

PARLIAMENT OF VICTORIA

**Advancing the Treaty Process with Aboriginal
Victorians Bill 2018**

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PARLIAMENT OF VICTORIA

Introduced in the Assembly

Advancing the Treaty Process with Aboriginal Victorians Bill 2018

A Bill for an Act to advance the treaty process between Aboriginal Victorians and the State by providing for the recognition of the Aboriginal Representative Body, enshrining the guiding principles for the treaty process and requiring the Aboriginal Representative Body and the State to work together to establish elements necessary to support future treaty negotiations and for other purposes.

Preamble

The State of Victoria acknowledges Victorian traditional owners as the first peoples of what is now known as Victoria. From time immemorial Victorian traditional owners have practised their laws, customs and languages, and nurtured Country through their spiritual, cultural, material and economic connections to land, water and resources. Through the strength, resilience and pride of Victorian traditional owners, their cultures, communities and economies endure and continue to grow and thrive today. Aboriginal Victorians are an intrinsic and valued part of Victoria's past, present and future.

The State acknowledges the diversity of Aboriginal Victorians, their communities and cultures, and the intrinsic connection of traditional owners to Country.

Aboriginal Victorians are Victorian traditional owners, clans, family groups and all other people of Aboriginal and Torres Strait Islander descent who are living in Victoria.

Victorian traditional owners maintain that their sovereignty has never been ceded, and Aboriginal Victorians have long called for treaty. These calls have long gone unanswered. The time has now come to take the next step towards reconciliation and to advance Aboriginal self-determination. Aboriginal Victorians and the State are ready to talk treaty.

In recent times, Victorian traditional owners and the State have worked together to ensure traditional owners play a lead role in managing and protecting land, natural resources and cultural heritage. To date, consultations with Aboriginal Victorians have emphasised the leading role and authority of traditional owners when it comes to treaty. Through this historic Act, all Aboriginal Victorians and the State are building on this and other good work and embarking on a renewed and mature relationship. This relationship is one of equal partnership, founded on mutual respect and a commitment to justice and equality for Aboriginal Victorians, and to promoting reconciliation between Aboriginal and non-Aboriginal Victorians.

The State will work to strengthen this relationship as it walks alongside Aboriginal Victorians on the pathway to treaty. This Act is an important first step on the journey. It is an expression of the State's commitment to lay the groundwork for future treaty negotiations in Victoria. To translate this commitment into outcomes, it is essential that Aboriginal Victorians and the State work in partnership at all stages of the journey.

Accordingly, this Act requires the State and a future Aboriginal Representative Body, as the voice chosen by Aboriginal Victorians, to work together in partnership to establish the entities, rules and resource base necessary to facilitate future treaty negotiations. The State and future Aboriginal Representative Body will at all times work collaboratively and always in good faith to achieve their joint vision for a state that celebrates Aboriginal Victorians in all areas of life.

The contents of a future treaty or treaties are yet unknown. A future treaty or treaties can help heal the wounds of the past, provide recognition for historic wrongs, address ongoing injustices, support reconciliation and promote the fundamental human rights of Aboriginal peoples, including the right to self-determination. A future treaty or treaties should enhance the existing laws of this State, acknowledge the importance of culture to Aboriginal identity, bring pride to all Victorians and have positive impacts for all of Victorian society. The State is committed to working with Aboriginal Victorians to negotiate a treaty or treaties on terms that will help tangibly improve their lives, and the lives of future generations.

The injustices of the past cannot be undone. The State is pursuing treaty because it is the right thing to do. Victoria needs a treaty or treaties that are reciprocal, and that through truth and justice provide far reaching benefits for Aboriginal Victorians. For traditional owners, Aboriginal children, elders, and stolen people; for a society that all Victorians can all be proud of; treaty will be for all Aboriginal Victorians. In the spirit of reconciliation, treaty will be for all Victorians.

With this Act Aboriginal Victorians and the State join hands to take the first step on the pathway towards treaty.

The Parliament of Victoria therefore enacts:

Part 1—Preliminary

1 Purposes

The purposes of this Act are—

- 5
- (a) to advance the process of treaty making between Aboriginal Victorians and the State; and
 - (b) to provide for a mechanism for the State to recognise the Aboriginal Representative Body as the sole representative of Aboriginal

Victorians for the purpose of establishing elements necessary to support future treaty negotiations; and

- 5 (c) to enshrine the guiding principles for the treaty process; and
- (d) to require the Aboriginal Representative Body and the State to work together to establish elements necessary to support future treaty negotiations.

