance to the Subcommittee.

Yours sincerely



Sonya Kilkenny
Attorney-General

Date: 28/11/2026



Scrutiny of Acts and Regulations Committee

15 December 2025

The Hon. Lizzie Blandthorn
Minister for Children
GPO Box 1774
Melbourne
Victoria, 3001

By email: minister.cpdac@dffh.vic.gov.au

Cc: Patrick.Hossack@education.vic.gov.au;
bryan.lim@education.vic.gov.au

Dear Minister

SR No. 107 – Child Wellbeing and Safety (Child Link) Amendment Regulations 2025

The Regulations Review Subcommittee (**Subcommittee**) of the Scrutiny of Acts and Regulations Committee (**Committee**) considered the above statutory rule at a meeting on 8 December 2025. The Subcommittee has not yet approved the Regulations.

The Subcommittee appreciates that a certificate exempting the Regulations from a Regulatory Impact Statement was issued under section 8(1)(a) of the *Subordinate Legislation Act 1994* (Vic) (**SLA**). Copies of the exemption certificate were tabled in the Parliament and given to the Committee in accordance with sections 15(1A) and 15A of the SLA.

However, the Subcommittee seeks further information in relation to an issue of technical compliance with the SLA. The Subcommittee understands from correspondence with the Department of Education (**Department**) that due to an administrative oversight a copy of the exemption certificate was not provided to the Clerk of the Executive Council. This constitutes a contravention of section 14(c) of the SLA, which states:

14 Submission of statutory rules to Governor in Council

A proposed statutory rule that is to be made by, or with the consent or approval of, the Governor in Council when submitted to the Governor in Council must be accompanied by—

...

- (c) if a regulatory impact statement was not required, a copy of the exemption certificate;

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1

The Subcommittee notes the effect of non-compliance with section 14(c) is unclear. While the SLA expressly provides that a failure to comply with procedural requirements set out in certain other provisions does not affect the operation or effect of a statutory rule, it is silent as to the effect of non-compliance with section 14.¹ Courts have previously found subordinate legislation invalid due to non-compliance with procedural making requirements.²

Pursuant to section 21(1)(j) of the SLA, the Committee may report to each House of the Parliament if it considers a statutory rule has been prepared in contravention of any provision of the SLA and the contravention is of a substantial or material nature. A report may contain any recommendations the Committee considers appropriate, including disallowance of the statutory rule in whole or in part.

Accordingly, the Subcommittee seeks your opinion of the nature of the failure to submit a copy of the exemption certificate to the Governor in Council. It seeks further information to support the Department's view, sent via email correspondence of 17 October 2025, that the oversight does not affect the operation of the Regulations.

Response

The Subcommittee would appreciate your response no later than Thursday, 29 January 2026, so that it can consider the Regulations again at its next meeting.

Thank you for your assistance with this matter. Please do not hesitate to contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au, should you require further information.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee

¹ See, eg, *Subordinate Legislation Act 1994* (Vic) ss 6(3), 12(4), 15(3), 15A(3).

² Dennis Pearce and Stephen Argument, *Delegated Legislation in Australia* (Butterworths, 2nd ed, 1999) 109.



Hon Lizzie Blandthorn MP

Deputy Leader of the Government in the Legislative Council
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Minister for Disability

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COR25176112

Gary Maas MP

Chair

Scrutiny of Acts and Regulations Committee

By email: sarc@parliament.vic.gov.au; helen.mason@parliament.vic.gov.au

Dear Chair

I refer to your letter on behalf of the Scrutiny of Acts and Regulations Committee (**Committee**) in relation to the Child Wellbeing and Safety (Child Link) Amendment Regulations 2025 (**Regulations**), which were made by the Governor in Council (**GiC**) under the *Child Wellbeing and Safety Act 2005* (**CWS Act**) on 14 October 2025 and commenced on 22 October 2025.

As you noted in your letter, while a certificate exempting the Regulations from the requirement to prepare a Regulatory Impact Statement under section 7 of the Subordinate Legislation Act 1994 (**SL Act**) was issued by me, as the responsible Minister, under section 8 of that Act (**exemption certificate**), this certificate was not provided to the GiC as required by section 14(c). Despite this, the GiC made the Regulations. The exemption certificate was subsequently provided to the Committee and tabled in Parliament in accordance with sections 15A(1) and 15(1A), respectively.

As requested, this letter confirms my support of the position expressed by the Department of Education (**Department**) that this oversight does not affect the operation of the Regulations as made by the GiC and provides more information to support that position.

Background

Section 7 of the SL Act requires the responsible Minister to ensure that a regulatory impact statement (RIS) is prepared for a statutory rule, unless an exemption certificate is issued under section 8.

Section 8(1)(a) provides that a Minister may issue an exemption if, in the opinion of the Minister, the proposed statutory rule would not impose a significant economic or social burden on a sector of the public. After considering the potential impact of the Regulations, I formed the view that an exemption was available under the SL Act and on 29 September 2025 proceeded to issue an exemption certificate on that basis. As recorded in that certificate, the key reason for forming this opinion was that the Regulations do not place a significant burden on any sector of the public who may be impacted by the Regulations.



Due to an administrative oversight, the requirement under section 14(c) of the SL Act, namely, that the exemption certificate accompany the draft Regulations when they were submitted to the GiC for making, was not complied with.

Despite this, the exemption certificate was tabled with the other relevant documents in both Houses of Parliament and lodged with the Committee as required by, and within the relevant timeframes set out in, sections 15(1A) and 15A(1) of the SL Act.

In short, it is not in doubt that the substantive and material requirements under sections 7 and 8 of the SL Act were satisfied. Rather, the Committee's enquiries are limited and strictly relate to the failure to comply with the requirement to provide the issued exemption certificate to the GiC, together with the draft Regulations and other documents, in accordance with section 14(c).

Summary

In summary, having regard to advice from the Department, it is my opinion that in the circumstances, non-compliance with section 14(c) of the SL Act is not intended to affect the exercise of the power granted to the GiC to make the Regulations. Rather, I consider that Parliament intended for non-compliance of this type to be managed by the powers granted to the Committee and the Parliament under the SL Act, as is the case with other breaches of the Act which are immaterial and unsubstantial in nature and consequence.

My view is supported by the express purposes of the SL Act, the Act's overall structure and context, and the fact that the failure to comply in this case was not substantial nor material. The exemption certificate was validly issued, based on reasonable grounds which are not in dispute, and the GiC was aware of these facts (which were clearly set out in the accompanying explanatory memorandum submitted to the GiC) when considering and deciding to make the Regulations.

For the sake of completeness, I note that, in addition to the question as to the Regulation's validity, the materiality of the breach in question is also relevant to the Committee's exercise of any powers under Part 5 of the SL Act in respect of the Regulations, particularly reporting to Parliament, under section 21(1)(j), the contravention of section 14(c). In my view, the contravention was neither substantial nor material.

Discussion

Intended consequences for failure to comply with section 14(c)

In the absence of any express provision in the SL Act, determining the effect or consequence of a contravention of section 14(c) with respect to the making of the Regulations is an exercise of statutory interpretation. While statutory interpretation begins and ends with the text of the provision, the provision must also be interpreted in light of the SL Act's context and purpose.¹

Section 35(a) of the *Interpretation of Legislation Act 1984* also requires that, in interpreting a provision of an Act, 'a construction which would promote the purpose or object underlying the Act...shall be preferred to a construction that would not promote that purpose or object'.

¹ *Project Blue Sky v Australian Broadcast Authority* (1998) 194 CLR 355; see also *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 187 CLR 38.

Section 1(a) of the SL Act provides that the purpose of the Act is to ‘ensure the power to make subordinate legislation is exercised subject to Parliament’s authority and control’. This purpose is also emphasised in the Second Reading Speech for the Subordinate Legislation Bill 1994, which noted that ‘the emphasis of the bill is on the responsibility of ministers to the Parliament in exercising powers delegated to them by Parliament’.²

This underlying purpose is emphasised through the important role played by, and the functions and powers conferred on, the Committee to support the Parliament in the exercise of its authority and control over the making of subordinate legislation in accordance with the SL Act. Specifically, the SL Act establishes a framework whereby:

- (a) the Committee is responsible for reviewing and reporting to Parliament any failures to comply with the SL Act in this context (see section 21(1));
- (b) the Committee may recommend that a statutory rule may be disallowed in whole or in part (section 21(2)) or may decide to suspend a statutory rule (section 22); and
- (c) a House of Parliament may disallow in whole or in part a statutory rule (section 23).

Furthermore, as the Committee noted in your letter, unlike failures to comply with sections 15(1), 15(1A) and 15A(2), which the SL Act expressly provides do not affect the operation or effect of a statutory rule, the SL Act is silent on the consequences or effect of a failure to comply with section 14(c). While the absence of a similar explicit validating provision for contraventions of section 14(c) may arguably infer an intention that such contraventions may affect the operation or effect of a statutory rule, the better view is that Parliament intended the other express provisions establishing the framework for dealing with such contraventions apply, namely, the substance and materiality of the contravention are to be considered and reported to the Parliament by the Committee, including any recommended consequences or actions, to enable the Parliament to consider and determine what action to take.

As the High Court recently decided in *Attorney-General (Tas) v Casimaty* [2024] HCA 31, in certain circumstances, Parliament may intend that non-compliance with certain statutory preconditions is to be a matter overseen by Parliament directly, rather than the judiciary, in order to leverage and strengthen the accountability of the executive to Parliament, particularly where Parliament has established a scheme for the scrutiny and oversight (including parliamentary oversight) of the exercise of the relevant statutory power. This decision is consistent with a general reluctance amongst courts to invalidate subordinate legislation where an Act has provided for those making processes to be subject to Parliamentary oversight.³

The framework established by the SL Act strongly indicates Parliament’s intention that the non-compliance with section 14(c) in the process of making the Regulations should be dealt with in accordance with the functions and powers conferred on the Committee and the Parliament in respect of such contraventions, rather than automatically invalidating the instrument. It would be inconsistent with the spirit and intent of the powers granted to the Committee and Parliament to deal with such non-compliance, and contrary to the overall intention of the SL Act, if minor contraventions that do not reach the threshold being of a ‘substantial or material nature’ automatically invalidated statutory rules, particularly as section 21(1)(j) only empowers the Committee to report to the Parliament contraventions of a material or substantial nature.

² Victoria, *Parliamentary Debates*, Legislative Assembly, 10 November 1994, 1683.

³ See also, for example, *Watson v Lee* (1979) 144 CLR 374.

Contravention of section 14 was not of a substantial or material nature

In the event that the Committee considers that, in some circumstances, Parliament did intend that certain contraventions of section 14(c) may result in a jurisdictional error, it is my view that the specific contravention in respect of the Regulations raised by the Committee does not reach the materiality threshold needed for a court to rule that a jurisdictional error occurred when the GiC made the Regulations, resulting in the Regulations being null and void.⁴ The underlying aims and purposes of section 14(c), which is to ensure the GiC has the benefit of the exemption certificate as a relevant consideration when considering whether to make a proposed statutory rule, were not frustrated by the contravention.

As I indicated above, the exemption certificate was issued by me as required by section 8 of the SL Act, on the basis that the Regulations do not impose a significant burden on any sector of the public and therefore a Regulatory Impact Statement (RIS), otherwise required to be prepared under section 7 of the SLA, was not required. While the actual exemption certificate was not before the GiC when it considered the relevant submission and ultimately proceeded to make the Regulations, the GiC nevertheless had this information at its disposal as the explanatory memorandum to the Regulations makes reference to this certificate, specifically noting that a RIS was not prepared as the Regulations did not impose a significant burden. The GiC having this knowledge and state of mind when making the Regulations supports the conclusion that the non-compliance, in this case, was not material and weighs in favour of the GiC validly exercising their power to make the Regulations.

While it is for the Committee to determine how it will exercise its powers, in the event it is useful to the Committee in finalising their consideration of the Regulations, I note that my comments would also be relevant to the Committee's consideration of whether the breach was of a 'substantial or material nature' for the purposes of section 21(1)(j) of the SL Act.

I thank the Committee for considering the Regulations and raising this matter with me and trust that this information will be of assistance to the Committee. Should you wish to discuss this matter further, please contact Burton Reynolds, Director, Commercial and Legislation at the Department of Education on 03 7022 0952 or burton.reynolds@education.vic.gov.au.

