

Module	VICTORIAN STATE GOVERNMENT
Jurisdictions	VIC
Legal Expert	SCOTT ALDEN Partner at HWL Ebsworth https://hwlebsworth.com.au/people/scott-alden/ https://www.linkedin.com/in/scott-alden-5884432b/?originalSubdomain=au

Module Scope

Employment

Does the agency act in accordance with the delegated powers of Public Service Body Heads and executive employees in the manner prescribed?

Does the agency only enter into contracts with employees, trainees and apprentices that are valid and lawful and meet the minimum standards prescribed by the National Employment Standards, relevant modern award and any enterprise agreement?

Does the agency only enter into enterprise agreements that are validly drafted, agreed and approved in the prescribed manner?

Governance

What are the laws that establish and prescribe the governance requirements for agencies in the Victorian public sector?

Is the department or agency familiar with the range of governance and management duties owed by certain officials and has it adopted appropriate policies, systems and procedures to ensure that those duties are discharged?

Does the public sector body have policies and processes in place to ensure that public sector employees perform their functions and duties in a manner consistent with the public sector values, information privacy principles, and other high standards of conduct and integrity required of public officials?

Reporting, Record Keeping and Information Security

Has a Victorian government agency or related person complied with all reporting, record keeping and information security requirements that are set out in the relevant Victorian legislation?

Has an agency complied with all its non-financial record-keeping and reporting requirements?

Has an agency complied with all financial record-keeping and reporting requirements?

Resource Management

Does the agency comply with its obligations in relation to the proper management of the financial and physical resources under its control?

Does the agency establish a financial management compliance framework, and does it ensure that the framework is subject to the required review, assessment and reporting procedures?

Does the agency ensure its bank accounts are operated in accordance with effective and efficient policies and procedures and does it bank public money it receives on a daily basis?

Module Application

The Victorian State Government module has 4 sub modules:

- Employment
- Governance
- Reporting , Record Keeping and Information Security
- Resource Management

The Victorian State Government module advises Victorian State Government entities of the processes and procedures they need to implement to ensure compliance with all Victorian State Government obligations which are based on the broad requirements of;

- Decision making;
- Accountability;
- Stewardship;
- Direction; and
- Control.

The broad scope of the *VICTORIAN STATE GOVERNMENT* module is to provide answers to these questions for the Victorian State Government entity;

- What are our legal obligations?
- From where are our legal obligations derived?
- How can we ensure that we are complying with our obligations?
- What are the consequences if we do not comply with our obligations?

To fulfil its purpose the module focuses on providing practical assistance to the Victorian State Government entity establishing and maintaining a robust foundational framework that determines;

- How the organisation will function;
- Who is the responsible decision maker;

- What matters are relevant to the decision-making process; and
- Whether the desired outcome has been achieved.

Due to their public stature and responsibility to the whole Victorian community public sector entities are generally held to a higher standard of conduct and scrutiny than entities operating in the private sector. Victorian State Government entities include;

- State Government Departments;
- Statutory authorities;
- Public entities; and
- State-owned enterprises.

Employment

The *EMPLOYMENT* sub module informs the Victorian State Government entity of their legislated legal obligations related to employment. The module demonstrates effective practical advice and assistance to the Victorian State Government entity to implement procedures and processes that will ensure compliance and regulatory accountability throughout all levels of the Victorian State Government entity.

These entities are all obligated to familiarise themselves with the broad landscape of governance obligations to which they are subject and establish relevant systems and processes to ensure compliance throughout their organisation. The *EMPLOYMENT sub* module should be subscribed by all Victorian State Government entities and their employees.

The *EMPLOYMENT* sub module covers all legislated employment obligations of Victorian State Government entities and demonstrates practical assistance and guidance to ensure that these obligations are complied with and best practice processes are implemented and maintained. The module also covers the role of the regulator as well as exemptions to the obligations, if applicable, and how they may or may not apply to the Victorian State Government entity.