10 **2 Commencement**

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- 15 (2) If a provision of this Act does not come into operation before 30 September 2018, it comes into operation on that day.

3 Definitions

In this Act—

20 ***Aboriginal Representative Body*** means the entity declared to be the Aboriginal Representative Body by the Minister—

- (a) by an Aboriginal Representative Body declaration; or
- (b) by a subsequent Aboriginal Representative Body declaration;

25 ***Aboriginal Representative Body declaration*** means a declaration by the Minister under section 10;

Aboriginal Treaty Working Group means—

- 30 (a) the Aboriginal Treaty Working Group recognised by the Minister in July 2016; or

- 5 (b) if that Aboriginal Treaty Working Group is no longer in existence, a body established by the Minister from time to time with objectives that correspond with—
- 10 (i) consulting with Aboriginal Victorians on options for establishing, or re-establishing, the Aboriginal Representative Body; and
- (ii) providing advice to Aboriginal Victorians and to the State for the purpose of advancing the treaty process;
- 15 ***dispute resolution process*** means the dispute resolution process established by agreement by the Aboriginal Representative Body and the State in accordance with Part 7;
- 20 ***guiding principles*** means the principles set out in Part 3;
- misconduct*** means conduct at a systemic level that brings the Aboriginal Representative Body into disrepute and that is not limited to the conduct of one person;
- 25 ***subsequent Aboriginal Representative Body declaration*** means a declaration by the Minister under section 17;
- 30 ***Treaty Authority*** means the Treaty Authority established by agreement by the Aboriginal Representative Body and the State in accordance with Part 4;
- 35 ***treaty negotiation framework*** means the treaty negotiation framework established by agreement by the Aboriginal Representative Body and the State in accordance with Part 5;
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Victorian Treaty Advancement Commissioner
means the office holder of that name
appointed by the Governor in Council under
section 88 of the **Constitution Act 1975**.

5 **4 Act does not affect certain rights**

(1) Nothing in this Act—

10 (a) derogates from any right or expectation
under the **Aboriginal Heritage Act 2006**,
the **Conservation, Forests and Lands
Act 1987** or the **Traditional Owner
Settlement Act 2010**; or

(b) affects any other right or expectation of
Aboriginal Victorians under any other Act
or law.

15 (2) The provisions of this Act must be interpreted in
a way that does not prejudice or reduce rights or
expectations of Aboriginal Victorians established
by or existing under any other Act or law.

5 Act does not affect native title rights and interests

20 (1) Nothing in this Act is intended to affect native
title rights and interests otherwise than in
accordance with the Native Title Act 1993 of
the Commonwealth.

25 (2) The provisions of this Act must be interpreted in
a way that does not prejudice native title rights
and interests to the extent that those rights and
interests are recognised and protected by the
Native Title Act 1993 of the Commonwealth.

30 (3) In this section, *affect* and *native title rights and
interests* have the same meanings as in the Native
Title Act 1993 of the Commonwealth.

6 Act does not affect certain entities

Nothing in this Act—

- 5
- (a) affects any statutory appointment existing for the purpose of representation of Aboriginal Victorians; or
 - (b) limits the recognition of any Aboriginal entity under any other Act or regulations or other law; or
 - 10 (c) limits the functions of any Aboriginal entity conferred or imposed by any other Act or regulations or other law.

7 Act binds the Crown

This Act binds the Crown—

- 15
- (a) in right of the State of Victoria; and
 - (b) to the extent that the legislative power of the Parliament permits, in all its other capacities.

Part 2—Aboriginal Representative Body

8 Recognition of Aboriginal Representative Body

- 5
- (1) The Aboriginal Representative Body is the sole representative of Aboriginal Victorians for the purpose of establishing elements necessary to support future treaty negotiations.
 - (2) The State must recognise the Aboriginal Representative Body as the sole representative of Aboriginal Victorians for that purpose.

