

**Authorised Version No. 001**  
**Climate Change Act 2017**

**No. 5 of 2017**

Authorised Version as at  
1 November 2017

**TABLE OF PROVISIONS**

<i>Section</i>	<i>Page</i>
<b>Part 1—Preliminary</b>	<b>2</b>
1 Purpose	2
2 Commencement	3
3 Definitions	3
4 Definition of forest carbon right	10
5 Application to Crown	10
<b>Part 2—Greenhouse gas emissions reduction targets</b>	<b>11</b>
<b>Division 1—Long-term emissions reduction target and eligible offsets</b>	<b>11</b>
6 Long-term emissions reduction target	11
7 Determination for net zero greenhouse gas emissions	11
8 Achieving the long-term emissions reduction target	11
9 Eligible offsets	12
<b>Division 2—Interim emissions reduction targets</b>	<b>12</b>
10 Interim emissions reduction targets	12
11 Form of interim emissions reduction targets	13
12 Independent expert advice in relation to interim emissions reduction targets	13
13 Publication of independent expert advice	14
14 Matters for consideration in determining interim emissions reduction targets	15
15 Publication of interim emissions reduction targets	15
16 Amending interim emissions reduction targets	16
<b>Part 3—Climate change considerations</b>	<b>17</b>
17 Decision makers must have regard to climate change	17
18 Ministerial guidelines for actions and decisions	18
19 Minister may have regard to guiding principles	19

<i>Section</i>	<i>Page</i>
<b>Part 4—Policy objectives and guiding principles</b>	<b>20</b>
<b>Division 1—Governmental regard to policy objectives and guiding principles</b>	<b>20</b>
20 Decision and policy making	20
21 Ministerial guidelines for the general application of objectives and principles	20
<b>Division 2—Policy objectives</b>	<b>21</b>
22 Policy objectives	21
<b>Division 3—Guiding principles</b>	<b>22</b>
23 Principle of informed decision making	22
24 Principle of integrated decision making	22
25 Principle of risk management	23
26 Principle of equity	23
27 Principle of community engagement	24
28 Principle of compatibility	24
<b>Part 5—Planning for climate change</b>	<b>26</b>
<b>Division 1—Climate change strategy</b>	<b>26</b>
29 Preparation of climate change strategy	26
30 Content of climate change strategy	26
31 Matters for consideration when preparing climate change strategy	28
32 Consultation requirements for climate change strategy	28
33 Publication of climate change strategy	29
<b>Division 2—Adaptation action plans</b>	<b>29</b>
34 Preparation of adaptation action plans	29
35 Content of adaptation action plan	30
36 Matters for consideration when preparing adaptation action plan	31
37 Consultation requirements for adaptation action plan	31
38 Responsibility for adaptation action plans	32
39 Ministerial directions in relation to adaptation action plans	32
40 Publication of adaptation action plan	33
<b>Division 3—Emissions reduction pledges</b>	<b>33</b>
41 Preparation of whole-of-government pledge	33
42 Content of whole-of-government pledge	33
43 Preparation of sector pledges	34
44 Content of sector pledges	35
45 Responsibility for sector pledges	35
46 Preparation of Council pledges	36
47 Content of Council pledges	36

<i>Section</i>	<i>Page</i>
48 Notification of Council pledge	37
49 Ministerial directions in relation to emissions reduction pledges	37
50 Variation of emissions reduction pledges	37
<b>Part 6—Further information and reports</b>	<b>39</b>
51 Climate science report	39
52 Annual greenhouse gas emissions report	40
53 Calculation of reduction of greenhouse gas emissions	41
54 End of interim target period report	41
55 Information to be included in end of interim target period report	42
<b>Part 7—Forestry rights, carbon sequestration rights and soil carbon rights on private land</b>	<b>43</b>
<b>Division 1—Introductory</b>	<b>43</b>
56 Application of Part	43
<b>Division 2—Forest carbon rights</b>	<b>43</b>
57 Creation and transfer of forest carbon rights	43
<b>Division 3—Forestry and Carbon Management Agreements</b>	<b>44</b>
58 Forestry and Carbon Management Agreements	44
59 Purpose of Forestry and Carbon Management Agreement	45
60 Management obligations	46
61 Security	47
62 Commencement of Forestry and Carbon Management Agreement	47
63 Recording of Forestry and Carbon Management Agreement	48
64 Effect of recording of agreement	48
65 Variation of Forestry and Carbon Management Agreement	49
66 Ending of Forestry and Carbon Management Agreement	50
67 Application to Registrar when agreement ends	50
68 Enforcement of Forestry and Carbon Management Agreement	51
69 Disputes in relation to ending Forestry and Carbon Management Agreements	51
70 Registrar to give effect to VCAT orders	51
<b>Part 8—Carbon sequestration on Crown land</b>	<b>52</b>
<b>Division 1—Application</b>	<b>52</b>
71 Application	52
72 Native title rights not affected	52
<b>Division 2—Use of Crown land for carbon sequestration</b>	<b>53</b>
73 Declaration of land available for use for carbon sequestration	53