The three main areas that are comprehensively covered in the *EMPLOYMENT* sub module are;

1. The state and commonwealth legislative and regulatory landscape from which the primary employment obligations are derived;

- Fair Work Act 2009 (Cth);
- Fair Work Regulation 2009 (Cth);
- Fair Work (Commonwealth Powers) Act 2009 (VIC);
- Parliamentary Salaries and Superannuation Act 1968 (VIC);
- Public Administration Act 2004 (VIC);
- Public Administration (Review of Actions) Regulations 2015 (VIC);
- Disability Discrimination Act 1992 (Cth);
- Disability Act 2006 (VIC);
- Migration Act 1958 (Cth);
- Child Employment Act 2003 (VIC);

- Education and Training Reform Act 2006 (VIC);
- Equal Opportunity Act 2010 (VIC);
- Privacy Act 1988 (Cth);
- Privacy and Data Protection Act 2014 (VIC);
- National Minimum Wage Order 2017;
- Superannuation Guarantee (Administration) Act 1992 (Cth);

- Charter of Human Rights and Responsibilities Act 2006 (VIC);
- Financial Management Act 1994 (VIC);
- Health Practitioner Regulation National Law Act 2009;
- Age Discrimination Act 2004 (Cth);
- Australian Human Rights Commission Act 1986 (Cth);
- Corporation Act 2001 (Cth);
- Racial Discrimination Act 1975 (Cth);
- Sex Discrimination Act 1984 (Cth);
- Independent Broad-Based Anti-Corruption Commission Act 2011 (VIC);
- Protected Disclosure Act 2012 (VIC);
- Occupational Health and Safety Act 2004 (VIC);
- Racial and Religious Tolerance Act 2001 (VIC);
- Social Security Act 1991 (Cth);
- Workplace Injury Rehabilitation and Compensation Act 2013 (VIC);
- Taxation Administration Act 1953 (Cth);
- Charter of Human Rights and Responsibilities Act 2006 (VIC);
- Competition and Consumer Act 2010 (Cth);
- Australian Consumer Law and Fair-Trading Act 2012 (VIC);
- Constitution of Australia 1901 (Cth);
- Constitution Act 1975 (VIC);

2. The employment legal obligations or duties imposed on Victorian State Government entities;

- The role, duties and responsibilities of public service body heads and executive employees.
- The formation of employment and training contracts.
- Enterprise agreements;
- Types of agreements and permitted matters;
- Bargaining representation;
- Drafting;
- Fair Work Commission approval; and
- Disputes.
- Remuneration and working hours;
- Payment of salary and wages;
- Minimum wages;
- Equal remuneration;
- Guaranteed annual earnings;
- Maximum hours; and
- Stand downs.
- Leave and flexible work arrangements;
- Requests;
- Leave entitlements; and
- Public holidays.
- Public sector career management;

- Transfers;
 - Retirement;
 - Right of return;
 - Review of actions;
 - Apprenticeship, cadetships and graduate programs;
 - Prescribed work level standards;
 - Disciplinary action; and
-
- Non-ongoing employment.
 - Fair treatment in the workplace;
 - Bullying;
 - Discrimination;
 - Coercion and sham contracting;
 - Protected disclosures;
 - Managing ill or injured employees; and
 - Fair work inspectors.
 - Terminating employment;
 - Grounds;
 - Notice;
 - Redundancy including notification and consultation; and
 - Entitlements.
 - Industrial Action;
 - Protected action;
 - Protected action ballots;
 - Non-payment of employees;
 - Stop orders; and
 - Rights of entry.
 - Workers Compensation;
 - Payment of premium or regulatory contribution;
 - Review and refunds;
 - Retired employees;
 - Self-insurance;
 - Providing information to WorkSafe; and
 - Return to work.
 - Record Keeping;
 - Maintaining employment records including inheriting and transferring;
 - Inspection and privacy; and
 - Accuracy.
 - Recruitment;
 - Deciding work arrangements;
 - Apprentices, trainees and interns;
 - Public sector employees;
 - Advertising;
 - Interviewing and selection of candidate processes;
 - Independent selection panels; and
 - Information provided to new employees.

3. The consequences that can be applied to Victorian State Government entities and employed individuals found to have breached or not complied with their legal obligations. These consequences vary considerably depending on the nature and extent of the breach. The *EMPLOYMENT* sub module covers specific consequences in detail. They can

include monetary penalties, disciplinary measures and even terms of imprisonment for individuals found to have committed serious criminal offences.

