



## Changes to VIC SOPA Scheme | Building Legislation Amendment Bill 2025

### Introduction

In late 2025, Victoria enacted significant reforms to its security of payment legislation, creating a new statutory framework for the regulation of performance security (bank guarantees and retention).

The amendments are due to take effect by 1 September 2026. They fundamentally alter the timing, the entitlement, the process, and the ability to draw on or resist release of performance security under Victorian construction contracts.

### Statutory Expansion

Section 3 now expressly states that SOPA ensures a person "is entitled to receive ... the release of a performance security" (s 3(1)) and that this entitlement is affected by statutory right (s 3(2)).

### Statutory Right to Release of Performance Security

Section 9 is replaced in full. The new s 9 provides:

- s 9(1) entitlement to progress payments (unchanged conceptually);
- s 9(2) new entitlement to the "release of the whole or a part of a performance security";

- s 9(3) the claim may be standalone or combined with a payment claim.

A centrepiece of the amendments is a new statutory right to the release of performance security under section 9(2). The right applies regardless of whether the contract expressly provides a right to release. This right mirrors, in structure and philosophy, the statutory right to payment of a progress claim.

### When Security Must Be Released

Practically, the parties' freedom to dictate the conditions under which security is returnable has been materially curtailed. The Act introduces "contracting out" prohibitions (s 12) that render void any contractual provision that

# eInsights

unduly restricts release or attempts to postpone, qualify or condition the statutory right.

Under s 12(1A):

- Contractual release triggers apply unless they conflict with statutory time limits.
- If the contract is silent, release is due 10 business days after the earliest day a security claim may be made under s 17B.

Critically, the new section 12 creates a hard cap on delaying release. Section 12(1B) introduces a strict prohibition:

- A contract cannot provide for release of security later than 20 business days after service of a performance security claim.

This dramatically compresses the timeline for principals accustomed to retaining security through defects liability periods, unresolved disputes, or until final certification.

## New Adjudication Regime for Security

The new changes following mirror the existing SOPA payment claim/schedule model but applies uniquely to security.

a claimant may:

- serve a “performance security claim” (s 17A);
- receive a performance security schedule (s 17E);
- seek adjudication (s 18A) if release is refused or delayed.

Importantly, contracting out of these restrictions is prohibited under s 17D. Any term that postpones the earliest claim date, extends the latest claim date, or attempts to override the statutory right has no effect.

Additionally, principals are subject to new and strict requirements prior to calling upon security. The Act requires:

- a written notice of intention identifying the contractual basis, amount and circumstances (s 17H(2)); and,
- a minimum 5 business day waiting period (s 17H(1) (b)).

These requirements override any contractual clause to the contrary.

The new rules give contractors a clear legal process to request the return of their retention or bank guarantees. Contracts can't be written to avoid or delay these rights. Principals must now give proper notice and wait five business days before they can use or “call on” someone's security.

## Key Takeaways

The new laws replace older, unfair risk rules and limit when a principal can use a contractor's security. They also allow an adjudicator's decision to give fast, practical outcomes.

Contractors can now get security back faster through a new straightforward process to request the release of retention and bank guarantees.

Principals are now subject to new rules regarding performance security or retention money. They need to give written notice and wait five business days before using any security, reducing the risk of sudden or unfair calls on guarantees.

Ultimately these changes give contractors and subcontractors much stronger protection. It becomes easier for them to recover money, and principals can no longer hold or call on security without proper reasons.