<i>Section</i>	<i>Page</i>	
74	Role of Secretary in relation to carbon sequestration on Crown land	54
75	Carbon sequestration on encumbered Crown land	54
<b>Division 3—Carbon Sequestration Agreements</b>		<b>55</b>
76	Carbon Sequestration Agreements	55
77	Requirements for Carbon Sequestration Agreements	56
78	What may a Carbon Sequestration Agreement provide for?	56
79	Grant of carbon sequestration right or soil carbon right	58
80	Carbon Sequestration Agreement may also provide for security to be provided	58
81	Carbon Sequestration Agreement may also include provisions relevant to orderly planning of land	58
82	Notice of proposed Carbon Sequestration Agreement	59
83	Consent of lessee or licensee required for Carbon Sequestration Agreement	60
84	Matters to be considered by Secretary	60
85	Notice of making of Carbon Sequestration Agreement	61
86	Consent of Secretary required to transfer a Carbon Sequestration Agreement or assign rights under an agreement	61
87	Ending of Carbon Sequestration Agreement	62
88	Register of Carbon Sequestration Agreements	62
89	Certificate of Secretary	62
<b>Division 4—Fire suppression and prevention</b>		<b>63</b>
90	Application	63
91	Directions by Secretary or authorised officer	63
92	Person must comply with direction	63
93	Secretary to reimburse for assistance	63
94	Division does not derogate from certain Acts	64
<b>Division 5—Enforcement</b>		<b>64</b>
95	Enforcement	64
<b>Part 9—General</b>		<b>65</b>
96	Application of planning laws	65
97	Regulations	65
<b>Part 10—Repeal and transitional provisions</b>		<b>67</b>
<b>Division 1—Repeal of Climate Change Act 2010</b>		<b>67</b>
98	Repeal of Climate Change Act 2010	67
<b>Division 2—Transitional provisions</b>		<b>67</b>
99	Carbon Sequestration Agreement	67
100	Forestry and Carbon Management Agreement	67

<i>Section</i>	<i>Page</i>
<b>Part 11—Amendment to the Environment Protection Act 1970</b>	<b>68</b>
101 Powers, duties and functions of Authority	68
102 Repeal of Part 11	68
<b>Schedule 1—Acts and decisions or actions</b>	<b>69</b>
<hr/> <hr/>	
<b>Endnotes</b>	<b>71</b>
1 General information	71
2 Table of Amendments	73
3 Amendments Not in Operation	74
4 Explanatory details	75

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**Preamble**

The Parliament of Victoria recognises on behalf of the people of Victoria that the international community has reached agreement to hold the global average temperature increase to well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels. There is overwhelming scientific consensus that human activity is causing climate change and that global emissions will need to decline to net zero levels by the second half of the century if this global goal is to be met.

The Parliament of Victoria recognises that some changes in the earth's climate are inevitable, despite all mitigation efforts. Victoria is particularly vulnerable to the adverse effects of climate change. Natural disasters are increasing in frequency and severity as a result of the changing climate. Impacts are felt differently and to different extents across individual regions and communities.