The *EMPLOYMENT* sub module's primary focus is on the legal obligations and duties of Victorian State Government entities relating to effective and compliant employment. The module does not intentionally focus on the interests of the private sector, although there is significant crossover with applicable legislation which in many cases applies to both private and public sector entities.

The *EMPLOYMENT* sub module also does not cover the rights or entitlements of individuals who have suffered damages or losses due to breaches of obligations by Victorian State Government entities. The module does not cover the process that an individual would follow to report the breach or their loss.

Governance

The *GOVERNANCE* sub module informs the Victorian State Government entity of their legislated legal obligations related to governance. The module demonstrates effective practical advice and assistance to the Victorian State Government entity to implement procedures and processes that will ensure compliance and regulatory accountability throughout all levels of the Victorian State Government entity.

These entities are all obligated to familiarise themselves with the broad landscape of governance obligations to which they are subject and, establish relevant systems and processes to ensure compliance throughout their organisation. The *GOVERNANCE* sub module should be subscribed by all Victorian State Government entities and their employees.

The *GOVERNANCE* sub module covers all legislated governance obligations of Victorian State Government entities and demonstrates practical assistance and guidance to ensure that these obligations are complied with and best practice processes are implemented and maintained. The module also covers the role of the regulator as well as exemptions to the obligations, if applicable, and how they may or may not apply to the Victorian State Government entity.

The three main areas that are comprehensively covered in the *GOVERNANCE* sub module are;

1. The legislative and regulatory landscape from which the primary governance obligations are derived;

- Audit Act 1994 (VIC);
- Privacy and Data Protection Act 2014 (VIC);
- Protected Disclosure Act 2012 (VIC);
- Protected Disclosure Regulations 2013 (VIC);
- Public Administration Act 2004 (VIC);
- Emergency Management Act 2013 (VIC);
- Emergency Management (Critical Infrastructure Resilience) Regulations 2015 (VIC);
- Emergency Management Manual Victoria;
- Financial Management Act 1994 (VIC);
- Financial Management Regulations 2014 (VIC);
- Standing Directions of the Minister for Finance 2016;

- Instructions Supporting the Standing Directions of the Minister for Finance;
- Telecommunications (Interception and Access) Act 1979 (Cth);
- Ombudsman Act 1973 (VIC);
- State Owned Enterprises Act 1992 (VIC);
- Surveillance Devices Act 1999 (VIC);
- Victorian Managed Insurance Authority Act 1996 (VIC);
- Code of Conduct for Directors of Victorian Public Entities;
- Victorian Public Sector Commission – Code of Conduct for Victorian Public Sector Employees;

- Victorian Government Professional Lobbyist Code of Conduct;
- Asset Management Accountability Framework;
- Cost Recovery Guidelines;
- Government Policy and Guidelines: Indemnities and Immunities;
- Independent Broad-Based Anti-Corruption Commission Act 2011 (VIC);
- Independent Broad-Based Anti – Corruption Commission (IBAC) Guidelines;
- Insurance Management Policy and Guidelines for General Government Sector;
- Ministerial Guidelines for Critical Infrastructure Resilience;
- Performance Management Framework for Victorian Government Departments; and
- Victorian Government Risk Management Framework.

2. The governance legal obligations or duties imposed on Victorian State Government entities;

- Duties of officials;
- Public sector body heads;
- Administrative office heads;
- The board;
- Directors of public entities;
- Accountable officers; and
- Responsible bodies.
- Proper conduct and use of position;
- Handling of information and privacy;
- Contact with government affairs directors and lobbyists;
- Standards and codes of conduct; and
- Conflicts of interest.
- Risk management;
- Strategy;
- Establishment of framework;
- Financial management;
- Register of assets;
- Annual review;
- Critical infrastructure resilience; and
- Prevention of fraud, corruption and other losses.
- Budget management;
- Appropriation of money;
- Transferring and carrying over money;
- Maintaining trust accounts;
- Obtaining supplementary funding;
- Applying surpluses;
- Managing assets and calculating depreciation;
- Hypothecation arrangements;