9 Function of Aboriginal Representative Body

- 10
- (1) The function of the Aboriginal Representative Body is to represent the diversity of Aboriginal Victorians in working with the State to establish by agreement elements necessary to support future treaty negotiations.
 - (2) In carrying out the function specified in subsection (1), the Aboriginal Representative Body must—
 - 15 (a) ensure that cultures of Aboriginal Victorians are promoted and respected; and
 - 20 (b) work with Aboriginal Victorians.

10 Declaration of Aboriginal Representative Body

- 25
- (1) The Minister, on the recommendation of the Victorian Treaty Advancement Commissioner, must declare an entity to be the Aboriginal Representative Body.
 - (2) A declaration under subsection (1) must be made by notice published in the Government Gazette.

11 Recommendation for declaration of Aboriginal Representative Body

- 5
- (1) The Victorian Treaty Advancement Commissioner must make a recommendation to the Minister that an entity be declared to be the Aboriginal Representative Body.
- (2) A recommendation under subsection (1) must be in writing and include—
- 10
- (a) the name of the entity; and
- (b) how the entity is established; and
- (c) the legal structure of the entity.

12 Declaration to be made by certain date

- 15
- (1) If the Minister has not made an Aboriginal Representative Body declaration before 1 July 2019, the Minister must cause a plan for making a timely Aboriginal Representative Body declaration to be laid before each House of the Parliament on or before 15 sitting days after that day.
- 20
- (2) In preparing a plan under subsection (1), the Minister must—
- 25
- (a) for the purpose of working in partnership with Aboriginal Victorians, work together with the Victorian Treaty Advancement Commissioner and the Aboriginal Treaty Working Group; and
- 30
- (b) set out the actions to be taken by the Minister for the purposes of—
- (i) supporting Aboriginal Victorians in establishing the Aboriginal Representative Body; and
- (ii) making an Aboriginal Representative Body declaration.

13 Revocation of declaration

- 5
- (1) The Minister may only revoke an Aboriginal Representative Body declaration if—
- (a) the entity declared to be the Aboriginal Representative Body ceases to exist; or
- (b) the Aboriginal Representative Body informs the Minister in writing that it is unable to perform its function under this Act; or
- 10
- (c) the Minister is satisfied on reasonable grounds that—
- (i) the Aboriginal Representative Body has committed misconduct; and
- 15
- (ii) by reason of the misconduct, the Aboriginal Representative Body is unable to effectively perform its function under this Act; and
- 20
- (iii) the Aboriginal Representative Body has failed to take reasonable steps to remedy the misconduct and to take all necessary steps to prevent further misconduct that are reasonably available.
- 25
- (2) If the Minister revokes an Aboriginal Representative Body declaration, the Minister must give reasons for the decision in writing.
- 30
- (3) If the Minister revokes an Aboriginal Representative Body declaration, the Minister, in the instrument of revocation, must provide for any transitional arrangements in relation to the activities of the Aboriginal Representative Body that are required until the Minister makes a subsequent Aboriginal Representative Body declaration.

- (4) This section applies despite anything to the contrary in sections 27 and 41A of the **Interpretation of Legislation Act 1984**.

14 Process for determining if misconduct has occurred

- 5 (1) For the purpose of determining if the Aboriginal Representative Body has committed misconduct, the Minister must carry out the following process—
- 10 (a) give the Aboriginal Representative Body notice in writing of the Minister's concern that the Aboriginal Representative Body has committed misconduct;
- 15 (b) invite the Aboriginal Representative Body to meet with the Minister within a reasonable period of time to discuss—
- 20 (i) the alleged misconduct; and
- (ii) any actions taken by the Aboriginal Representative Body to remedy the alleged misconduct or prevent further misconduct;
- 25 (c) request in writing the Aboriginal Representative Body to provide reasons, within a reasonable period of time specified by the Minister, why the Aboriginal Representative Body declaration should not be revoked.
- 30 (2) The Minister must not revoke an Aboriginal Representative Body declaration under section 13(1)(c) unless the Minister has carried out the process specified in subsection (1).