Yours sincerely



Hon Lizzie Blandthorn MP

Deputy Leader of the Government in the Legislative Council
Minister for Children
Minister for Disability

26 January 2026

⁴ See *Hossain v Minister for Immigration and Border Protection* (2018) 264 CLR 123 and *Minister for Immigration and Border Protection v SZMTA* (2019) 264 CLR 421, which emphasise that not every statutory or procedural breach results in a jurisdictional error, particularly where the breach is not material to the exercise of the relevant power; rather, a breach would be material to a decision if compliance could realistically have resulted in a different decision.



Scrutiny of Acts and Regulations Committee

13 February 2026

The Hon. Lily D'Ambrosio MP
Minister for Energy and Resources
8 Nicholson Street
East Melbourne
Victoria, 3002

By email: lily.dambrosio@parliament.vic.gov.au

Dear Minister

SR No. 113 – National Electricity (Victoria) (VicGrid) Regulations 2025

The Regulations Review Subcommittee (**Subcommittee**) of the Scrutiny of Acts and Regulations Committee (**Committee**) considered the above statutory rule at a meeting on 11 February 2026.

The Subcommittee approved the Regulations. As a minor matter, the Subcommittee also noted the documents issued in relation to the Regulations were given to the Committee on 21 November 2025, which is 17 working days after the Regulations were made on 28 October 2025.

Section 15A of the *Subordinate Legislation Act 1994* requires responsible Ministers to ensure such documents are given to the Committee no later than 10 working days after the making of a statutory rule. While failure to comply with section 15A does not affect the operation of the Regulations, timeliness in providing documents is important to facilitate effective parliamentary oversight of subordinate legislation.

The Subcommittee draws attention to any delays under section 15A as a matter of general practice — and for the information of departments and agencies which may be reviewing their procedures for subordinate legislation. The Subcommittee appreciates the delay in this instance was acknowledged in the cover letter sent to the Committee.

Response

Thank you for your time and attention to this matter. No response is required. Please do not hesitate to contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au should you have any questions.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Gary Maas', is displayed within a light blue rectangular box.

Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



Scrutiny of Acts and Regulations Committee

13 February 2026

The Hon. Enver Erdogan MLC
Minister for Corrections
Level 16, 121 Exhibition Street
Melbourne
Victoria, 3000

By email: minister.erdogan@justice.vic.gov.au

Cc: Kathleen.Sutton@justice.vic.gov.au

Dear Minister

SR No. 118 – Corrections Amendment Regulations 2025

The Regulations Review Subcommittee (**Subcommittee**) of the Scrutiny of Acts and Regulations Committee considered the above statutory rule at a meeting on 11 February 2026.

The Subcommittee has deferred its final consideration of the *Corrections Amendment Regulations 2025* (**Regulations**). It seeks further information from you in relation to the compatibility of the Regulations with the human rights set out in the Charter of Human Rights and Responsibilities.

The Regulations amend the *Corrections Regulations 2019* (**Principal Regulations**). Sub-regulation 5(1) inserted new provisions into regulation 14 of the Principal Regulations, including new sub-regulation 14(1A), which requires the Governor of a prison to direct a prison officer to apply an instrument of restraint to any prisoner who the Governor believes on reasonable grounds has committed an assault of a custodial worker (while on duty) or a person employed or engaged to work in a prison (while doing that work), where the assault is of a kind specified by the Commissioner of Corrections (**Commissioner**) under new sub-regulation 14(1C) and the Governor is not satisfied that exceptional circumstances make it unnecessary to do so.

The Subcommittee observes that new sub-regulation 14(1A) may differ from the other provisions governing instruments of restraint in the *Corrections Act 1986* (**Act**) and in the remainder of regulation 14, to the extent that it requires, rather than merely permits, the application of an instrument of restraint to a prisoner. The Subcommittee also observes that new sub-regulation 14(1A) may differ from sub-regulations 14(1) and 14(3) as it is not expressed to be '[s]ubject to sub-regulation (7)'. The Subcommittee further observes that new sub-

regulation 14(1C) permits the Commissioner to specify a kind of assault that, in the Commissioner's opinion, would make a direction under new sub-regulation 14(1A) 'necessary' for safety, security or good order.

The Subcommittee would appreciate further information as to:

1. the purpose of new sub-regulations 14(1A) & (1C), to the extent these provisions require (rather than merely permit) Governors to direct the application of instruments of restraints to some prisoners;
2. the exceptional circumstances in which it is envisaged the Governor may decline to make a direction under new sub-regulation 14(1A);
3. the circumstances in which it is envisaged the Commissioner will specify a kind of assault under new sub-regulation 14(1C);
4. whether new sub-regulations 14(1A) & (1C) are subject to sub-regulation 14(7);
5. the meaning of the word 'necessary' in new sub-regulation 14(1C), in light of the Federal Court of Australia's recent ruling on the meaning of the word 'necessary' in section 10D(1)(b)(ii) of the *Control of Weapons Act 1990*: see *Browne v Assistant Commissioner of Police, North West Metro Region* [2026] FCA 15, [63]-[82].

The Subcommittee also notes the remarks in the Human Rights Certificate that:

- 'restraints cannot be used punitively and may only be used under both ... new regulation 14(1A) and existing 14(1) where necessary to protect a person's safety or the security or good order of the prison';
- 'Corrections Victoria policies only permit the use of restraints where necessary and appropriate';
- '[t]he protections and oversight mechanisms set out in existing regulation 14 ... will continue to apply to the Amendment Regulations'; and
- any limitation on section 22(1) of the Charter 'will be reasonable and demonstrably justifiable in accordance with section 7(2)'.

The Subcommittee observes that existing sub-regulation 14(1) may differ from new sub-regulations 14(1A) & (1C) to the extent that the latter provisions may:

- operate in effect as a system of punishment for specified kinds of assault;
- not require an individualised assessment of the particular prisoner, the details of what he or she is believed to have done, or the surrounding context and security environment;

- not be partly exempt from the Charter requirement that public authorities give proper consideration to and act compatibly with Charter rights; and
- not be fully subject to Corrections Victoria policies.

The Committee also observes that the Human Rights Certificate may not address the Charter rights of child prisoners and some aspects of the statutory test in section 7(2) of the Charter.

The Subcommittee would appreciate further information as to:

6. whether new sub-regulations 14(1A) & (1C) may operate equivalently to a system of punishment for specified kinds of assault;
7. whether new sub-regulations 14(1A) & (1C) are compatible with the recommendations of the Australian Human Rights Commission set out in *Mr Adam Watt v State of NSW* [2023] AusHRC 149, [253], specifically those relating to individualised risk assessments;
8. whether section 38(2) of the Charter may partly prevent the application of section 38(1) of the Charter to decisions made or acts done by Governors or prison officers under new sub-regulation 14(1A), specifically decisions on whether or not a prisoner will be restrained;
9. whether a Governor acting under new sub-regulation 14(1A) and the Commissioner acting under new sub-regulation 14(1C) must comply with Corrections Victoria policies requiring that all restraints be necessary and appropriate, specifically when making decisions on whether or not a prisoner will be restrained and whether to specify a kind of assault;
10. the compatibility of new sub-regulations 14(1A) & (1C) with the rights of child prisoners set out in sections 17(2) and 23(3) of the Charter;
11. whether any instrument made under new sub-regulation 14(1C) must be published (for example, as a legislative instrument under the *Subordinate Legislation Act 1994*);
12. whether existing sections 21(1) and 22(1) of the Act and existing sub-regulations 14(1) & (3) of the Principal Regulations are less restrictive means reasonably available to achieve the purposes of new sub-regulations 14(1A) & (1C).

Response

The Subcommittee would appreciate your response no later than Monday, 16 March 2026 in order that it might consider the Regulations again at its next meeting.

Thank you for your assistance with these matters. Please do not hesitate to contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au should you require further information.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Gary Maas', is displayed on a light blue rectangular background.

Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



The Hon. Enver Erdogan MLC

Minister for Casino, Gaming and Liquor Regulation
Minister for Corrections
Minister for Youth Justice

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Gary Maas
Chair, Scrutiny of Acts and Regulations Committee
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EAST MELBOURNE VIC 3002
Via email: SARC@parliament.vic.gov.au

SR. No. 118 – Corrections Amendment Regulations 2025

Dear Mr Maas

Thank you and the Regulations Review Subcommittee (Subcommittee) for your consideration of the Corrections Amendment Regulations 2025 (Regulations) and your request for further information dated 13 February 2026.

The Subcommittee has sought further information in relation to new sub-regulations 14(1A) and 14(1C) of the Corrections Regulations 2019, which relate to the use of instruments of restraint.

The Department of Justice and Community Safety will provide me with advice on the Subcommittee's questions and requests for further information. Given the complexity of some of the requests that advice is not yet complete. I expect that I will be in a position to provide a detailed response by late April 2026.

In the meantime, should you require any further information, please do not hesitate to contact Kathleen Sutton, Senior Manager, Legal Policy, Corrections and Justice Services at kathleen.sutton@justice.vic.gov.au.

Yours sincerely

The Hon. Enver Erdogan MLC
Minister for Casino, Gaming and Liquor Regulation
Minister for Corrections
Minister for Youth Justice

17/3/2026





The Hon. Paul Hamer MP

Minister for Local Government
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SR. No. 118 – Corrections Amendment Regulations 2025

Dear Mr Maas

Thank you and the Regulations Review Subcommittee (Subcommittee) for your consideration of the Corrections Amendment Regulations 2025 and your request for further information dated 13 February 2026.

Responses to the Subcommittee's requests for further information are set out below.

Question 1. The purpose of new sub-regulations 14(1A) & (1C), to the extent these provisions require (rather than merely permit) Governors to direct the application of instruments of restraints to some prisoners.

The purpose of new sub-regulations 14(1A) and (1C) is to ensure the safety, security and good order within the prison environment, and in particular to mitigate the risk of injury and harm to staff (or other people in prison) posed by people who have used violence against staff and demonstrate a further risk of violence against staff. The new sub-regulations demonstrate government's commitment to staff safety by recognising that staff have a right to be and feel safe at work, and that a safe workplace and workforce are fundamental to a safe, secure, humane and rehabilitative prison system.

In addition, new sub-regulations 14(1A) and (1C) will provide certainty and clarity to staff in relation to when restraints must be applied, support consistent application of restraints across prison locations, and ensure restraints are applied in appropriate circumstances to mitigate safety and security risks.

Question 2. The exceptional circumstances in which it is envisaged the Governor may decline to make a direction under new sub-regulation 14(1A)

Under new sub-regulation 14(1A), the Governor (or their delegate) will consider and determine whether exceptional circumstances exist on a case-by-case basis, based on the

individual circumstances of the person in prison and the incident in question, before directing the application of restraints.

Corrections Victoria policy provides examples of what might constitute exceptional circumstances to support decision makers to exercise this discretion. These examples include where the person is known to be more than 6 months pregnant or has a cognitive impairment, and the risk posed by the person can be mitigated in another way. The list of examples provided in the policy is not exhaustive.

Question 3. The circumstances in which it is envisaged the Commissioner will specify a kind of assault under new sub-regulation 14(1C)

Corrections Victoria operational policy has been updated to specify the assaults which will attract the operation of new sub-regulation 14(1A).

The policy provides that new sub-regulation 14(1A) will apply to assaults against staff where the staff member is hospitalised or requires medical treatment as a result of the assault. This codifies existing practice within the prison system under the Principal Regulations, whereby a person who commits a serious assault against a staff member may be placed in handcuffs where necessary to mitigate the risk they pose to staff and other people in prison.

The Commissioner may update operational policy from time to time as required, however in accordance with new sub-regulation 14(1C) the Commissioner may only specify assaults which would make the application of restraints necessary to protect a person's safety or the security or good order of the prison.

As demonstrated by the assaults currently specified, this threshold is appropriately high, and the intent is only for the most serious staff assaults to be captured.

Question 4. Whether new sub-regulations 14(1A) & (1C) are subject to sub-regulation 14(7).

Sub-regulation 14(7) requires prison officers to consider the age, best interests and vulnerability of a person in prison who is under 18 years of age before applying restraints to that person. Officers who are directed to apply restraints to a person who is under 18 years of age under new sub-regulation 14(1A) may consider the matters listed in sub-regulation 14(7) but are not required to. New sub-regulation 14(1A) is not specifically expressed to be subject to sub-regulation 14(7) and the Governor can consider factors equivalent to those listed in sub-regulation 14(7) when deciding whether exceptional circumstances make it unnecessary to make a direction under new sub-regulation 14(1A).