- Managing accounts and debit cards;
 - Establish financial authorisations; and
 - Cost recovery and setting fees;
 - Financial administration.
 - Managing inquiries;
 - IBAC inquiries and investigations;
 - Ombudsman inquiries and investigations; and
 - Reviews and requests from the Inspector-General.
 - Auditing;
 - Establish a committee;
-
- Establish internal systems and functions;
 - Examinations before the Auditor-General; and
 - Complying with requirements.
 - Performance planning, monitoring and assessment;
 - Long term and medium term planning;
 - Specifying outputs and measuring performance;
 - Output pricing and budgeting;
 - Developing performance information; and
 - Performance assessments.
 - Emergency Situations;
 - State emergency response plan;
 - Control of emergency response;
 - Issue warnings and provide information;
 - Incident management; and
 - Co-ordination responsibilities.
 - Victorian Managed Insurance Authority (VMIA) cover and provision of indemnities.
 - The operation of state-owned entities;
 - Board of Directors', constitution, powers and duties;
 - Payments to the State Government;
 - Corporate plan and statement of intent; and
 - Conversion to a state owned company.
 - Managing protected disclosures;
 - Establish protected disclosure procedures; and
 - Comply with IBAC review recommendations.

3. The consequences that can be applied to Victorian State Government entities and employed individuals found to have breached or not complied with their legal obligations. These consequences vary considerably depending on the nature and extent of the breach. The *GOVERNANCE* sub module covers specific consequences in detail. They can include monetary penalties, disciplinary measures and even terms of imprisonment for individuals found to have committed serious criminal offences.

The *GOVERNANCE* sub module's primary focus is on the legal obligations and duties of Victorian State Government entities relating to effective and compliant governance. The module does not intentionally focus on the interests of the private sector, although there is significant crossover with applicable state legislation which in many cases applies to both private and public sector entities.

The *GOVERNANCE* sub module also does not cover the rights or entitlements of individuals who have suffered damages or losses due to breaches of obligations by Victorian State

Government entities. The module does not cover the process that an individual would follow to report the breach or their loss.

Reporting, Record Keeping and Information Security

The *REPORTING, RECORD KEEPING AND INFORMATION SECURITY* sub module informs the Victorian State Government entity of their legislated legal obligations related to reporting, record keeping, and information security. The module demonstrates effective practical advice and assistance to the Victorian State Government entity to implement procedures and processes that will ensure compliance and regulatory accountability throughout all levels of the Victorian State Government entity.

These entities are all obligated to familiarise themselves with the broad landscape of governance obligations to which they are subject and establish relevant systems and processes to ensure compliance throughout their organisation. The *REPORTING, RECORD KEEPING AND INFORMATION SECURITY* sub module should be subscribed by all Victorian State Government entities and their employees.

The *REPORTING, RECORD KEEPING AND INFORMATION SECURITY* sub module covers all legislated reporting, record keeping and information security obligations of Victorian State Government entities and demonstrates practical assistance and guidance to ensure that these obligations are complied with and best practice processes are implemented and maintained. The module also covers the role of the regulator as well as exemptions to the obligations, if applicable, and how they may or may not apply to the Victorian State Government entity.

The three main areas that are comprehensively covered in the *REPORTING, RECORD KEEPING AND INFORMATION SECURITY* sub module are;

1. The state and commonwealth legislative and regulatory landscape from which the primary reporting, record keeping and information security obligations are derived;

- Audit Act 1994 (VIC);
- Crime Statistics Act 2014 (VIC);
- Corporations Act 2001 (Cth);
- Equal Opportunity Act 2010 (VIC);
- Freedom of Information Act 1982 (VIC);
- Freedom of Information Professional Standards;
- Public Records Act 1973 (VIC);
- Public Records Regulations 2013 (VIC);
- State Owned Enterprises Act 1992 (VIC);
- Terrorism (Community Protection) Act 2003 (VIC);
- Victorian State Government Department of Treasury and Finance – Financial Reporting Directions;
- Standing Directions of the Minister for Finance 2016;
- Financial Reporting Operations Framework;
- Performance Management Framework for Victorian Government Departments;
- Privacy and Data Protection Act 2014 (VIC);
- Financial Management Act 1994 (VIC);
- Financial Management Regulations 2014 (VIC);
- Independent Broad-Based Anti-Corruption Commission Act 2011 (VIC);
- Protected Disclosure Act 2012 (VIC);

- Protected Disclosure Regulations 2013 (VIC); and
- Public Administration Act 2004 (VIC).