Although responding to climate change is a responsibility shared by all levels of government, industry, communities and the people of Victoria, the role of subnational governments in driving this transition cannot be understated. Through decisive, long-term action to reduce greenhouse gas emissions, the Victorian government can help Victoria achieve an orderly and just transition to a net zero greenhouse gas emissions economy and remain prosperous and liveable. It will also enable Victoria to benefit from the global trend towards decarbonisation.

Victoria must also take strong action to build resilience to, and reduce the risks posed by, climate change and protect those most vulnerable.

The Parliament of Victoria recognises that the community wants and expects Victoria to play its part in global mitigation efforts and in preparing the community for unavoidable climatic impacts. This Act will help ensure Victoria remains prosperous and liveable as we transition to meet these challenges.

**The Parliament of Victoria therefore enacts:**

## **Part 1—Preliminary**

### **1 Purpose**

The purpose of this Act is to repeal and re-enact with amendments the **Climate Change Act 2010**—

- (a) to set a long-term greenhouse gas emissions reduction target; and
- (b) to provide for the setting of 5-yearly interim greenhouse gas emissions reduction targets in order to reach the long-term greenhouse gas emissions reduction target; and
- (c) to facilitate the consideration of climate change issues in specified areas of decision making of the Government of Victoria; and
- (d) to set policy objectives and guiding principles to inform decision-making under this Act and the development of government policy in the State; and
- (e) to provide for a strategic response to climate change through a climate change strategy, adaptation action plans and emissions reduction pledges; and

- (f) to provide for greater clarity and accountability through information collection and reporting; and
- (g) to facilitate the State's contribution to national and international carbon sequestration efforts; and
- (h) to provide for the creation of forestry rights, carbon sequestration rights and soil carbon rights; and
- (i) to provide for Forestry and Carbon Management Agreements in relation to private land and Carbon Sequestration Agreements in relation to Crown land; and
- (j) to implement changes arising from a statutory review of the **Climate Change Act 2010**; and
- (k) to make a consequential amendment to the **Environment Protection Act 1970**.

## 2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 November 2017, it comes into operation on that day.

## 3 Definitions

In this Act—

*adaptation* means any process of adjusting to actual or expected climate and its effects that—

- (a) in human systems, seeks to moderate or avoid harm or exploit beneficial opportunities; and

(b) in natural systems, may be facilitated by human intervention;

***adaptation action plan*** means an adaptation action plan prepared under Division 2 of Part 5;

***annual greenhouse gas emissions report*** means a report prepared under section 52;

***built environment*** means the places and structures built or developed for human occupation, use and enjoyment;

**Examples**

Cities, buildings, urban spaces, housing and infrastructure.

***built environment system*** means—

- (a) the built environment; and
- (b) how people use and interact with the built environment;

***carbon dioxide equivalent*** means the standard unit of measurement used in greenhouse gas accounting, representing an amount of a greenhouse gas multiplied by the global warming potential of that gas;

***Carbon Sequestration Agreement*** means an agreement entered into under section 76;

***carbon sequestration right*** means an exclusive right to the economic benefits associated with carbon sequestered by vegetation other than vegetation that has been harvested, lopped or felled;

***climate change*** means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition

to natural climate variability observed over comparable time periods;

***climate change strategy*** means a climate change strategy prepared under Division 1 of Part 5;

***climate science report*** means a report prepared under section 51;

***Council*** has the same meaning as in the **Local Government Act 1989**;

***Council pledge*** means a statement made under section 46 in respect of reductions of greenhouse gas emissions caused or otherwise influenced by a Council;

***Department*** means the Department of Environment, Land, Water and Planning;

***education and training system*** means the services and assets primarily engaged in the planning, development, provision and support of education and training, including future workplace skills and needs;

***eligible offset*** has the meaning given in section 9;

***emissions reduction pledge*** means—

- (a) a whole-of-government pledge; or
- (b) a sector pledge; or
- (c) a Council pledge;

***forest carbon right*** has the meaning given in section 4;

***forest produce*** has the same meaning as in the **Forests Act 1958**;

***Forestry and Carbon Management Agreement*** means an agreement entered into under section 58;

***forestry right*** means an exclusive right, including a right of entry to land, to—

- (a) plant, establish, manage and maintain vegetation on land; and
- (b) take and deal with any vegetation that has been harvested, lopped or felled;