New sub-regulation 14(1C) is directed to the Commissioner and does not directly authorise prison officers to apply restraints. Accordingly, sub-regulation 14(7) is not considered to be relevant to new sub-regulation 14(1C).

Question 5. The meaning of the word 'necessary' in new sub-regulation 14(1C), in light of the Federal Court of Australia's recent ruling on the meaning of the word 'necessary' in section 10D(1)(b)(ii) of the Control of Weapons Act 1990: see *Browne v Assistant Commissioner of Police, North West Metro Region* [2026] FCA 15, [63]-[82].

The word necessary in new sub-regulation 14(1C) is intended to be given its ordinary meaning in line with existing sub-regulations 14(1), (2) and (3) and established case law, meaning 'required' or 'needed to be done'. In *Browne*, Justice Bennet acknowledged that the

word 'necessary' can carry 'different shades of meaning' depending on context. As in *Browne*, the relevant assessment is directed in part to anticipated risks, in this context risks to the safety, security and good order within the prison environment, and in particular the risks posed by people who have used violence against staff.

Question 6. Whether new sub-regulations 14(1A) & (1C) may operate equivalently to a system of punishment for specified kinds of assault?

The application of restraints in accordance with new sub-regulations 14(1A) and (1C) is to be used to respond to the risks posed by persons who commit specific types of serious assaults, not used as punishment for those assaults. New sub-regulation 14(1C) makes clear that new sub-regulation 14(1A) can only be enlivened where necessary for the safety of the prisoner or another person or the security or good order of the prison. Sub-regulation 14(2) makes it clear that a person can only be kept under restraint for as long as is necessary to achieve those purposes. Where a person no longer presents a risk, restraints must be removed.

A separate process operates for the punishment of serious assaults against staff. Every assault is referred to Victoria Police and dealt with either by criminal law or internal disciplinary hearing.

Question 7. Whether new sub-regulations 14(1A) & (1C) are compatible with the recommendations of the Australian Human Rights Commission set out in *Mr Adam Watt v State of NSW* [2023] AusHRC 149, [253], specifically those relating to individualised risk assessments.

Watt concerned the use of a number of restraints including handcuffs, belt and leg shackles during a transfer between prisons in New South Wales. As such, the Australian Human Rights Commission's (AHRC) analysis and recommendations may not be directly transferrable to the context in which new sub-regulations 14(1A) and (1C) operate. With that said, the framework for the application of the use of restraints in Victoria provides for individualised risk assessments.

New sub-regulation 14(1A), when read together with the rest of regulation 14 and Corrections Victoria operational policy, requires:

- the Governor to consider whether exceptional circumstances make it unnecessary to apply restraints on a case-by-case basis, based on the individual circumstances of the person in prison, before directing the application of restraints. It is noted that the bar for when restraints would not be applied (exceptional circumstances) is higher due to the fact that a high baseline level of risk is established by virtue of the serious assaults committed on staff which enliven new sub-regulation 14(1A).
- regular review of the use of restraints is necessitated by the requirement in existing sub-regulation 14(2) that a person must not be kept under restraint for longer than necessary.

Question 8. Whether section 38(2) of the Charter may partly prevent the application of section 38(1) of the Charter to decisions made or acts done by Governors or prison officers under new sub-regulation 14(1A), specifically decisions on whether or not a prisoner will be restrained;

The exception in section 38(2) of the Charter is intended to exonerate public authorities who act to give effect to legislation that is incompatible with a human right in circumstances where they could not reasonably have acted differently or made a different decision.

New sub-regulation 14(1A) requires a Governor to direct the application of restraints if they believe on reasonable grounds that a prisoner has committed an assault of a kind specified under new sub-regulation 14(1C), unless satisfied that exceptional circumstances make it unnecessary to do so. New sub-regulation 14(1A) limits rights under section 17(2), 22(1) and 23(3) of the Charter, however these limitations are considered to be justified under section 7(2) of the Charter for the reasons set out in the human rights certificate and the response to Question 10 below. Acts done or decisions made by the Governor or a prison officer consistent with new sub-regulation 14(1A) are therefore considered to be compatible with the Charter.

Question 9. whether a Governor acting under new sub-regulation 14(1A) and the Commissioner acting under new sub-regulation 14(1C) must comply with Corrections Victoria policies requiring that all restraints be necessary and appropriate, specifically when making decisions on whether or not a prisoner will be restrained and whether to specify a kind of assault;

Yes, both the Governor and Commissioner must comply with Corrections Victoria policies relating to instruments of restraint when acting under new sub-regulations 14(1A) and (1C).

This policy reflects the requirements set out in regulation 14 that restraints are only applied when appropriate, and then only for the minimum time necessary.

The assaults specified by the Commissioner under new sub-regulation 14(1C) form part of this policy which must be followed by all staff in prisons.

Question 10. The compatibility of new sub-regulations 14(1A) & (1C) with the rights of child prisoners set out in sections 17(2) and 23(3) of the Charter;

New sub-regulation 14(1A) and (1C) only apply in relation to people held in adult correctional facilities. While it is rare for children to be held in adult custody, any application of restraints to prisoners under the age of 18 under new sub-regulations 14(1A) and (1C) would engage, and likely limit, the right of children to protection in their best interests (section 17(2)) and the right of children convicted of an offence to be treated in an age-appropriate way (section 23(3)). However, those limits are likely to be reasonably and demonstrably justified by the purpose of the use of restraints under the new sub-regulations, which is to ensure safety, security and good order within the prison environment and mitigate the risk of harm to staff or other people in prison. As with adult prisoners, restraints will only be applied to prisoners under the age of 18 in a way that is proportionate to that purpose, taking account of the individual circumstances

It is noted that there are several protective factors within regulation 14 and Corrections Victoria policies to support the proportionate use of restraints under the new sub-regulations. The protective factors include:

- the requirement in new sub-regulation 14(1A) for the Governor to consider whether exceptional circumstances exist. As identified in response to Question 2 above, the non-exhaustive list of examples of exceptional circumstances in Corrections Victoria policy are directed to peoples' vulnerabilities. It is intended that a person's age, interests and

vulnerabilities may be considered as exceptional circumstances which make it unnecessary to apply restraints.

- the requirement in sub-regulation 14(2) that restraints must not be applied for longer than necessary.
- the requirement in sub-regulation 14(5) that the restraints must be applied in a manner approved by the Commissioner of Corrections.
- the power in sub-regulation 14(6) for the Secretary to order the removal of restraints at any time.
- policies that require regular review of an individual's risk assessment at regular intervals, and the maintenance and review of records of the use of restraints.

Question 11. Whether any instrument made under new sub-regulation 14(1C) must be published (for example, as a legislative instrument under the *Subordinate Legislation Act 1994*)

The reference to an 'instrument' in new sub-regulation 14(1C) is intended to be a reference to Corrections Victoria operational policy. Assaults specified under new sub-regulation 14(1C) are set out in Corrections Victoria operational policy which does not need to be published. The relevant operational policy is not made public as it contains sensitive information that would compromise security and good order if made public.

Question 12. Whether existing sections 21(1) and 22(1) of the Act and existing sub-regulations 14(1) & (3) of the Principal Regulations are less restrictive means reasonably available to achieve the purposes of new sub-regulations 14(1A) & (1C).

As noted at Question 1, the purpose of new sub-regulations 14(1A) and (1C) is to ensure safety, security and good order within the prison environment, and in particular to mitigate the risk of injury and harm to staff (or other people in prison) posed by people who have used violence against staff and demonstrate a further risk of violence against staff.

In addition, new sub-regulations 14(1A) and (1C) will provide certainty and clarity to staff in relation to when restraints must be applied, support consistent application of restraints across prison locations, and ensure restraints are applied in appropriate circumstances to mitigate safety and security risks.

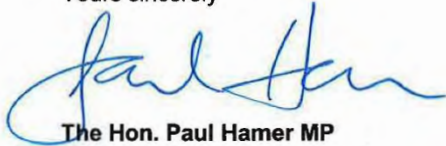
Existing section 21(1) and 22(1) provide that a Governor is responsible for the management, security and good order of the prison and the safe custody and welfare of the prisoners, and officers must immediately report anything which might reasonably be thought to jeopardize the security of the prison or the welfare of the prisoners to the Governor. These provisions when read alone do not authorise the application of instruments of restraint. The framework for the application of instruments of restraint also relies on use of force (under section 23) and the requirements under regulations 13, 14 and 15.

Existing sub-regulations 14(1) and (3) provide a discretionary power for the Governor to direct the application of restraints in specific circumstances, and a discretionary power for an officer to apply restraints in specific circumstances.

The broad and discretionary nature of these provisions do not fully achieve the intended purpose of the new sub-regulations and as such are not considered a reasonable alternative.

Should you require any further information, please do not hesitate to contact Kathleen Sutton, Acting Director – Policy, Policy and Strategy, Corrections Victoria, at kathleen.sutton@justice.vic.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Paul Hamer', written over a light blue circular stamp.

The Hon. Paul Hamer MP
Minister for Local Government
Minister for Corrections
Minister for Youth Justice

18 / 5 / 2026



Scrutiny of Acts and Regulations Committee

31 March 2026

The Hon. Enver Erdogan MLC
Minister for Casino, Gaming and Liquor Regulation
Level 16, 121 Exhibition Street
Melbourne
Victoria, 3000

By email: minister.erdogan@justice.vic.gov.au; renee.o'neill@justice.vic.gov.au

Dear Minister

SR No. 129 – Liquor Control Reform (Prohibited Supply) Regulations 2025

The Regulations Review Subcommittee (**Subcommittee**) of the Scrutiny of Acts and Regulations Committee considered the *Liquor Control Reform (Prohibited Supply) Regulations 2025* (**Regulations**) at a meeting on 25 March 2026.

The Subcommittee approved the Regulations. However, the Subcommittee seeks additional information in relation to new regulation 9 introduced by the Regulations.

Pursuant to section 21(1)(i) of the *Subordinate Legislation Act 1994* (Vic), the Scrutiny Committee may report to the Parliament if it considers a statutory rule requires explanation as to its form or intention.

Prohibition of supply of liquor in certain packaging

The Regulations prohibit the supply of certain classes of liquor where the Minister is satisfied under section 118B of the *Liquor Control Reform Act 1998* (**Act**) that it is in the interest of the community to do so. The Regulations largely remake the previous regulations which sunset on 15 December 2025, but also introduce the following new prohibition:

9 Prohibition of supply of liquor in certain packaging

A person must not supply liquor that is packaged in a container the appearance of which could reasonably be mistaken for a children's toy.

Penalty: 30 penalty units.

The Subcommittee observes the scope of regulation 9 may be open to interpretation. The terms ‘*container*’, ‘*appearance*’ and ‘*children’s toy*’ are not defined in the Regulations or Act. These terms may be assumed to bear their ordinary or natural meaning within the context of the legislation as a whole. ‘Toy’, for example, is commonly defined as ‘an object for children to play with’.

The Exemption Certificate and the Explanatory Memorandum accompanying the Regulations may assist its interpretation. These materials state the new regulation responds to the specific product of ‘Emodka vodka’ or to a ‘niche product’ with ‘limited availability’, and therefore does not represent a significant loss of revenue for liquor licensees.

The Explanatory Memorandum states:

This prohibition is in response to the availability of ‘Emodka’, a 50ml shot of vodka in a yellow ball-shaped bottle with a face emoji on it. The packaging of this product makes it look like a toy, and could reasonably be mistaken by both adults and children to be a toy.

The Subcommittee notes South Australia has introduced laws aimed at the same product, although the classes of liquor are more narrowly prescribed, with the prohibition applying to ‘Emodka vodka’ specifically and to ‘any other spirit in a container purporting to be an emoji (however described)’.¹

The Explanatory Memorandum continues:

The Minister considers that it is in the interest of the community to prohibit any liquor product that could reasonably be mistaken for a children’s toy, as it could lead to a child accidentally consuming the product.

The Subcommittee notes the materials accompanying the Regulations do not address whether any liquor products in supply in Victoria other than ‘Emodka’ have been identified as likely to come within the scope of the new prohibition. The Subcommittee observes, for example, the following types of products:

- miniature liquor products:
 - e.g. miniature liquor bottles/gift sets, which may resemble play sets of miniature grocery items or doll accessories;
- liquor products packaged in ball-shaped containers:
 - e.g. ‘Gingle Bells Floral Gin Filled Baubles’, which are packaged in containers shaped like Christmas baubles;²

¹ *Liquor Licensing (General) Regulations 2012* (SA) reg 20A, which prescribes classes of liquor for the purposes of the prohibition in section 131AA of the *Liquor Licensing Act 1997* (SA).