2. The reporting, record keeping, and information security legal obligations or duties imposed on Victorian State Government entities;

- Non-financial record keeping and reporting;
 - Duties;
 - Documents to be retained;
 - The public services workforce; and
 - Reporting emergency situations to parliament.
 - Financial record keeping and reporting;
-
- Budget information;
 - Annual financial reports;
 - Annual reports;
 - Duties and roles;
 - Operations and financial statements including performance information;
 - Standing directions of the Minister for Finance;
 - Composite reports and annual reports of state-owned corporations;
 - Reporting requirements;
 - Cash management;
 - Special accounting issues; and
 - Chart of accounts.

Complying with Victorian Government Standards for the management of public records processes when providing access to records or transferring records.

- Protected disclosures;
- Mandatory disclosures;
- Notification and assessment;
- Protection of disclosing individuals;
- Confidentiality; and
- Guidelines, procedures and reports.
- Privacy and data protection;
- Proper handling of information;
- Complying with notices;
- Information usage arrangements;
- Use and disclosure of information;
- Access to and correction of records;
- Data security standards and schemes; and
- Information commissioner's access to data and data systems.
- Managing complaints and complying with compliance notices in privacy investigations.
- Enabling data sharing within the government;
- Responding to data requests;
- Authorised use and disclosure of data; and
- Secrecy provisions.
- Enabling data sharing and the operation of datasets within the community.
- Planning and performance reporting;
- Revenue certification; and
- Lapsing program evaluation.

3. The consequences that can be applied to Victorian State Government entities and employed individuals found to have breached or not complied with their legal obligations. These consequences vary considerably depending on the nature and extent of the breach. The *REPORTING, RECORD KEEPING AND INFORMATION SECURITY* sub module covers specific consequences in detail. They can include monetary penalties, disciplinary measures, and even terms of imprisonment for individuals found to have committed very serious criminal offences.

The *REPORTING, RECORD KEEPING AND INFORMATION SECURITY* sub module's primary focus is on the legal obligations and duties of Victorian State Government entities relating to effective and compliant reporting, record keeping and information security. The module does not intentionally focus on the interests of the private sector, although there is

significant crossover with applicable legislation which in many cases applies to both private and public sector entities.

The *REPORTING, RECORD KEEPING AND INFORMATION SECURITY* sub module also does not cover the rights or entitlements of individuals who have suffered damages or losses due to breaches of state or commonwealth obligations by Victorian State Government entities. The module does not cover the process that an individual would follow to report the breach or their loss.

Resource Management

The *RESOURCE MANAGEMENT* sub module informs the Victorian State Government entity of their legislated legal obligations related to resource management. The module demonstrates effective practical advice and assistance to the Victorian State Government entity to implement procedures and processes that will ensure compliance and regulatory accountability throughout all levels of the Victorian State Government entity.

These entities are all obligated to familiarise themselves with the broad landscape of governance obligations to which they are subject and, establish relevant systems and processes to ensure compliance throughout their organisation. The *RESOURCE MANAGEMENT* sub module should be subscribed by all Victorian State Government entities and their employees.

The *RESOURCE MANAGEMENT* sub module covers all legislated resource management obligations of Victorian State Government entities and demonstrates practical assistance and guidance to ensure that these obligations are complied with and best practice processes are implemented and maintained. The module also covers the role of the regulator as well as exemptions to the obligations, if applicable, and how they may or may not apply to the Victorian State Government entity.

The three main areas that are comprehensively covered in the *RESOURCE MANAGEMENT* sub module are;

1. The state and commonwealth legislative and regulatory landscape from which the primary resource management obligations are derived;

- Audit Act 1994 (VIC);
- Australia-Chile Free Trade Agreement 2009;

- Australia-United States Free Trade Agreement 2005;
- Australian and New Zealand Government Procurement Agreement 2013;
- Japan-Australia Economic Partnership Agreement 2015;
- Korea-Australia Free Trade Agreement 2014;
- National Alliance Contracting Guidelines: Policy Principles;
- Borrowing and Investment Powers Act 1987 (VIC);
- Constitution Act 1975 (VIC);
- Copyright Act 1968 (Cth);
- The Department of Premier and Cabinet;
- Asset Management Accountability Framework;
- Budget Operations Framework;
- The Department of Treasury and Finance;
- Financial Management Act 1994 (VIC);
- Land Acquisition and Compensation Act 1986 (VIC);