***greenhouse gas emissions*** means emissions of—

- (a) carbon dioxide, methane, nitrous oxide or sulphur hexafluoride; or
- (b) a hydrofluorocarbon or a perfluorocarbon that is specified in regulations made under the National Greenhouse and Energy Reporting Act 2007 of the Commonwealth;

***guiding principles*** means the principles set out in Division 3 of Part 4;

***health and human services system*** means—

- (a) the services and assets primarily engaged in protecting human health from disease resulting from or associated with communicable disease, food, water or the environment; and
- (b) the services and assets which provide human physical and mental health care, social support and assistance;

***instrument*** has the same meaning as in the **Transfer of Land Act 1958**;

***interim emissions reduction target*** means a greenhouse gas emissions reduction target determined under Division 2 of Part 2;

***interim target period*** means the period in respect of which an interim emissions reduction target has been determined under Division 2 of Part 2;

*land* has the same meaning as in the **Transfer of Land Act 1958**;

*long-term emissions reduction target* has the meaning given in section 6;

*natural environment system* means the State's natural environment including—

- (a) land, water over that land and the soils and biodiversity associated with that land; and
- (b) the coastal waters of the State (within the meaning of the Coastal Waters (State Powers) Act 1980 of the Commonwealth in relation to Victoria), the land under those waters and the biodiversity associated with those waters and that land; and
- (c) the ecological processes and systems associated with the things set out in paragraphs (a) and (b);

*nominated Minister* means—

- (a) in Division 2 of Part 5—a Minister in respect of which a determination is made for the purposes of an adaptation action plan; or
- (b) in Division 3 of Part 5—a Minister in respect of which a determination is made for the purposes of a sector pledge;

*old agreement* means a forest property agreement or carbon rights agreement existing under the **Forestry Rights Act 1996**;

*owner*, in relation to land, includes any person entitled to be registered as the registered proprietor of that land;

*policy objectives* means the objectives set out in section 22;

*primary production system* means—

- (a) the growing and cultivation of horticultural and other crops, including plantation forestry and farm forestry; and
- (b) the controlled breeding, raising or farming of animals; and
- (c) the infrastructure, workforce and communities supporting the activities set out in paragraphs (a) and (b);

*public land manager*, in relation to Crown land, means—

- (a) in relation to reserved Crown land that is managed by a committee of management—the committee of management; or
- (b) in relation to any other Crown land—the Minister, public authority or municipal council responsible for the care or management of the land;

*Register* has the same meaning as in the **Transfer of Land Act 1958**;

*Registrar* has the same meaning as in the **Transfer of Land Act 1958**;

*relevant Act* means—

- (a) **Crown Land (Reserves) Act 1978**; or
- (b) **Forests Act 1958**; or
- (c) **Land Act 1958**; or
- (d) **National Parks Act 1975**; or

(e) **Sustainable Forests (Timber) Act 2004**; or

(f) **Victorian Plantations Corporation Act 1993**;

*Secretary* has the same meaning as in the **Conservation, Forests and Lands Act 1987**;

*sector pledge* means a statement made under section 43 in respect of reductions of greenhouse gas emissions from a prescribed category of emissions and removals;

*soil carbon right* means an exclusive right to the economic benefits of carbon sequestered underground, excluding carbon stored within plants;

*transport system* means all of the components for the movement of persons and goods, including—

- (a) physical components, including transport networks, facilities and vehicles; and
- (b) services components, including passenger, freight and other transport services to move persons and goods;

*vegetation* means any part of a plant, whether alive or dead;

*water cycle system* means—

- (a) the collection, storage, treatment, delivery and supply of water, including recycled water; and
- (b) sewerage services, including the collection, treatment and disposal of wastewater through sewerage systems and wastewater treatment plants; and

- (c) drainage services, including the operation of drainage systems; and
- (d) flood management services, including the operation and maintenance of infrastructure to mitigate floods;

***whole-of-government pledge*** means a statement made under section 41 in respect of reductions of greenhouse gas emissions caused by government operations and activities.