² <<https://boozehouse.com.au/products/gingle-bells-floral-gin-filled-baubles-boxed-set-of-6>>.

- liquor products packaged in novelty containers:
 - e.g. 'Lycan AK47 Premium Grain Vodka',³ which is packaged in a container shaped like a gun;
 - e.g. 'Crystal Head Vodka',⁴ which is packaged in a container shaped like a skull;
- liquor products bearing resemblances to children's food products, such as liquor products resembling icy poles, soft drinks, malt milk drinks, or jelly cups:
 - e.g. the 'Vodka Martini Skinny Freezers' product, which may 'mimic the popular Zooper Dooper';⁵
 - e.g. the 'Hard Solo' product, which may be considered an 'alcoholic version of the popular soft drink Solo';⁶
 - e.g. the 'Choc Milk Stout' product, which a 'child mistook for Nestle's Milo'.⁷

The Subcommittee also notes that while initial consultation on the proposed Regulations was undertaken with the liquor industry, it is unclear whether the specific wording of the new prohibition and its potential to extend to products beyond 'Emodka' formed part of these discussions.

The Subcommittee notes that the section 8(1)(a) certificate exempting the Regulations from assessment under a Regulatory Impact Statement does not provide specific figures of the estimated number of affected industry participants or the expected revenue loss.

The Subcommittee seeks clarification as to the operation and effect of the wording of regulation 9. Specifically, whether the prohibition is likely to extend to liquor products in supply in Victoria other than 'Emodka', such as the types of products canvassed above.

The Subcommittee also requests specific details of the economic burden imposed on the liquor industry by new regulation 9, including the estimated number of industry participants which supply the product/s likely to come within the scope of the new prohibition and the estimated cost in dollars of removing these products from supply.

³ <<https://boozehouse.com.au/products/lycan-ak47-premium-grain-vodka-750ml>>.

⁴ <https://www.danmurphys.com.au/product/DM_710148/crystal-head-vodka-700ml>.

⁵ <<https://fare.org.au/victorian-regulator-shirks-warning-on-dangerous-alcohol-product/>>.

⁶ <<https://www.smh.com.au/national/hard-solo-sparks-formal-complaint-over-claims-it-appeals-to-minors-20230803-p5dtk8.html>>.

⁷ <<https://eaglegate.au/misleading-products-could-harm-kids/>>.

Response

The Subcommittee would appreciate your response by Friday, 29 May 2026.

Thank you for your assistance with this matter. Please do not hesitate to contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au should you require further information.

Yours sincerely,

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

Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



The Hon. Enver Erdogan MLC

Minister for Environment
Minister for Casino, Gaming and Liquor Regulation
Minister for Outdoor Recreation

8 Nicholson Street
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Our ref: 26036599

Mr Gary Maas MP
Chair, Scrutiny of Acts and Regulations Committee

By email: Alex.Kershaw@parliament.vic.gov.au

SR NO. 129 – LIQUOR CONTROL REFORM (PROHIBITED SUPPLY) REGULATIONS 2025

Dear Mr Maas

Thank you for your consideration of the Liquor Control Reform (Prohibited Supply) Regulations 2025 (regulations). Please see responses below to your request for additional information.

A) The Subcommittee seeks clarification as to the operation and effect of the wording of regulation 9. Specifically, whether the prohibition is likely to extend to liquor products in supply in Victoria other than 'Emodka', such as the types of products canvassed above.

I do not consider that the prohibition is likely to extend to any other products on the market in Victoria, other than Emodka.

The Department of Justice and Community Safety (department) is developing guidelines in consultation with the liquor regulator, Liquor Control Victoria (LCV), which will provide more detail about which products are in the scope of the new regulation 9, and its intended operation and effect.

These guidelines will help the regulator to determine whether a particular product falls within the prohibition and will be published on LCV's website. It is intended that this will prevent product designers and retailers from introducing such liquor products into the Victorian market.

The test outlined in the proposed guidelines for whether a liquor product falls within the scope of regulation 9 will be: 'Could the product reasonably be mistaken for a children's toy?'. This means the product itself must resemble a toy. It is not enough for the product to simply have a picture of a toy on it, or that the product appeals to a child for any reason other than that it resembles a toy.



Characteristics that might contribute to the product reasonably being mistaken for a toy include, but are not limited to:

- it uses designs, pictures, images, logos, cartoons etc. that commonly appear on children's toys or are associated with children's toys
- it uses designs, pictures, images, logos, cartoons etc. that appeal to children
- the liquid inside the product's container is not visible or is difficult to see
- the lid/opening is not easily visible (for example, is located at the back of the product where it cannot be seen from the front)
- the product's container is not a traditional shape (for example, a bottle that is not cylindrical with a narrow neck)
- there is no writing, or minimal non-descript writing, on the front of the product.

Regarding the product types specifically mentioned in your correspondence:

Miniature liquor products, liquor products packaged in ball-shaped containers, and liquor products packaged in novelty containers

These products may fall within the scope of regulation 9, but the characteristics of being miniature or being packaged in a non-traditional container are not enough on their own to bring a product within scope.

For example, all liquor-filled baubles currently on the market, such as 'Gingle Bells Gin Baubles', are clear glass with the liquid inside clearly visible, and the product's opening and lid are also clearly visible. A Christmas bauble is not inherently a children's toy (though some may be designed for children) and these baubles are a mature design that appeals to adults. These additional features mean it is unlikely the product would be mistaken for a toy and would not fall within the scope of regulation 9.

Liquor products bearing resemblances to children's food products such as liquor products resembling icy poles, soft drinks, malt milk drinks, or jelly cups

While these products may resemble a food product type that appeals to children, this is different to a liquor product that could reasonably be mistaken for a children's toy. These products do not fall within the scope of regulation 9.

Whether liquor product types such as alcoholic icy poles, ice blocks, ice creams, soft drinks and jellies should be prohibited was considered and the subject of consultation. My department advised is that these do not pose a risk over and above other alcoholic products. These and other emerging liquor products are monitored, balancing the broad objectives of liquor regulation.

The South Australian regulations, the Liquor Licensing (General) Regulations 2012, which prohibit Emodka and 'any other spirit in a container purporting to be an emoji (however described)' were considered when developing the regulations. In Victoria, under the *Liquor Control Reform Act 1998*, regulations can be made to prohibit the supply of any class of liquor, but not to prohibit the supply of a specific liquor product. The wording 'in a container purporting to be an emoji (however described)' was not used to describe the class of liquor to be prohibited as the Office of the Chief Parliamentary Counsel, the regulator and other stakeholders raised issues with the words 'purporting' and 'emoji', considering them to be problematic and difficult to interpret.

A broader approach was taken to capture the principle of prohibiting a liquor product that might be mistaken for a toy. The aim was for the regulations to apply to future or emerging products that might circumvent a prohibition on a specific theme or product, rather than restricting emoji-themed products only. This reflects the policy intention of prohibiting products that appeal to children and could lead to a child consuming liquor accidentally.

The word 'container' is used in other provisions of the regulations. For example, regulation 5 refers to a 'sealed container', while regulation 7 uses the term in its description of a flexible tube.

The words 'appearance' and 'children's toy' are taken to have their ordinary meaning.

The Subcommittee also requests specific details of the economic burden imposed on the liquor industry by new regulation 9, including the estimated number of industry participants which supply the product/s likely to come within the scope of the new prohibition and the estimated cost in dollars of removing these products from supply.

I am advised that the only product on the market likely to fall within the scope of regulation 9 is Emodka. This product is only available in Victoria from one interstate supplier, Paul's Liquor, via its website and some online platforms, such as Amazon and Cellars Market. Paul's Liquor is licensed in New South Wales and does not have a Victorian liquor licence. The regulations prohibit Victorian licensees from supplying this product. As there are no known suppliers of Emodka with a Victorian liquor licence, it is unlikely that prohibiting its sale will result in any economic impact in Victoria.

I consider that the potential harm of allowing such products is greater than the negligible (if any) associated revenue loss in Victoria.

I trust this information is of assistance to you. If you require anything further, please contact Ms Simone Cusack, Executive Director, Gaming and Liquor, at simone.cusack@justice.vic.gov.au.

Yours sincerely



The Hon. Enver Erdogan MLC
Minister for Environment
Minister for Casino, Gaming and Liquor Regulation
Minister for Outdoor Recreation

2 / 6 / 2026



Scrutiny of Acts and Regulations Committee

31 March 2026

The Hon. Enver Erdogan MLC
Minister for Casino, Gaming and Liquor Regulation
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Victoria, 3000

By email: minister.erdogan@justice.vic.gov.au; helen.miller@justice.vic.gov.au

Dear Minister

SR No. 137 – Casino Control Amendment Regulations 2025

The Regulations Review Subcommittee (**Subcommittee**) of the Scrutiny of Acts and Regulations Committee considered the above statutory rule at a meeting on 25 March 2026.

The Subcommittee approved the statutory rule. However, the Subcommittee draws your attention to a technical scrutiny matter of compliance with the consultation requirements under section 6 of the *Subordinate Legislation Act 1994 (SLA)* and Guidelines.¹

Section 6(1)(c) requires that where the Guidelines require consultation, a certificate of consultation in accordance with the Guidelines is issued for that statutory rule. The Guidelines state ‘a consultation certificate should provide details of who was consulted’.²

In this instance the consultation certificate records consultation under section 6(1)(b) occurred but does not include details of which stakeholders were consulted. It can be ascertained from the exemption certificate and explanatory memorandum accompanying the statutory rule that the relevant stakeholders were Crown Melbourne Limited and the Victorian Gambling and Casino Control Commission. However, these details should have been included in the consultation certificate.

While the operation or effect of a statutory rule is not affected by a failure to comply with section 6(1), the Subcommittee considers compliance with the certification requirements throughout the SLA to be important in facilitating effective parliamentary oversight of subordinate legislation. The Subcommittee

¹ *Subordinate Legislation Act 1994 Guidelines* (Department of Premier and Cabinet, September 2023).

² *Ibid* p. 24.

draws your attention to these requirements for future reference when preparing statutory rules.

Response

Thank you for your time and attention to this matter. No response is required. Please do not hesitate to contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au should you require further information.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Gary Maas', with a horizontal line underneath.

Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



Scrutiny of Acts and Regulations Committee

31 March 2026

The Hon. Lizzie Blandthorn MP
Minister for Children
Level 22, 50 Lonsdale Street
Melbourne
Victoria, 3000

By email: minister.cpdac@dffh.vic.gov.au

Cc: Petrea.Turner@education.vic.gov.au;
Patrick.Hossack@education.vic.gov.au

Dear Minister

SR No. 144 – Child Wellbeing and Safety (Information Sharing) Further Amendment Regulations 2025

The Regulations Review Subcommittee (**Subcommittee**) of the Scrutiny of Acts and Regulations Committee considered the *Child Wellbeing and Safety (Information Sharing) Further Amendment Regulations 2025 (Regulations)* at a meeting on 25 March 2026.

The Subcommittee has deferred its final consideration of the Regulations in order to seek additional information from you on the regulation-making powers conferred by the authorising Act.

Section 21 of the *Subordinate Legislation Act 1994 (SLA)* provides that the Scrutiny Committee may report to the Parliament if it considers a statutory rule does not appear to be within the powers conferred by the authorising Act (section 21(1)(a)) or requires explanation as to its form or intention (section 21(1)(i)).

Overview of Act and Regulations

The Regulations are made pursuant to the authorisation of sections 46ZC and 47 of the *Child Wellbeing and Safety Act 2005 (Act)*. The Regulations amend the *Child Wellbeing and Safety (Information Sharing) Regulations 2018 (Vic) (Principal Regulations)*, including to insert new regulation 5A(2A) which states:

- (2A) The Early Childhood Regulator may delegate any power, function or duty conferred or imposed on the Victorian Early Childhood Regulatory Authority as an information sharing

entity under Part 6A of the Act or under these Regulations, other than this power of delegation, to any person employed or engaged under section 15 of the Victorian Early Childhood Regulatory Authority Act 2025.