15 Effect of revocation of declaration

- 5 (1) If the Minister revokes an Aboriginal Representative Body declaration under section 13(1)(b) or (c), the entity to which the revocation applies ceases to be the Aboriginal Representative Body for the purposes of this Act, without affecting the constitution or function of the entity for any other purpose.
- 10 (2) The revocation of an Aboriginal Representative Body declaration does not affect the following—
- (a) any agreements already in force between the Aboriginal Representative Body and the State;
 - 15 (b) any actions taken by the Aboriginal Representative Body, or by the Aboriginal Representative Body and the State acting together.
- 20 (3) Subsection (2) applies whether or not the Aboriginal Representative Body is declared to be the Aboriginal Representative Body—
- (a) by an Aboriginal Representative Body declaration; or
 - (b) by a subsequent Aboriginal Representative Body declaration.

25 **16 Minister to prepare plan for making subsequent Aboriginal Representative Body declaration**

- 30 (1) If the Minister revokes an Aboriginal Representative Body declaration, the Minister must cause a plan for making a timely subsequent Aboriginal Representative Body declaration to be laid before each House of the Parliament on or before 30 sitting days after the day the Minister revokes the declaration.

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- (2) In preparing a plan under subsection (1), the Minister must—
- (a) for the purpose of working in partnership with Aboriginal Victorians—
- (i) convene or cause to be convened a forum, or more than one forum, in relation to the Aboriginal Representative Body that is open to all Aboriginal Victorians; and
- (ii) work together with the Aboriginal Treaty Working Group; and
- (b) set out any other actions that must be taken by the Minister before making a subsequent Aboriginal Representative Body declaration.
- (3) If the Minister revokes an Aboriginal Representative Body declaration because the entity declared to be the Aboriginal Representative Body ceases to exist, the Minister must include in a plan prepared under subsection (1) the actions to be taken by the Minister to support Aboriginal Victorians to re-establish the Aboriginal Representative Body.

17 Subsequent Aboriginal Representative Body declaration

- 25
- 30
- (1) The Minister must declare an entity to be the Aboriginal Representative Body subsequent to revoking an Aboriginal Representative Body declaration.
- (2) Before declaring an entity to be the Aboriginal Representative Body under subsection (1), the Minister must comply with a plan prepared under section 16.
- (3) A declaration under subsection (1) must be made by notice published in the Government Gazette.

18 Transmission of plans to the Parliament when in recess

- 5 (1) If the Minister proposes to transmit a plan prepared under this Part to the Parliament when Parliament is in recess, the Minister must—
- (a) give one business day's notice of the Minister's intention to do so to the clerk of each House of the Parliament; and
- 10 (b) give the plan to the clerk of each House on the day indicated in the notice; and
- (c) cause the plan to be published on an appropriate government website as soon as practicable after giving it to the clerks.
- (2) The clerk of each House of the Parliament must—
- 15 (a) notify each member of the House of the receipt of a notice under subsection (1)(a) on the same day that the clerk receives that notice; and
- (b) give a copy of the plan to each member of the House as soon as practicable after the plan is received under subsection (1)(b); and
- 20 (c) cause the plan to be laid before the House on the next sitting day of the House.
- 25 (3) For the purposes of this section, the Parliament is in recess when neither House is sitting.

Part 3—Guiding principles for the treaty process

19 Application of this Part and definition

- 5 (1) This Part specifies the guiding principles for the treaty process.
- 10 (2) It is the intention of the Parliament that the guiding principles should be culturally empowering, and the Parliament acknowledges that the guiding principles may have different meanings and emphasis for different Aboriginal Victorians and those variations must be considered in the application of the guiding principles.
- 15 (3) In this Part—
parties to the treaty process means the following—
- (a) the Aboriginal Representative Body;
 - (b) the State;
 - (c) the Treaty Authority;

20 (d) any person, group or body participating in future treaty negotiations.

20 Effect of this Part

- 25 (1) The parties to the treaty process at all times must act in accordance with the guiding principles.
- (2) Without limiting subsection (1), the Aboriginal Representative Body and the State must act in accordance with the guiding principles in establishing elements necessary to support future treaty negotiations.
- 30 (3) It is the intention of the Parliament that in the administration of this Act regard is to be given to the guiding principles.

21 Self-determination and empowerment

- 5
- (1) Aboriginal Victorians have the right to self-determination.
 - (2) Aboriginal Victorians are empowered to freely determine their participation in the treaty process and, to this end, their form of representation in the treaty process.