- Patents Act 1990 (Cth);
- Trade Marks Act 1995 (Cth);
- Designs Act 2003 (Cth);
- Planning and Environment Act 1987 (VIC);
- Public Administration Act 2004 (VIC);
- Plant Breeder's Rights Act 1994 (Cth);
- Valuation of Land Act 1960 (VIC);
- Victorian Government Purchasing Board;
- Victorian Government Standard Motor Vehicle Policy 2017;
- Victorian Public Sector Commission (VPSC) Code of Conduct;
- Victorian Public Service Enterprise Agreement 2016; and
- Victorian Public Service Travel Policy.

2. The resource management legal obligations or duties imposed on Victorian State Government entities;

- Establishing a financial management compliance framework and systems to review, assess and report on financial management compliance.
- Maintaining banking accounts and the banking of money.
- Managing revenue and cost recovery;
- General requirements;
- Complying with cost recovery objectives;
- Designing and implementing cost recovery systems;
- Monitoring, reviewing and adjusting fees and penalties;
- Implementing competitive neutrality measures;
- Seeking and receiving sponsorship; and
- Managing cash.
- Managing expenses;
- Implementing expenditure systems;
- Use of purchasing cards and prepaid debit cards;
- Managing grant programs;
- Providing sponsorship;
- Donations;
- Gifts, benefits and hospitality;
- Travel;
- Approved asset investment programs; and
- Capital assets charge.

- Procuring goods and services;
 - Implementing the framework;
 - Aggregated purchasing arrangements;
 - Assessing complexity, capability and market conditions;
 - Preparing a business case;
 - Engaging with the market;
 - Public/ private partnerships;
 - Alliance contracting;
 - International free trade agreements;
 - Gateway reviews; and
 - Local content and suppliers.
 - Asset management;
 - Developing and implementing strategy;
 - Allocating functions and resources;
 - Operation, maintenance and performance monitoring;
-
- Disposal; and
 - Maintaining registers.
 - Managing a motor vehicle fleet;
 - Implementing the framework;
 - Procuring a vehicle; and
 - Operation, maintenance and disposal requirements.
 - Managing intellectual property;
 - Identifying and recording;
 - Granting, protecting and enforcing rights;
 - The procurement process;
 - Commercialising; and
 - Third party factors.
 - Managing land;
 - General obligations;
 - Land transaction obligations;
 - Acquiring and retaining;
 - Selling and leasing;
 - Disposal of surplus crown land; and
 - Reporting requirements.
 - Borrowing and managing investments;
 - Conducting transactions with financial institutions;
 - Overdrafts;
 - Management and maintenance;
 - Identification of surplus assets; and
 - Disposal of property.
 - Managing contracts;
 - Procurement contracts; and
 - Disclosure.

3. The consequences that can be applied to Victorian State Government entities and employed individuals that are found to have breached or not complied with their legal obligations. These consequences vary considerably depending on the nature and extent of the breach. The *RESOURCE MANAGEMENT* sub module covers specific consequences in detail. They can include monetary penalties, disciplinary measures, and even terms of imprisonment for individuals found to have committed very serious criminal offences.

The *RESOURCE MANAGEMENT* sub module's primary focus is on the legal obligations and duties of Victorian State Government entities relating to effective and compliant resource management. The module does not intentionally focus on the interests of the private sector, although there is significant crossover with applicable legislation which in many cases applies to both private and public sector entities.

The *RESOURCE MANAGEMENT* sub module also does not cover the rights or entitlements of individuals who have suffered damages or losses due to breaches of obligations by Victorian State Government entities. The module does not cover the process that an individual would follow to report the breach or their loss.

About LexisNexis Regulatory Compliance

LexisNexis Regulatory Compliance® helps you forge a clear path to compliance.

With LexisNexis® content know-how at the core, our compliance registers, alerts, and information-driven solutions make compliance uncomplicated for GRC professionals across the globe.