The Subcommittee observes section 46ZC(2)(i) of the authorising Act expressly provides for regulations to be made enabling the delegation or sub-delegation of an information sharing entity's powers, functions and duties under Part 6A of the Act or the Regulations. However, it only provides this authorisation for an information sharing entity that is a public sector body Head. Section 46ZC(2)(i) is set out:

- (2) Without limiting subsection (1), the Governor in Council may make regulations for or with respect to—
 - ...
 - (i) enabling an information sharing entity that is a public sector body Head or a restricted information sharing entity that is a public sector body Head—
 - (i) to delegate its powers, duties and functions under Part 6A or the regulations; and
 - (ii) to sub-delegate any powers, duties and functions under Part 6A or the regulations that have been delegated to the information sharing entity;

The Subcommittee accordingly seeks clarification as to whether new regulation 5A(2A) is within the powers conferred by the authorising Act. Specifically, whether and how the Early Childhood Regulator is 'an information sharing entity that is a public sector body Head' within the meaning of section 46ZC(2)(i) of the Act.

'Information sharing entity that is a public sector body Head'

'Information sharing entity'

The authorising Act defines 'information sharing entity' as 'a person or body, or a class of person or body, prescribed to be an information sharing entity'.¹ The Victorian Early Childhood Regulatory Authority (**VECRA**) is prescribed by the Regulations as an information sharing entity. The Early Childhood Regulator is not itself prescribed as an information sharing entity. However, the Subcommittee notes the Early Childhood Regulator constitutes and has all the functions and powers of the VECRA.²

¹ *Child Wellbeing and Safety Act 2005* (Vic) ss 3(1) (definition of 'information sharing entity') and 41R.

² *Victorian Early Childhood Regulatory Authority Act 2025* (Vic) ss 5(2) and 10(3)(a).

‘Public sector body Head’

The authorising Act defines ‘public sector body Head’ by reference to the *Public Administration Act 2004 (PA Act)*,³ which, in section 4(1), provides the following three-pronged definition:⁴

public sector body Head means—

- (a) in relation to a public service body, the public service body Head;
- (b) in relation to a public entity, the public entity Head;
- (c) in relation to a special body, the special body Head;

A ‘public entity Head’ and ‘special body Head’ are further defined under the PA Act to mean the ‘chief executive officer (by whatever name called)’ of the relevant entity or body.⁵

It is not clear whether the Early Childhood Regulator is equivalent to VECRA’s ‘chief executive officer’ within the meaning of the PA Act — although it ‘is responsible for undertaking the strategic leadership’ of the VECRA.^{6,7}

Regardless, the VECRA, as the relevant entity or body in relation to the Early Childhood Regulator, may not be a ‘public entity’ or ‘special body’ within the meaning of those terms as given in section 5 and section 6 of the PA Act.⁸ Although the VECRA is established under the *Victorian Early Childhood Regulatory Authority Act 2025* as a body corporate which represents the Crown,⁹ it is not apparent that the right to appoint at least one half of its directors is vested in the Executive Government in accordance with subsection (1)(b) of the meaning of ‘public entity’ given in section 5 of the PA Act.¹⁰ The *Victorian Early Childhood Regulatory Authority Act 2025* is silent on this issue. The VECRA is not

³ *Child Wellbeing and Safety Act 2005* (Vic) s 3(1) (definition of ‘public sector body Head’).

⁴ *Public Administration Act 2004* (Vic) s 4(1) (definition of ‘public sector body Head’).

⁵ *Public Administration Act 2004* (Vic) s 4(1) (definition of ‘public entity Head’) and (definition of ‘special body Head’), which definitions respectively state: ‘public entity Head means chief executive officer (by whatever name called) of a public entity’ and ‘special body Head means chief executive officer (by whatever name called) of a special body’.

⁶ *Victorian Early Childhood Regulatory Authority Act 2025* (Vic) s 10(3)(b).

⁷ Cf <<https://www.vic.gov.au/about-us-victorian-early-childhood-regulatory-authority>> which sets out the actual corporate structure of the VECRA, including a role of ‘Chief Executive Officer’ that is separate to the role of ‘interim Regulator’.

⁸ *Public Administration Act 2004* (Vic) s 4(1) (definition of ‘public entity’) and (definition of ‘special body’), which definitions refer the reader to the meaning given in section 5 and section 6 respectively.

⁹ *Victorian Early Childhood Regulatory Authority Act 2025* (Vic) ss 5 and 7. Note these characteristics of the VECRA may partially fulfill the meaning of ‘public entity’ set out in section 5 of the *Public Administration Act 2004* (Vic), particularly the requirements at section 5(1)(a)(i) and 5(1)(c).

¹⁰ *Public Administration Act 2004* (Vic) s 5(1)(b) states: ‘in the case of a body corporate, the right to appoint at least one half of the directors of which is vested in the Governor in Council or a Minister or could have been so vested in the case of a body corporate established by an Order made by the Governor in Council or a Minister under the power given by the Act under which the Order is made’.

listed as a 'special body' under subsection (1) nor does it appear to have been declared by the Minister to be a 'special body' pursuant to subsection (2) of section 6 of the PA Act.¹¹

A 'public service body Head' means the Head of either a Department established under section 10 or an Administrative Office established under section 11 of Part 3 of the PA Act, which require an Order of the Governor in Council.¹²

No such Order appears to have been made in relation to the VECRA or the Early Childhood Regulator.¹³ Additionally, Part 3 of the PA Act – which generally provides for the employment and responsibilities of public service body Heads – may not apply to the Early Childhood Regulator by implication of section 10(4) of the *Victorian Early Childhood Regulatory Authority Act 2025*.¹⁴

Section 16(1)(kh) of the PA Act

The Subcommittee does however note section 16(1)(kh) of Part 3 of the PA Act, which states:

- (1) Despite anything to the contrary in this Act, the following office holders have all the functions of a public service body Head in relation to employees in the following offices or bodies—
- ...
- (kh) the Early Childhood Regulator appointed under section 10 of the *Victorian Early Childhood Regulatory Authority Act 2025* in relation to the Victorian Early Childhood Regulatory Authority; ...

The Subcommittee notes section 16(1)(kh) was inserted into Part 3 of the PA Act by section 59 of the *Victorian Early Childhood Regulatory Authority Act 2025*. It may be assumed that Parliament did not intend to create an issue of inconsistency between the operation of this provision and the implied operation of section 10(4) of the *Victorian Early Childhood Regulatory Authority Act 2025*, which otherwise appears to carve out Part 3 of the PA Act from having application to the Early Childhood Regulator.

¹¹ The Subcommittee was unable to find such a declaration published in the Victorian Government Gazette.

¹² *Public Administration Act 2004* (Vic) s 4(1) (definition of 'public service body Head') and (definition of 'Department') and (definition of 'Administrative Office'), which definitions refer the reader to section 10 and section 11. (Not of relevance to this discussion is the

¹³ The Subcommittee was unable to find such an order published in the Victorian Government Gazette.

¹⁴ Section 10(4) of the *Victorian Early Childhood Regulatory Authority Act 2025* (Vic) states (emphasis added): 'The *Public Administration Act 2004* (other than Part 3 of that Act) applies to the Early Childhood Regulator in respect of that office.'

Giving full effect to section 16(1)(kh), the Subcommittee nevertheless observes that *‘hav[ing] all the functions of a public service body Head’* may not be equivalent to *‘is a public sector body Head’* for the purposes of the power to make regulations as set out in the authorising Act.

Conclusion

In summary, the Subcommittee observes it is not immediately clear whether the Early Childhood Regulator, which

- is not an information sharing entity, but constitutes¹⁵ and ‘has all the functions and powers’¹⁶ of the information-sharing entity of the VECRA, and
- is prima facie not a public service body Head or otherwise a public sector body Head, but has ‘all the functions of a public service body Head in relation to employees’,¹⁷

is equivalent to ‘an information sharing entity that is a public sector body Head’ within the meaning of section 46ZC(2)(i) of the authorising Act. **The Subcommittee seeks your clarification of this issue. It would appreciate any additional information as to whether new regulation 5A(2A) is within the powers conferred by the authorising Act.**

Response

The Subcommittee would appreciate your response no later than Monday, 20 April 2026 in order that it might consider the Regulations again at its next meeting.

Thank you for your assistance with these matters. Please do not hesitate to contact the Subcommittee’s secretariat at SARC@parliament.vic.gov.au should you require further information.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee

¹⁵ *Victorian Early Childhood Regulatory Authority Act 2025* (Vic) s 5(2).

¹⁶ *Victorian Early Childhood Regulatory Authority Act 2025* (Vic) s 10(3)(a).

¹⁷ *Public Administration Act 2004* (Vic) s 16(1)(kh).



Hon Lizzie Blandthorn MP

Deputy Leader of the Government in the Legislative Council
Minister for Children
Minister for Disability

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Gary Maas MP

Chair

Scrutiny of Acts and Regulations Committee

By email: sarc@parliament.vic.gov.au; helen.mason@parliament.vic.gov.au

Dear Chair

I refer to your letter on behalf of the Scrutiny of Acts and Regulations Committee (**Committee**) in relation to the Child Wellbeing and Safety (Information Sharing) Further Amendment Regulation 2025 (**Regulations**), made by the Governor in Council (**GiC**) under the *Child Wellbeing and Safety Act 2005* (**CWS Act**) on 16 December 2025 and commenced on 1 January 2026. The Regulations amend the *Child Wellbeing and Safety (Information Sharing) Regulations 2018* (**Principal Regulations**), including to insert new regulation 5A(2A).

As requested, this letter provides additional information to clarify the basis on which new regulation 5A(2A), which enables the Early Childhood Regulator (**ECR**) to delegate the powers, functions and duties conferred on the Victorian Early Childhood Regulatory Authority (**VECRA**) as an information sharing entity (**ISE**), is within the regulation-making powers of the CWS Act.

Summary

Having regard to advice from the Department of Education (**department**), my view is that regulation 5A(2A) is within the scope of the following enabling provisions of the CWS Act:

1. Section 46ZC(1) provides that the Governor in Council may make regulations 'for or with respect to...any matter or thing...necessary to be prescribed to give effect to Part 6A' (Part 6A establishes the Child Information Sharing Scheme (**CISS**)). I consider that enabling the ECR to delegate the powers, duties and functions conferred on VECRA as an ISE is necessary given the unique statutory structure of VECRA and to enable it to establish a clear and robust authorising framework to ensure the proper and efficient discharge of its powers, functions and duties under the CISS.
2. Section 46ZC(2)(i) makes specific provision for delegation and sub-delegation powers to be conferred on public sector body Heads who are prescribed as ISEs. The ECR, in my view, is a public sector body Head and, by virtue of the ECR constituting the VECRA and having all the functions of the VECRA, including its functions as an ISE under the CWS Act, is also an ISE.

Discussion

Victorian Early Childhood Regulatory Authority governance structure

The governance structure of VECRA is relatively atypical in that it is a body corporate which is constituted by an individual (ie the ECR) (section 5(2), *Victorian Early Childhood Regulatory Authority Act 2025 (VECRA Act)*) who has all the functions and powers of VECRA (section 10(3)(a), VECRA Act).

The functions of VECRA and, as a result, the functions of the ECR include those conferred on VECRA by or under the CWS Act (section 8(c)(iv), VECRA Act) and 'any other Act' (section 8(c)(v), VECRA Act).

The ECR may delegate any power or function conferred on VECRA under the VECRA Act (section 17, VECRA Act), including the powers conferred on VECRA under section 8(c)(iv) and (v).

Regulation making powers under the CWS Act

General regulation making power

Based on advice from the department, I am of the view that new regulation 5A(2A) is effective and within the general regulation making power in section 46ZC(1) of the CWS Act.

While section 46ZC(2)(i) specifically refers to regulations which provide for delegations to be given by an ISE that is a public sector body Head, it is prefaced with 'without limiting subsection (1)', emphasising the breadth of and the clear intention not to limit the general power. The clear purpose of section 46ZC(2) is to clarify that the general power is intended to be broad and flexible,¹ and to provide more specificity on the variety of matters that may be prescribed by regulations.

Distinct from matters which are 'required or permitted' to be prescribed, which require enabling provisions in the Act itself to specify what is 'required' or 'permitted' to be included in regulations, where a regulation making power refers to matters which are 'necessary...to give effect to the Act', this will generally 'authorise the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provisions'.² That is, to give effect to Part 6A, the prescribed matter does not need to be explicitly referenced in the Act so long as it falls within the general purpose of the Act, and the Act could not function to best effect without the aid, as it were, of the regulations.³ The Explanatory Memorandum for the Children Legislation Amendment (Information Sharing) Bill 2018, further supports this construction, as it confirms that section 46ZC(2) 'does not limit' the general regulation making power, but rather confirms its flexibility in that it 'allow[s] a range of matters to be prescribed in regulation in order to administer new Part 6A'.