22 Fairness and equality

- 10
- (1) The parties to the treaty process must ensure fairness between parties as they work together to advance the treaty process.
 - (2) The parties to the treaty process must make decisions that promote equality for Aboriginal Victorians.

15 **23 Partnership and good faith**

- (1) The parties to the treaty process must work together in good faith to advance the treaty process.
- 20 (2) If any disputes arise in advancing the treaty process, the parties to the treaty process must resolve those disputes as soon as possible after they arise.

24 Mutual benefit and sustainability

- 25
- (1) The parties to the treaty process must commit to a treaty process that, in an ongoing and sustainable manner, provides material social, economic and cultural benefits for Aboriginal Victorians.
 - 30 (2) The parties to the treaty process must commit to advancing the treaty process in a manner that promotes reconciliation and celebration of cultures of Aboriginal Victorians and, in doing so, provides benefits to the whole of the Victorian community.

25 Transparency and accountability

The parties to the treaty process must act with honesty and integrity and must be accountable for their shared commitment to self-determination and to the treaty process.

5

Part 4—Treaty Authority

26 Treaty Authority

5 The Aboriginal Representative Body and the State must work together to establish the Treaty Authority by agreement.

27 Functions of the Treaty Authority

- 10 (1) The Treaty Authority, once established, has the following functions—
- 15 (a) facilitating and overseeing treaty negotiations;
 - (b) administering the treaty negotiation framework;
 - (c) providing for resolution of disputes in treaty negotiations in accordance with the treaty negotiation framework;
 - (d) carrying out research to support treaty negotiations and the administration of the treaty negotiation framework.
- 20 (2) In establishing the Treaty Authority, the Aboriginal Representative Body and the State may include any additional functions to those specified in subsection (1).

28 Recognition of the Treaty Authority

- 25 (1) The State must recognise the Treaty Authority established by the Aboriginal Representative Body and the State in accordance with this Part as a necessary element to the treaty process and as the sole entity performing the functions of the Treaty Authority.
- 30 (2) The State must work with the Treaty Authority in good faith to advance the treaty process.

Part 5—Treaty negotiation framework

29 Treaty negotiation framework

- 5
- (1) The Aboriginal Representative Body and the State must work together to establish the treaty negotiation framework by agreement.
 - (2) The Aboriginal Representative Body and the State must not agree to the treaty negotiation framework before the Treaty Authority is established.

30 Content of the treaty negotiation framework

- 10
- (1) The treaty negotiation framework must include the following matters—
 - (a) the process for negotiating a treaty or treaties;
 - 15 (b) the process for formalising agreement to a treaty or treaties;
 - (c) minimum standards with which a party must comply in order to enter into treaty negotiations;
 - 20 (d) a schedule setting out the matters (if any) that cannot or must not be agreed to in the course of treaty negotiations;
 - (e) the process for the resolution of disputes arising in the course of treaty negotiations;
 - 25 (f) the mechanisms for enforcing a treaty or treaties;
 - (g) reporting requirements in relation to a treaty or treaties.
 - (2) The treaty negotiation framework must be consistent with the functions of the Treaty Authority specified in section 27.
- 30

- (3) In establishing the treaty negotiation framework by agreement, the Aboriginal Representative Body and the State may include additional matters to those specified in subsections (1) and (2).

5 **31 Variation of the treaty negotiation framework**

The Aboriginal Representative Body and the State may vary the treaty negotiation framework by agreement.

32 Commencement of treaty negotiations

10 Treaty negotiations must not commence before the treaty negotiation framework is agreed to.

33 Treaty negotiations to comply with treaty negotiation framework

15 Treaty negotiations must be conducted in accordance with the treaty negotiation framework.

Part 6—Self-determination fund

34 Self-determination fund

5 The Aboriginal Representative Body and the State must work together to establish the self-determination fund by agreement.

35 Purposes of self-determination fund

- 10 (1) The self-determination fund has the following purposes—
- (a) supporting Aboriginal Victorians to have equal standing with the State in treaty negotiations;
 - (b) providing a financial resource, independent from the State, that empowers Aboriginal Victorians to build capacity, wealth and prosperity.
- 15 (2) In establishing the self-determination fund, the Aboriginal Representative Body and the State may include purposes additional to those specified in subsection (1) by agreement.
- 20 (3) The Aboriginal Representative Body and the State may vary any additional purposes of the self-determination fund agreed to under subsection (2) by agreement.