#### **4 Definition of forest carbon right**

- (1) In this Act—

***forest carbon right*** means—

- (a) a carbon sequestration right; or
  - (b) a forestry right; or
  - (c) a soil carbon right.
- (2) A forest carbon right is an interest in land.
- (3) A forest carbon right is not an easement or right of way.

#### **5 Application to Crown**

This Act binds the Crown in right of the State of Victoria and so far as the legislative power of the Parliament extends, the Crown in all its other capacities.

## **Part 2—Greenhouse gas emissions reduction targets**

### **Division 1—Long-term emissions reduction target and eligible offsets**

#### **6 Long-term emissions reduction target**

(1) For the purposes of this Act, the long-term emissions reduction target for the State is an amount of net zero greenhouse gas emissions by the year 2050.

(2) In this section—

*net zero greenhouse gas emissions* means zero greenhouse gas emissions after—

- (a) determining the amount of total greenhouse gas emissions attributable to the State, including any removals of greenhouse gas emissions from the atmosphere due to activities within the State; and
- (b) deducting from the amount described in paragraph (a) any eligible offsets from outside of the State.

#### **7 Determination for net zero greenhouse gas emissions**

For the purposes of section 6, the Premier and the Minister must determine the amount of total greenhouse gas emissions attributable to the State.

#### **8 Achieving the long-term emissions reduction target**

The Premier and the Minister must ensure that the State achieves the long-term emissions reduction target.

## **9 Eligible offsets**

An eligible offset is a prescribed unit of greenhouse gas emissions issued under a prescribed regulatory, accreditation or certification scheme.

## **Division 2—Interim emissions reduction targets**

### **10 Interim emissions reduction targets**

- (1) The Premier and the Minister must determine a greenhouse gas emissions reduction target for the State in respect of each of the following periods—
  - (a) 1 January 2021 to 31 December 2025;
  - (b) 1 January 2026 to 31 December 2030;
  - (c) 1 January 2031 to 31 December 2035;
  - (d) 1 January 2036 to 31 December 2040;
  - (e) 1 January 2041 to 31 December 2045;
  - (f) 1 January 2046 to 31 December 2050.
- (2) The interim emissions reduction target under subsection (1)(a) and (b) must be determined on or before 31 March 2020.
- (3) The interim emissions reduction target under subsection (1)(c) must be determined on or before 31 March 2023.
- (4) The interim emissions reduction target under subsection (1)(d) must be determined on or before 31 March 2028.
- (5) The interim emissions reduction target under subsection (1)(e) must be determined on or before 31 March 2033.
- (6) The interim emissions reduction target under subsection (1)(f) must be determined on or before 31 March 2038.

## **11 Form of interim emissions reduction targets**

- (1) An interim emissions reduction target must be expressed as the extent to which the amount of the State's greenhouse gas emissions is to be reduced in relation to the amount of the State's greenhouse gas emissions for the year 2005.
- (2) For the purposes of this section, the Minister must determine a figure that represents the amount of the State's greenhouse gas emissions for the year 2005 in accordance with the prescribed method.

## **12 Independent expert advice in relation to interim emissions reduction targets**

- (1) Before determining an interim emissions reduction target, the Minister must obtain advice from one or more persons who are appropriately qualified, in the Minister's opinion, to act as an independent expert.
- (2) The advice obtained under subsection (1) must include the following—
  - (a) one or more recommended interim targets for reducing greenhouse gas emissions during the interim target period;
  - (b) indicative trajectories for the State to achieve the long-term emissions reduction target based on each option identified in paragraph (a);
  - (c) potential opportunities across the Victorian economy as a whole for reducing greenhouse gas emissions in the most efficient and cost-effective manner in the interim target period;
  - (d) any other matters on which the Minister, in consultation with the Premier, considers appropriate.

- (3) In forming the advice, an independent expert must consider the following—
- (a) the long-term emissions reduction target;
  - (b) relevant up-to-date climate science, including any climate science report;
  - (c) any technology relevant to climate change;
  - (d) economic circumstances, in particular the likely impact of the target on the economy and the competitiveness of particular sectors of the economy;
  - (e) social circumstances, in particular the likely impact of the target on the health and wellbeing of Victorians;
  - (f) environmental circumstances, in particular the benefits to the environment of emissions reduction;
  - (g) existing national and global action on climate change, including any undertakings relating to the reduction of greenhouse gas emissions that Australia has given under international climate change agreements;
  - (h) any progress towards the reduction of greenhouse gas emissions, including any annual greenhouse gas emissions report;
  - (i) the matters required to be considered by the Premier and the Minister under section 14(1)(c), (d) and (2).
- (4) The Minister may obtain one piece of independent expert advice in respect of both interim emissions reduction targets required under section 10(2).