¹ See *P T Garuda Indonesia Ltd v Australian Competition and Consumer Commission* (2012) 290 ALR 681, [38].

² *Shanahan v Scott* (1957) 96 CLR 245, 250.

³ Dennis Pearce and Stephen Argument, *Delegated Legislation in Australia* (LexisNexis, 6th ed, 2023) 334.

Given that the ECR has all the functions and powers conferred upon VECRA, including under Part 6A of the CWS Act, my view is that it is 'necessary' to enable the ECR to delegate the relevant powers and functions to enable the establishment of a clear and robust authorising framework for statutory decision making, and ensures it is clear on the face of the Principal Regulations how the powers conferred on VECRA as a body corporate are to be managed and exercised.

Power to make regulations conferring delegation powers on ISEs who are public sector body Heads

The Committee has also queried the extent to which the ECR would be considered a 'public sector body Head', if they were to be prescribed as an ISE, for the purpose of section 46ZC(2)(i). Based on advice from my department, I am of the view that the ECR is a 'public sector body Head' under the PA Act as either a public entity Head or a public service body Head.

Public entity Head

In your letter, the primary reason expressed for the view that VECRA could not be considered a 'public entity' is based on section 5(1)(b) of the *Public Administration Act 2004 (PA Act)*, which requires that 'in the case of a body corporate, the right to appoint at least one half of the directors of which is vested in the Governor in Council or a Minister or could have been so vested in the case of a body corporate established by an Order made by the Governor in Council or a Minister under the power given by the Act under which the Order is made'.

In the case of VECRA, which is constituted by a single appointee (the ECR), this subsection needs to be read in conjunction with other relevant definitions section 4(1) of the PA Act. Clearly, the VECRA is a 'public entity' and a 'Commissioner entity' by virtue of the ECR as it satisfies the definition of 'Commissioner entity' by virtue of the ECR satisfying paragraph (b) of the definition of 'board'.

Your letter then goes on to query the extent to which the ECR would be the 'public entity Head' with respect to VECRA if it were a public entity, given there is a separate 'chief executive officer' listed in VECRA's corporate structure. 'Public entity Head' is defined in section 4(1) as the 'chief executive officer (by whatever name called) of a public entity'. While the PAA does not contain a specific definition of 'CEO' or 'executive officer', it is clear that a public entity Head is intended to capture the person who performs the functions of a CEO, rather than one who simply holds that job title. The Macquarie Dictionary defines 'CEO' as the highest-ranking executive or administrator in an organisation. In some organisations, the title of CEO is used even though that role is not necessarily the head of the organisation. For example, within the department, there are multiple 'CEOs' that ultimately report to the Secretary as the actual public service body Head under the PA Act for the department.

As noted in your letter, under section 10(3)(b) of the VECRA Act, the ECR 'is responsible for undertaking the strategic leadership' of VECRA, which is an essential characteristic of a chief executive officer. The ECR bears ultimate strategic responsibility for VECRA, under section 10(3)(b), aligning with the definition of a CEO as the highest-ranking executive or administrator. Importantly, the CEO position is an executive role established administratively by VECRA as part of its corporate structure as opposed to being a statutory office under the VECRA's governing legislation. It is open to VECRA to decide whether to create, maintain or abolish that position from time to time. The existence of the CEO position does not change or affect the

true character of the ECR's roles and responsibilities as enshrined by statute, which in my view satisfies the definition of 'public entity Head' in the PA Act.

Public service body Head

In the event the Committee remains of the view that the ECR may not be characterised as a public entity Head under the PA Act, the ECR is also treated as a 'public service body Head' under the PA Act.

As you have highlighted, section 16(1)(kh) of the PA Act provides that, 'despite anything to the contrary' in the PA Act, the ECR has 'all the functions of a public service body Head in relation to employees' of VECRA. While 'having all the functions' of a public service body Head is slightly different language to that used in section 46ZC(2)(i) of the CWS Act, which refers to an ISE who 'is' a public sector body Head, my view is that there is a clear intention that the ECR should be captured by section 46ZC(2)(i).

Section 35(a) of the *Interpretation of Legislation Act 1984* requires that, in interpreting a provision of an Act, an interpretation that promotes the purpose of that Act is to be preferred over one that would not. Further, the text of a provision must be interpreted in light of the context and purpose of the legislation as a whole.⁴ It would undermine the purpose of this section to take a literal approach to the use of 'is' and exclude the ECR from the meaning of 'public sector body Head', as this would unnecessarily and unintentionally limit the ability of the ECR to establish a clear and robust authorising framework to enable the proper and efficient discharge of its powers, functions and duties as an ISE. A purposive approach to interpreting this provision, which recognises the PA Act treats the ECR with respect to the VECRA as if it 'is' its public service body Head and, therefore, its public sector body Head, would better promote the objects of the CWS Act to promote child safety and wellbeing and to ensure information is shared by duly authorised individuals who have the skills, knowledge and experience to make decisions under the CISS.

Practical implications and further considerations

If the Committee forms a different opinion as to the proper construction of the relevant enabling provisions in the CWS Act, I request the Committee consider the following additional matters in deciding the appropriate course of action:

1. The VECRA, as a body corporate, can only act through duly authorised individuals and, on this basis, VECRA would need to establish a framework to determine who is permitted operationally to exercise its powers as an ISE (which, in the absence of an express power of delegation in the Principal Regulations, it may seek to do by way of exercising its express power of delegation in the VECRA Act or through establishing authorisations or *non-statutory* delegations). That is, VECRA will still have a number of options available to it to enable employees and other authorised individuals to exercise its powers, duties and functions under CISS, even if regulation 5A(2A) is inoperative.
2. I have asked the department to explore amendments to the Principal Regulations to remove any doubt that may be associated with regulation 5A(2A), such as by prescribing

⁴ *Project Blue Sky v Australian Broadcast Authority* (1998) 194 CLR 355.

the ECR directly as an ISE with a corresponding delegation power under section 46ZC(2)(i) based on the ECR's status as a public sector body Head under the PA Act.

I thank the Committee for considering the Regulations and raising this matter with me. I trust that this information will be of assistance to the Committee. Should you wish to discuss this matter, please contact Burton Reynolds, Director, Commercial and Legislation at the Department of Education on 03 7022 0952 or burton.reynolds@education.vic.gov.au.

Yours sincerely



Hon Lizzie Blandthorn MP

Deputy Leader of the Government in the Legislative Council

Minister for Children

Minister for Disability



Scrutiny of Acts and Regulations Committee

31 March 2026

The Hon. Lily D'Ambrosio MP
Minister for Energy and Resources
8 Nicholson Street
East Melbourne
Victoria, 3002

By email: lily.dambrosio@parliament.vic.gov.au;

Cc: dallele.mikhael@deeca.vic.gov.au;
florine.baerlocher@deeca.vic.gov.au

Dear Minister

SR No. 145 – Gas Safety (Gas Installation) Amendment Regulations 2025

The Regulations Review Subcommittee (**Subcommittee**) of the Scrutiny of Acts and Regulations Committee considered the above statutory rule at a meeting on 25 March 2026.

The Subcommittee approved the statutory rule. However, the Subcommittee draws your attention to a technical scrutiny matter of compliance with the consultation requirements under section 6 of the *Subordinate Legislation Act 1994 (SLA)* and Guidelines.¹

Section 6(1)(c) requires that where the Guidelines require consultation, a certificate of consultation in accordance with the Guidelines is issued for that statutory rule. The Guidelines state 'a consultation certificate should provide details of who was consulted'.² The Subcommittee's view is that, as far as practicable, all stakeholders with whom consultation occurred should be recorded in the certificate.

In this instance the consultation certificate records consultation under section 6(1)(b) occurred with '16 stakeholder groups including the Master Plumbers Association, other unions, businesses, employer and trade associations', but does not include details of these stakeholders other than the Master Plumbers

¹ *Subordinate Legislation Act 1994 Guidelines* (Department of Premier and Cabinet, September 2023).

² *Ibid* p. 24.

Association. These details should have been included in the consultation certificate.

While the operation or effect of a statutory rule is not affected by a failure to comply with section 6(1)(c), the provision of sufficient detail in the consultation certificate is important to demonstrating compliance with the requirement in section 6(1)(b) that consultation in accordance with the Guidelines occurs with any sector of the public on which a significant economic or social burden may be imposed by the statutory rule.

The Subcommittee would be most appreciative if you could please provide details of the other stakeholders who were consulted alongside the Masters Plumbing Association in the preparation of the statutory rule.

Response

The Subcommittee would appreciate your response by Friday, 29 May 2026.

Thank you for your assistance with this matter. Please do not hesitate to contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au should you require further information.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee



Hon Lily D'Ambrosio MP

Minister for Climate Action
Minister for Energy and Resources
Minister for the State Electricity Commission

8 Nicholson Street
East Melbourne, Victoria 3002
Telephone: 03 9637 9504

MIN-260400109

Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
SARC@parliament.vic.gov.au

Dear Gary Maas MP

Thank you for your correspondence regarding SR No. 145 - Gas Safety (Gas Installation) Amendment Regulations 2025.

I note the Regulation Review Subcommittee (Subcommittee) of the Scrutiny of Acts and Regulations Committee comments concerning the level of detail provided in the consultation certificate. I thank the Subcommittee for raising this matter. I acknowledge the importance of clearly demonstrating compliance with the consultation requirements under section 6(1)(b) of the *Subordinate Legislation Act 1994* and the Guidelines.

Consultation on the development of the statutory rule was undertaken with the following stakeholders:

Unions	1. Victoria Trades Hall Council 2. Plumbing and Pipe Trades Employees Union 3. Australian Council of Trade Unions
Community, consumers, and small businesses	4. Beachside Plumbing 5. Detector Inspector 6. Gas Appliance Manufacturers Association of Australia 7. GASTEK 8. Plumbing Industry Climate Action Centre
Employer trade associations and other businesses	9. Australian Industry Group 10. Chromagen 11. Housing Industry Association 12. Master Builders Association Victoria 13. Master Plumbers Association 14. Rheem
Regulators	15. Victorian Building Authority 16. Energy Safe Victoria



Official

The consultation undertaken was appropriate and proportionate to the nature and impact of the statutory rule and satisfied the requirements of section 6(1)(b) of the *Subordinate Legislation Act 1994*.

I trust this information assists the Subcommittee in its consideration of the statutory rule.

If you have further questions, please contact Katie Brown, Executive Director, Electrification, Efficiency and Safety, Department of Energy, Environment and Climate Action at katie.brown@deeca.vic.gov.au.

Yours sincerely



Hon Lily D'Ambrosio MP
Minister for Climate Action
Minister for Energy and Resources
Minister for the State Electricity Commission

04 / 05 / 2026



Scrutiny of Acts and Regulations Committee

31 March 2026

The Hon. Gabrielle Williams MP
Minister for Public and Active Transport
PO Box 2392
Melbourne
Victoria, 3001

By email: receptionminwilliams@transport.vic.gov.au;

Cc: alana.chinn@transport.vic.gov.au

Dear Minister

SR No. 147 – Transport (Compliance and Miscellaneous) (Conduct on Public Transport) Regulations 2025

The Regulations Review Subcommittee (**Subcommittee**) of the Scrutiny of Acts and Regulations Committee considered the above statutory rule at a meeting on 25 March 2026.

The Subcommittee has deferred its final consideration of the statutory rule in order to seek additional information from you on the substantial or material effect of a failure to comply with section 11 of the *Subordinate Legislation Act 1994* (**SLA**).

Pursuant to section 21(1)(j) of the SLA, the Scrutiny Committee may report to the Parliament if it considers a statutory rule has been prepared in contravention of any provision of the SLA and the contravention is of a substantial or material nature.

Where a Regulatory Impact Statement (**RIS**) is prepared in relation to a statutory rule, section 11(1) of the SLA requires the responsible Minister to ensure a notice in accordance with section 11(2) is published in the Government Gazette and on the Public Notices website. Section 11(2) states the notice must provide ‘not less than 28 days from the publication of the notice’ for public comments and submissions.¹

¹ However, allowing at least 60 days for consultation is considered best practice: *Subordinate Legislation Act 1994 Guidelines* (Department of Premier and Cabinet, September 2023) p. 46, [188].