36 Aboriginal Representative Body to administer self-determination fund

25 The Aboriginal Representative Body must administer the self-determination fund in a manner consistent with the purposes specified in section 35.

Part 7—Dispute resolution

37 Dispute resolution process

5 The Aboriginal Representative Body and the State must work together to establish the dispute resolution process by agreement.

38 Application of dispute resolution process

10 Any disputes between the Aboriginal Representative Body and the State that arise in the course of performing any function under Parts 4, 5 or 6 must be dealt with in accordance with the dispute resolution process.

39 Content of the dispute resolution process

The dispute resolution process must—

- 15 (a) be culturally appropriate; and
- (b) set out a procedure for the resolution of disputes between the Aboriginal Representative Body and the State that arise in the course of performing any function under Parts 4, 5 or 6; and
- 20 (c) specify the periods of time within which stages of the dispute resolution process must be carried out; and
- 25 (d) provide for the extension of time by written consent of the Aboriginal Representative Body and the State.

Part 8—Reporting

40 Minister's annual report

- 5 (1) The Minister must prepare an annual report on the work of the State in advancing the treaty process that—
- (a) sets out the progress towards establishing by agreement—
- 10 (i) the Treaty Authority; and
- (ii) the treaty negotiation framework; and
- (iii) the self-determination fund; and
- (b) includes the details of any events or activities conducted for the purpose of working in partnership with Aboriginal Victorians in advancing the treaty process; and
- 15 (c) sets out any findings or outcomes arising from events or activities conducted for the purpose of working in partnership with Aboriginal Victorians in advancing the treaty process; and
- 20 (d) sets out the activities conducted by the State to engage Aboriginal and non-Aboriginal Victorians in the treaty process; and
- (e) includes any other information in relation to advancing the treaty process that the
- 25 Minister considers relevant.
- (2) The Minister must prepare a report under subsection (1)—
- (a) as soon as practicable after the end of each financial year; and
- 30 (b) as a report separate to any other report prepared by the Minister.

41 Aboriginal Representative Body's annual report

- 5 (1) The Aboriginal Representative Body must prepare an annual report on the work of the Aboriginal Representative Body in advancing the treaty process that—
- (a) sets out the progress towards establishing by agreement—
- 10 (i) the Treaty Authority; and
- (ii) the treaty negotiation framework; and
- (iii) the self-determination fund; and
- (b) includes the details of any events or activities conducted for the purpose of advancing the treaty process; and
- 15 (c) sets out any findings or outcomes arising from events or activities conducted for the purpose of advancing the treaty process; and
- (d) includes any other information in relation to advancing the treaty process that the Aboriginal Representative Body considers
- 20 relevant.
- (2) The Aboriginal Representative Body must provide a report prepared under subsection (1) to the Minister for the purpose of transmission of the report to the Parliament.

25 **42 Transmission of annual reports to the Parliament**

The Minister must cause a copy of the Minister's annual report and a copy of the Aboriginal Representative Body's annual report to be laid before each House of the Parliament within

30 3 sitting days of that House after the preparation of the Minister's annual report or receipt of the Aboriginal Representative Body's annual report (as the case requires).

43 Transmission of annual reports to the Parliament when in recess

- 5 (1) If the Minister proposes to transmit a copy of the Minister's annual report and a copy of the Aboriginal Representative Body's annual report to the Parliament when Parliament is in recess, the Minister must—
- 10 (a) give one business day's notice of the Minister's intention to do so to the clerk of each House of the Parliament; and
- (b) give the reports to the clerk of each House on the day indicated in the notice; and
- 15 (c) cause the reports to be published on an appropriate government website as soon as practicable after giving the reports to the clerks.
- (2) The clerk of each House of the Parliament must—
- 20 (a) notify each member of the House of the receipt of a notice under subsection (1)(a) on the same day that the clerk receives that notice; and
- (b) give copies of the reports to each member of the House as soon as practicable after the reports are received under subsection (1)(b);
- 25 and
- (c) cause the reports to be laid before the House on the next sitting day of the House.
- (3) For the purposes of this section, the Parliament is in recess when neither House is sitting.
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Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.