### **13 Publication of independent expert advice**

- (1) The Minister must ensure that a copy of the independent expert advice obtained under section 12 in respect of an interim emissions

reduction target is laid before each House of the Parliament within 10 sitting days of that House after obtaining the advice.

- (2) The Minister must publish an independent expert advice obtained under section 12 on the Internet site of the Department as soon as practicable after the advice is laid before each House of the Parliament under subsection (1).

#### **14 Matters for consideration in determining interim emissions reduction targets**

- (1) In determining an interim emissions reduction target, the Premier and the Minister must have regard to—
  - (a) the long-term emissions reduction target; and
  - (b) the independent expert advice obtained under section 12; and
  - (c) the policy objectives; and
  - (d) the guiding principles; and
  - (e) any annual greenhouse gas emissions reports considered relevant.
- (2) In addition to subsection (1), the Premier and the Minister must ensure that each interim emissions reduction target constitutes a greater reduction in greenhouse gas emissions than any previous interim emissions reduction target.

#### **15 Publication of interim emissions reduction targets**

- (1) The Minister must cause an interim emissions reduction target to be laid before each House of the Parliament within 10 sitting days of that House after the determination of the target.

- (2) The Minister must publish an interim emissions reduction target on the Internet site of the Department as soon as practicable after the target is laid before each House of the Parliament under subsection (1).

## **16 Amending interim emissions reduction targets**

- (1) Subject to this section, this Division applies to a proposed amendment to an interim emissions reduction target as if the proposed amendment were the initial interim emissions reduction target for an interim target period.
- (2) The Premier and the Minister may amend an interim emissions reduction target if, in the opinion of the Premier and the Minister, exceptional circumstances apply.
- (3) Section 10(2) to (6) does not apply to the amendment of an interim emissions reduction target.
- (4) The publication of an amended interim emissions reduction target must be accompanied by a statement of the reasons why the amendment is necessary.

## **Part 3—Climate change considerations**

### **17 Decision makers must have regard to climate change**

- (1) This section applies to any decision made or action taken that is authorised by—
  - (a) the provision of an Act specified in Schedule 1; or
  - (b) any other prescribed provision of an Act specified in Schedule 1; or
  - (c) any prescribed provision of a subordinate instrument made under an Act specified in Schedule 1.
- (2) A person making a decision or taking an action referred to in subsection (1) must have regard to—
  - (a) the potential impacts of climate change relevant to the decision or action; and
  - (b) the potential contribution to the State's greenhouse gas emissions of the decision or action; and
  - (c) any guidelines issued by the Minister under section 18.
- (3) In having regard to the potential impacts of climate change, the relevant considerations for a person making a decision or taking an action are—
  - (a) potential biophysical impacts; and
  - (b) potential long and short term economic, environmental, health and other social impacts; and
  - (c) potential beneficial and detrimental impacts; and

- (d) potential direct and indirect impacts; and
  - (e) potential cumulative impacts.
- (4) In having regard to the potential contribution to the State's greenhouse gas emissions, the relevant considerations for a person making a decision or taking an action are—
- (a) potential short-term and long-term greenhouse gas emissions; and
  - (b) potential direct and indirect greenhouse gas emissions; and
  - (c) potential increases and decreases in greenhouse gas emissions; and
  - (d) potential cumulative impacts of greenhouse gas emissions.
- (5) The requirements of this Part apply in addition to and without limiting the power or duty of a person making a decision or taking an action referred to in subsection (1) to consider any other matter.
- (6) Nothing in this Part limits the power of a person making a decision or taking an action not referred to in subsection (1) to consider any potential impacts of climate change or potential contributions to the State's greenhouse gas emissions in making any other decision or taking any other action under any other Act or subordinate instrument.