In this instance, a notice inviting public comments and submissions no later than 18 August 2025 was published in the Government Gazette and on the Public Notices website on 22 July 2025.²

Section 44(1) of the *Interpretation of Legislation Act 1984* provides: 'Where in an Act or subordinate instrument a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall not be included in the period.' Applying this method of interpreting time, the period specified in the notice for public comments and submissions (from 22 July 2025 to 18 August 2025) was only 27 days, rather than the minimum 28 days required under section 11(2) of the SLA.

The Subcommittee requests information on the material effect, if any, of this error, including:

- **whether any public comments or submissions were able to be, and were, received after 18 August 2025;**
- **if so, whether these comments or submissions raised issues relevant to the proposed Regulations or RIS which were not raised in other comments or submissions received on or before 18 August 2025;**
- **if so, whether such issues were considered by you prior to the making of the Regulations.**

Response

The Subcommittee would appreciate your response no later than Monday, 20 April 2026 in order that it might consider the statutory rule again at its next meeting.

Thank you for your assistance with this matter. Please do not hesitate to contact the Subcommittee's secretariat at SARC@parliament.vic.gov.au should you require further information.

Yours sincerely,



Gary Maas, MP
Chair
Scrutiny of Acts and Regulations Committee

² See *Government Gazette: Special: No. 375, 22 July 2025* <<https://www.gazette.vic.gov.au/gazette/Gazettes2025/GG2025S375.pdf>>; Victorian Government, *Public Notices* (website) <<https://www.vic.gov.au/notice-preparation-regulatory-impact-statement-conduct-public-transport-regulations-2025>>.



Gabrielle Williams MP

Minister for Transport Infrastructure
Minister for Public and Active Transport

PO Box 2392
Melbourne, Victoria 3001 Australia

Ref: CMIN-1-26-2304

Mr Gary Maas MP
Chair
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002
sarc@parliament.vic.gov.au

Dear Mr Maas,

Thank you for your letter regarding the Transport (Compliance and Miscellaneous) (Conduct on Public Transport) Regulations 2025 (the Regulations). You have asked for additional information in relation to the material effect of a failure to comply with section 11 of the *Subordinate Legislation Act 1994*.

Public consultation on the Regulations attracted a high level of stakeholder engagement. The Department of Transport and Planning received a total of 3077 responses through the online survey, as well as 261 written submissions in relation to the Regulatory Impact Statement (RIS) and the consultation draft of the Regulations. Notwithstanding the formal consultation period, submissions continued to be accepted after 18 August 2025. Stakeholders were able to provide feedback via a dedicated departmental email inbox, which the Department continued to monitor and from which submissions received up to and including 21 August 2025 were included and considered.

Consistent with the high level of engagement reflected in the volume of responses received, the public consultation period indicated that a clear number of respondents opposed the proposed broad restriction on the carriage of electric transport devices (ETDs) on public transport. Submissions raised concerns regarding the proportionality and practical impacts of the proposed restriction, including its effect on lawful use and active transport options. Submissions received after 18 August 2025 largely reflected matters that had been raised during the formal consultation period and did not raise new matters of significance relevant to the proposed Regulations or the RIS.

The Department confirms that the issues raised through public consultation were considered prior to the making of the Regulations. These included matters relating to battery safety and standards for ETDs, including submissions that suggested restricting or prohibiting the carriage of non-compliant devices, as well as feedback from users of compliant devices who expected continued access to public transport services. The Department also considered the potential impacts on young people, the elderly or those with a physical condition or disability, people from vulnerable communities, and the role of ETDs in supporting first- and last-mile



connectivity. These issues were considered alongside the objectives of the regulatory framework and the evidence and analysis set out in the RIS, prior to the Regulations being finalised.

I hope this information is of use. Thank you for raising this matter.

Sincerely,



Gabrielle Williams MP
Minister for Transport Infrastructure
Minister for Public and Active Transport
Minister for Women and Girls

28 / 4 / 2026

Appendix D

Committee Practice Note

EXEMPTIONS

- **Dating certificates.** The Subcommittee has occasionally been presented with undated exemption certificates. The Subcommittee expects all certificates to be dated.
- **Reasons for exemption.** The Subcommittee has occasionally received regulations or legislative instruments exempted under section 8 with certificates of exemption which fail to adequately explain the reasons for granting the exemption or with reasons for granting the exemption contained in the Explanatory Memorandum. It should be noted that it is a requirement of section 8(3) of the Act that certificates of exemption 'specify the reasons for the exemption'. The Subcommittee expects all exemption certificates to contain adequate explanations of the reasons for granting the exemptions.
- **Extension of Regulations for periods up to 12 months.** Regulations expire 10 years after they have been made. The Subcommittee has been presented with a number of regulations made under sections 8(1)(e)(iii) and 5A(1) extending regulations due to expire for periods up to 12 months. Before an extension of time can be granted, the Minister must certify that due to 'special circumstances' there is insufficient time available to comply with the formal regulation-making requirements of the Act. The Subcommittee expects details of the 'special circumstances' to be contained in the section 5A(1) certificate itself as required by the Act.
- **Using appropriate exemption categories.** Departmental and agency officers need to be careful when determining which category to use when exempting regulations or legislative instruments from the Regulation Impact Statement process.
- **Typographical Errors.** Department and agency officers need to be careful when preparing certificates to ensure that they do not contain typographical errors.

EXTENSION OF TIME

The Subcommittee is often presented with regulations which require an extension of time for a period of twelve months. Such regulations are accompanied by a section 5A(1) certificate of special circumstances which outlines the particular reasons for the extension. It is difficult for the Subcommittee to know whether any particular regulation has been accompanied by a previous extension of time certificate. Ongoing extensions of time in respect of a particular regulation are clearly matters upon which the Subcommittee would make adverse comment.

The Subcommittee expects that in the event that a second or subsequent extensions of time are sought for a regulation (in addition to an initial request), the Minister inform it that this is the case.

EXPLANATORY MEMORANDA

One copy of the explanatory memorandum for each statutory rule or legislative instrument must be provided to the Subcommittee. The Subcommittee expects explanatory memoranda to comply with page 43 of the *Premier's Guidelines*. As stated in paragraph 196, an explanatory memorandum should be brief and generally contain:

- a brief outline of the statutory rule;
- an explanation of the changes effected by each provision;
- a statement of the reasons for making the statutory rule;
- where applicable, the reasons no RIS was prepared;

- a statement as to whether consultation has taken place, and if it has not taken place, an explanation as to why a decision was made not to consult; and
- where a statutory rule amends fees in an existing statutory rule, a table comparing the proposed and existing fees (including the percentage increase or decrease for each fee).

FEE INCREASES

An exemption certificate may be issued under sections 8(1)(d) or 12F(1)(c) of the Act on the basis that the proposed statutory rule or legislative instrument only increases fees in respect of a financial year by an amount not exceeding the annual rate approved by the Treasurer in relation to the State Budget. For each financial year a percentage increase is set by the Treasurer. The Treasurer notifies the Subcommittee in writing of the relevant percentage increase.

A regulation may increase a number of fees, with some individual fee increases falling outside the rate set by the Treasurer. However when the total average of fee increases for that regulation is calculated, it must fall within the rate fixed by the Treasurer. This practice is referred to as the 'basket approach'. Page 28, paragraph 124 of the *Premier's Guidelines* provides that:

A statutory rule can set a package of fees, often known as a 'basket approach'. An example is the Prevention of Cruelty to Animals Regulations 2020 (discussed above) which set about 40 fees for approvals for therapeutic electronic devices, approvals for the use of traps and fees related to rodeos. Where there is to be an increase in one or more individual fees within a basket of fees exceeding the Treasurer's annual rate, but the increase to the basket of fees as a whole is within that rate, then this exemption can apply.

Sections 8(2) and 12F(2) of the Act validate the rounding up of fee increases to the nearest whole dollar. Sometimes the total average increase may be greater than that set by the Treasurer but may be validated on the basis that there has been rounding up to the nearest whole dollar. The Subcommittee may only approve such increases where the extra amount can be considered insignificant when compared to the whole fee. Where the amount is significant in proportion to the whole fee, the Subcommittee may request the Minister to reconsider the increase.

The preparation of a table showing new and old fees and including an indication of the percentage increase or decrease is of great assistance to the Subcommittee. The Subcommittee provides the following as an example:

Description	Current Fee	Proposed Fee	% Increase
Application for	\$100.00	\$105.00	5.0
Application for ...	\$320.00	\$325.00	1.6

CONSULTATION CERTIFICATES

Section 6 and 12C of the Act states that the responsible Minister must ensure that where the Premier's Guidelines require consultation:

- (a) there is consultation in accordance with the guidelines with any other Minister whose area of responsibility may be affected by a proposed statutory rule or legislative instrument so as to avoid any overlap or conflict with any other existing or proposed statutory rule, legislative instrument or other legislation;
- (b) there is consultation in accordance with the guidelines with any sector of the public on which a significant economic or social burden may be imposed by a proposed statutory rule or legislative instrument so that the need for, and the scope of, the proposed statutory rule or legislative instrument is considered;
- (c) a certificate of consultation in accordance with the guidelines is issued for the proposed statutory rule or legislative instrument.

The Premier's Guidelines provide that, where a legislative instrument has been exempted under section 12F(1)(a) of the Act, initial consultation should be undertaken to enable the responsible Minister to obtain sufficient evidence to form a view as to whether the proposed statutory rule imposes a significant burden.

Departments should ensure that consultation certificates are issued under section 6(b) or 12C(b) if required under the Premier's Guidelines.

PROVISION OF DOCUMENTS TO THE COMMITTEE

Pursuant to sections 15A and 16C of the Act, the responsible Minister is required to send the Committee all required documentation within 10 working days after the regulation or legislative instrument has been made. The Subcommittee has a limited time within which to review regulations. The Subcommittee notes in most cases the required documentation is provided to the Committee within 10 working days after the statutory rule or legislative instrument has been made. However, there has been a recent increase in documentation being provided outside the statutory timeframe.

If the Committee wants to move for disallowance of a regulation it must do so within 18 sitting days of that regulation or legislative instrument being tabled in Parliament. Prior to the Committee moving a motion for disallowance, the Subcommittee corresponds and negotiates with the particular Minister. Accordingly, the Subcommittee needs sufficient time for this process to take place.

Additionally, the Committee prefers to receive all documentation electronically to sarc@parliament.vic.gov.au. However, in the event of a large number of documents the Committee would appreciate hard copies sent c/o SARC Secretariat, Parliament House, Spring Street, East Melbourne VIC 3002.

Appendix E

Committee Checklists

The checklists for documents required by the Committee were published in November 2020 and have been reproduced below.



PARLIAMENT OF VICTORIA

Scrutiny of Acts and Regulations Committee

Statutory Rules

Regulatory Impact Statement Checklist

Section 7 – Regulatory Impact Statement

- ☐ Explanatory memorandum
- ☐ Recommendation from the Minister to make Regulations (Letter)
- ☐ Section 6 consultation certificate
- ☐ Section 6A Infringements offence consultation certificate (*if relevant*)
- ☐ Section 10(3) letter of independent assessment
- ☐ Section 10(4) compliance certificate
- ☐ Section 12A human rights certificate
- ☐ Section 13 certificate from the Chief Parliamentary Counsel
- ☐ Regulatory Impact Statement (RIS)
- ☐ Copy of all submissions
- ☐ Summary of all submissions
- ☐ Copy of letters sent to those who made submissions
- ☐ Copy of draft regulations (*Optional*)
- ☐ Copy of RIS newspaper advertisement – Invitation for public comment
- ☐ Copy of Government Gazette advertisement – Invitation for public comment
- ☐ Copy of RIS newspaper advertisement – Notice of decision
- ☐ Copy of RIS Government Gazette advertisement – Notice of decision

Please forward all relevant documents to:

Scrutiny of Acts and Regulations Committee

Parliament House, Spring Street

Melbourne VIC 3000



PARLIAMENT OF VICTORIA

Scrutiny of Acts and Regulations Committee

Statutory Rules Exemptions Checklist

Section 8(1)(a) – Would not impose Significant Economic or Social Burden

- ☐ Explanatory Memorandum
- ☐ Recommendation from the Minister to the Governor in Council to make the Regulations
- ☐ Section 6 Consultation Certificate
- ☐ Section 6A Infringements offence consultation certificate (*if relevant*)
- ☐ Section 8 Exemption Certificate
- ☐ Section 12A Human Rights Certificate
- ☐ Section 13 Certificate from the Chief Parliamentary Counsel
- ☐ Copy of draft regulations (*Optional*)

Section 8(1)(b) – Is a Rule which relates only to a Court or Tribunal

- ☐ Explanatory Memorandum
- ☐ Section 6 Consultation Certificate (*Optional*)
- ☐ Section 8 Exemption Certificate
- ☐ Section 12A(3) Human Rights Exemption Certificate

Section 8(1)(c) – Is of a Fundamentally Declaratory or Machinery Nature

- ☐ Explanatory Memorandum
- ☐ Recommendation from the Minister to the Governor in Council to make the Regulations
- ☐ Section 6A Infringements offence consultation certificate (*if relevant*)
- ☐ Section 8 Exemption Certificate
- ☐ Section 12A Human Rights Certificate
- ☐ Section 13 Certificate from the Chief Parliamentary Counsel
- ☐ Copy of draft regulations (*Optional*)

Section 8(1)(d) – Only increases Fees in respect of a Financial Year by an amount not exceeding the Annual Rate Approved by the Treasurer

- ☐ Explanatory Memorandum
- ☐ Recommendation from the Minister to the Governor in Council to make the Regulations
- ☐ Section 6A Infringements offence consultation certificate (*if relevant*)
- ☐ Section 8 Exemption Certificate
- ☐ Section 12A Human Rights Certificate
- ☐ Section 13 Certificate from the Chief Parliamentary Counsel
- ☐ Copy of draft regulations (*Optional*)

Note: Section 13 certificates are not required for court rules or for statutory rules which are not made by Governor-in-Council.