## **18 Ministerial guidelines for actions and decisions**

- (1) The Minister may issue guidelines for a person making a decision or taking an action referred to in section 17(1) as to the scope and application of the factors that the person is required to consider under section 17(2) when making that decision or taking that action.

- (2) The Minister must consult with the Minister administering an Act or a subordinate instrument referred to in section 17(1) before making a guideline that relates to a decision or an action under that Act or subordinate instrument.
- (3) The Minister must publish the guidelines in the Government Gazette.

**19 Minister may have regard to guiding principles**

The Minister may have regard to incorporating any of the guiding principles in making or issuing Ministerial guidelines under section 18 if the Minister considers the principle is relevant in the circumstances.

## **Part 4—Policy objectives and guiding principles**

### **Division 1—Governmental regard to policy objectives and guiding principles**

#### **20 Decision and policy making**

The Government of Victoria will endeavour to ensure that any decision made by the Government and any policy, program or process developed or implemented by the Government appropriately takes account of climate change if it is relevant by having regard to the policy objectives and the guiding principles.

#### **21 Ministerial guidelines for the general application of objectives and principles**

- (1) The Minister may issue guidelines about how the Government of Victoria is to have regard to the policy objectives and the guiding principles when making a decision or developing or implementing a policy, program or process.
- (2) Without limiting subsection (1), guidelines issued under that subsection may—
  - (a) provide practical guidance on the application of the policy objectives and the guiding principles; or
  - (b) provide guidance on when the policy objectives and guiding principles may be taken into account; or
  - (c) provide guidance on how an obligation to consider policy objectives and guiding principles under this Act may be discharged.

- (3) Guidelines issued under subsection (1) may—
- (a) apply to all decisions, policies, programs or processes; or
  - (b) apply to a specified class of decision, policy, program or process.

## **Division 2—Policy objectives**

### **22 Policy objectives**

The policy objectives of this Act are—

- (a) to reduce the State's greenhouse gas emissions consistently with the long-term emissions reduction target and interim emissions reduction targets; and
- (b) to build the resilience of the State's infrastructure, built environment and communities through effective adaptation and disaster preparedness action; and
- (c) to manage the State's natural resources, ecosystems and biodiversity to promote their resilience; and
- (d) to promote and support the State's regions, industries and communities to adjust to the changes involved in the transition to a net zero greenhouse gas emissions economy, including capturing new opportunities and addressing any impacts arising from the need to reduce greenhouse gas emissions across the economy; and
- (e) to support vulnerable communities and promote social justice and intergenerational equity.

### **Division 3—Guiding principles**

#### **23 Principle of informed decision making**

It is a guiding principle of this Act that a decision, policy, program or process—

- (a) should be based on a comprehensive analysis of the best practicably available information about the potential impacts of climate change that is relevant to the decision, policy, program or process under consideration; and
- (b) should take into account the potential contribution to the State's greenhouse gas emissions.

#### **24 Principle of integrated decision making**

It is a guiding principle of this Act that a decision, policy, program or process should integrate the competing long-term, medium-term and short-term environmental, economic, health and other social considerations relating to climate change to ensure that—

- (a) all relevant issues relating to climate change associated with the decision, policy, program or process are taken into consideration during the decision making process; and
- (b) there is a proper examination of all the issues which are relevant to climate change; and
- (c) any measures adopted as a result of the decision, policy, program or process are cost effective and in proportion to the problems relating to climate change that are relevant to the decision, policy, program or process.

## **25 Principle of risk management**

- (1) It is a guiding principle of this Act that a decision, policy, program or process should be based on—
  - (a) careful evaluation of the best practicably available information about the potential impacts of climate change to avoid, wherever practicable, serious or irreversible damage resulting from climate change; and
  - (b) an assessment of the consequences of each of the options in making a decision having regard to the risks of each of those options; and
  - (c) managing and allocating the risks associated with the potential impacts of climate change in a manner that is easily seen and understood and endeavouring to achieve best practice.
- (2) It is a guiding principle of this Act that a decision, policy, program or process should not rely on a lack of full scientific certainty as a reason to postpone appropriate measures to prevent serious or irreversible loss or damage as a result of climate change.