Please forward all relevant documents to:
Scrutiny of Acts and Regulations Committee
Parliament House, Spring Street
Melbourne VIC 3000

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



PARLIAMENT OF VICTORIA

Scrutiny of Acts and Regulations Committee

Statutory Rules

Exemptions Checklist

Section 8(1)(e)(i) and (ii) – Prescribes under section 4(1)(a) or 4(1)(b) an instrument or class of instrument to be a statutory rule or to be exempt

- ☐ Explanatory Memorandum
- ☐ Recommendation from the Minister to the Governor in Council to make the Regulations
- ☐ Section 8 Exemption Certificate
- ☐ Section 12A(3) Human Rights Exemption Certificate
- ☐ Section 13 certificate from the Chief Parliamentary Counsel
- ☐ Copy of draft regulations (*Optional*)

Section 8(1)(e)(iii) – Is an extension regulation

- ☐ Explanatory Memorandum
- ☐ Recommendation from the Minister to the Governor in Council to make the Regulations
- ☐ Section 5A(1) Minister's extension certificate
- ☐ Section 5A(3) Premier's extension certificate
- ☐ Section 8 Exemption Certificate
- ☐ Section 12A(3) Human Rights Exemption Certificate
- ☐ Section 13 Certificate from the Chief Parliamentary Counsel
- ☐ Copy of draft regulations (*Optional*)

Section 8(1)(e)(iv), (v) and (vi) – Prescribes under section 4A(1)(a), 4A(1)(b) or 4A(1)(c) an instrument to be a legislative instrument or to be exempt

- ☐ Explanatory Memorandum
- ☐ Recommendation from the Minister to the Governor in Council to make the Regulations
- ☐ Section 8 Exemption Certificate
- ☐ Section 12A(3) Human Rights Exemption Certificate
- ☐ Section 13 Certificate from the Chief Parliamentary Counsel
- ☐ Copy of draft regulations (*Optional*)

Note: Section 13 certificates are not required for court rules or for statutory rules which are not made by Governor-in-Council.

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PARLIAMENT OF VICTORIA

Scrutiny of Acts and Regulations Committee

Statutory Rules

Exemptions Checklist

Section 8(1)(f) – Is required under a national uniform legislation scheme and an assessment of costs and benefits has been undertaken under that scheme

- ☐ Explanatory Memorandum
- ☐ Recommendation from the Minister to the Governor in Council to make the Regulations
- ☐ Section 6 Consultation Certificate
- ☐ Section 6A Infringements offence consultation certificate (*if relevant*)
- ☐ Section 8 Exemption Certificate
- ☐ Section 12A Human Rights Certificate
- ☐ Section 13 Certificate from the Chief Parliamentary Counsel
- ☐ Copy of draft regulations (*Optional*)

Section 8(1)(g) – Deals with administration or procedures within or a between Departments or declared authorities within the meaning of the *Public Administration Act 2004* or Departments within the meaning of the *Parliamentary Administration Act 2005*

- ☐ Explanatory Memorandum
- ☐ Recommendation from the Minister to the Governor in Council to make the Regulations
- ☐ Section 6 Consultation Certificate
- ☐ Section 6A Infringements offence consultation certificate (*if relevant*)
- ☐ Section 8 Exemption Certificate
- ☐ Section 12A Human Rights Certificate
- ☐ Section 13 Certificate from the Chief Parliamentary Counsel
- ☐ Copy of draft regulations (*Optional*)

Section 8(1)(h) – Notice of the proposed statutory rule would render the proposed statutory rule ineffective or would unfairly advantage or disadvantage any person likely to be affected by the proposed statutory rule

- ☐ Explanatory Memorandum
- ☐ Recommendation from the Minister to the Governor in Council to make the Regulations
- ☐ Section 6 Consultation Certificate (*Optional*)
- ☐ Section 6A Infringements offence consultation certificate (*if relevant*)
- ☐ Section 8 Exemption Certificate
- ☐ Section 12A Human Rights Certificate
- ☐ Section 13 Certificate from the Chief Parliamentary Counsel
- ☐ Copy of draft regulations (*Optional*)

Note: Section 13 certificates are not required for court rules or for statutory rules which are not made by Governor-in-Council.

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PARLIAMENT OF VICTORIA

Scrutiny of Acts and Regulations Committee

Statutory Rules

Exemptions Checklist

Section 9 – The Premier may issue a certificate in writing that, in the Premier’s opinion, in the special circumstances of the case the public interest requires that the proposed statutory rule be made without complying with Section 7(1)

- ☐ Explanatory Memorandum
- ☐ Recommendation from the Minister to the Governor in Council to make the Regulations
- ☐ Section 6 Consultation Certificate (*Optional*)
- ☐ Section 6A Infringements offence consultation certificate (*if relevant*)
- ☐ Section 9 Exemption Certificate
- ☐ Section 12A Human Rights Certificate
- ☐ Section 13 Certificate from the Chief Parliamentary Counsel
- ☐ Copy of draft regulations (*Optional*)

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Please forward all relevant documents to:

**Scrutiny of Acts and Regulations Committee
Parliament House, Spring Street
Melbourne VIC 3000**

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



PARLIAMENT OF VICTORIA

Scrutiny of Acts and Regulations Committee

Legislative Instruments

Regulatory Impact Statement Checklist

Section 12D – Regulatory Impact Statement

- ☐ Legislative instrument
- ☐ Explanatory memorandum
- ☐ Section 12C consultation certificate
- ☐ Section 12D human rights certificate
- ☐ Section 12H(3) letter of independent assessment
- ☐ Section 12H(4) compliance certificate
- ☐ Regulatory Impact Statement (RIS)
- ☐ Copy of all submissions
- ☐ Summary of all submissions
- ☐ Copy of letters sent to those who made submissions
- ☐ Copy of RIS newspaper advertisement – Invitation for public comment
- ☐ Copy of Government Gazette advertisement – Invitation for public comment
- ☐ Copy of RIS newspaper advertisement – Notice of decision
- ☐ Copy of RIS Government Gazette advertisement – Notice of decision

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Scrutiny of Acts and Regulations Committee

Parliament House, Spring Street

Melbourne VIC 3000



PARLIAMENT OF VICTORIA

Scrutiny of Acts and Regulations Committee

Legislative Instruments

Exemptions Checklist

Section 12F(1)(a) – Would not impose a significant economic or social burden

- ☐ Legislative instrument
- ☐ Explanatory Memorandum
- ☐ Section 12C Consultation Certificate
- ☐ Section 12D Human Rights Certificate
- ☐ Section 12F Exemption Certificate

Section 12F(1)(b) – Is of a fundamentally declaratory or machinery nature

- ☐ Legislative instrument
- ☐ Explanatory Memorandum
- ☐ Section 12D Human Rights Certificate
- ☐ Section 12F Exemption Certificate

Section 12F(1)(c) – Only increases fees in respect of a financial year by an amount not exceeding the annual rate approved by the Treasurer

- ☐ Legislative instrument
- ☐ Explanatory Memorandum
- ☐ Section 12D Human Rights Certificate
- ☐ Section 12F Exemption Certificate

Section 12F(1)(d) – Only imposes a burden on a public sector body

- ☐ Legislative instrument
- ☐ Explanatory Memorandum
- ☐ Section 12C Consultation Certificate
- ☐ Section 12D Human Rights Certificate
- ☐ Section 12F Exemption Certificate

Section 12F(1)(e) – An order made under the *Administrative Arrangements Act 1983*

- ☐ Legislative instrument
- ☐ Explanatory Memorandum
- ☐ Section 12D Human Rights Certificate
- ☐ Section 12F Exemption Certificate

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Melbourne VIC 3000

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PARLIAMENT OF VICTORIA

Scrutiny of Acts and Regulations Committee

Legislative Instruments

Exemptions Checklist

Section 12F(1)(f) – Is required under a national uniform legislation scheme and an assessment of costs and benefits has been undertaken under that scheme

- ☐ Legislative instrument
- ☐ Explanatory Memorandum
- ☐ Section 12C Consultation Certificate
- ☐ Section 12D Human Rights Certificate
- ☐ Section 12F Exemption Certificate

Section 12F(1)(g) – Is required to undergo, or has undergone, an analytical and consultation process which, in the opinion of the responsible Minister, is equivalent to the process for a regulatory impact statement required until section 12E

- ☐ Legislative instrument
- ☐ Explanatory Memorandum
- ☐ Section 12C Consultation Certificate
- ☐ Section 12D Human Rights Certificate
- ☐ Section 12F Exemption Certificate

Section 12F(1)(h) – Is not of more than 12 months duration and is necessary to respond to: (i) a public emergency; (ii) an urgent public health issue or an urgent public safety issue; or (iii) likely or actual significant damage to the environment, resource sustainability or the economy

- ☐ Legislative instrument
- ☐ Explanatory Memorandum
- ☐ Section 12C Consultation Certificate (*Optional*)
- ☐ Section 12D(3) Human Rights Exemption Certificate
- ☐ Section 12F Exemption Certificate

Section 12F(1)(i) – Deals with administration or procedures within or a between Departments or declared authorities within the meaning of the *Public Administration Act 2004* or Departments within the meaning of the *Parliamentary Administration Act 2005*

- ☐ Legislative instrument
- ☐ Explanatory Memorandum
- ☐ Section 12C Consultation Certificate (*Optional*)
- ☐ Section 12D Human Rights Certificate
- ☐ Section 12F Exemption Certificate

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PARLIAMENT OF VICTORIA

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Legislative Instruments

Exemptions Checklist

Section 12F(1)(j) – Notice of the proposed legislative instrument would render the proposed legislative instrument ineffective or would unfairly advantage or disadvantage any person likely to be affected by the proposed legislative instrument

- ☐ Legislative instrument
- ☐ Explanatory Memorandum
- ☐ Section 12C Consultation Certificate (*Optional*)
- ☐ Section 12D Human Rights Certificate
- ☐ Section 12F Exemption Certificate

Section 12F(1)(k) – Is made under a statutory rule and the regulatory impact statement for that statutory rule has adequately considered the impact of the proposed legislative instrument

- ☐ Legislative instrument
- ☐ Explanatory Memorandum
- ☐ Section 12C Consultation Certificate (*Optional*)
- ☐ Section 12D Human Rights Certificate
- ☐ Section 12F Exemption Certificate

Section 12G – The Premier may issue a certificate in writing that, in the Premier's opinion, in the special circumstances of the case the public interest requires that the proposed statutory rule be made without complying with Section 7(1)

- ☐ Legislative instrument
- ☐ Explanatory Memorandum
- ☐ Reasons given by the responsible Minister to the Premier as to why the public interest requires that the legislative instrument be made without preparing a RIS
- ☐ Section 12C Consultation Certificate (*Optional*)
- ☐ Section 12D Human Rights Certificate
- ☐ Section 12G Exemption Certificate

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