## **26 Principle of equity**

It is a guiding principle of this Act that a decision, policy, program or process should have regard to the following—

- (a) opportunities should be created by the present generation to increase the capacities within that generation and future generations to adapt to climate change;
- (b) in particular, the present generation should consider the opportunities to increase the capacities to adapt to climate change of those

people most vulnerable to the potential impacts of climate change;

- (c) the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations and that any adverse impacts of climate change are minimised for future generations;
- (d) the present generation should consider the long-term, medium-term and short-term consequences of decisions, policies, programs and processes that may impact on climate change.

### **27 Principle of community engagement**

It is a guiding principle of this Act that community involvement in decisions, policies, programs or processes relating to climate change that may affect members of the community or members of the community in future generations, especially members of vulnerable or marginalised communities, should be facilitated and this includes—

- (a) providing appropriate information to the community; and
- (b) providing opportunities for the community to be involved in the decision, policy, program or process; and
- (c) providing for appropriate and adequate public consultation with the community.

### **28 Principle of compatibility**

It is a guiding principle of this Act that a decision, policy, program or process to address issues relating to climate change should—

- (a) seek to promote a coherent policy framework within the State; and
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- (b) seek to achieve cohesion the policies, programs, initiatives, standards or commitments relating to climate change of—
- (i) other States or Territories; and
  - (ii) the government of the Commonwealth; and
  - (iii) governments of other countries; and
  - (iv) international bodies and organisations.

## **Part 5—Planning for climate change**

### **Division 1—Climate change strategy**

#### **29 Preparation of climate change strategy**

- (1) The Minister must prepare a climate change strategy on or before 31 October 2020.
- (2) The Minister must prepare further climate change strategies on or before 31 October in every fifth year after 31 October 2020 up to and including 31 October 2045.
- (3) A climate change strategy must relate to the period of 5 years starting on 1 January in the year following its preparation.

#### **30 Content of climate change strategy**

- (1) A climate change strategy must include—
  - (a) a statement of priorities; and
  - (b) an adaptation component; and
  - (c) an emissions reduction component.
- (2) The statement of priorities of a climate change strategy must include a description of the Government of Victoria's priorities in relation to—
  - (a) adaptation; and
  - (b) the reduction of greenhouse gas emissions; and
  - (c) planning for the State's transition to meet the challenges of climate change and to capitalise on the opportunities created by climate change.

- (3) The adaptation component of a climate change strategy must include the following—
- (a) a summary of the most recent climate science report, including the implications of climate change for the State and any regions of the State;
  - (b) the medium-term and long-term objectives of the State in respect of adaptation, including any regions of the State;
  - (c) actions which may be taken by the Government of Victoria to ensure that the effects of climate change are considered during the carrying out of its operations and activities.
- (4) The emissions reduction component of a climate change strategy must include the following information in respect of the period to which the strategy relates—
- (a) the interim emissions reduction target;
  - (b) the whole-of-government pledge;
  - (c) the sector pledges;
  - (d) any Council pledges;
  - (e) an assessment of the estimated total level of greenhouse gas emissions reductions resulting from the implementation of emissions reduction pledges;
  - (f) information about any other proposals from the business sector or wider community attempting to reduce greenhouse gas emissions that the Minister considers appropriate.

- (5) The Minister must ensure that a climate change strategy includes a report on the implementation and effectiveness, as at the time the strategy is prepared, of any preceding climate change strategy.
- (6) In respect of the climate change strategy prepared under section 29(1), the strategy must include a report on the implementation and effectiveness, as at the time the strategy is prepared, of any Climate Change Adaptation Plan prepared under the **Climate Change Act 2010** that is in effect immediately before the repeal of that Act.

**31 Matters for consideration when preparing climate change strategy**

In preparing a climate change strategy, the Minister must consider—

- (a) the policy objectives; and
- (b) the guiding principles; and
- (c) any independent expert advice obtained under section 12; and
- (d) any climate science reports; and
- (e) any annual greenhouse gas emissions reports; and
- (f) any written submissions in relation to the strategy under section 32.

**32 Consultation requirements for climate change strategy**

Before finalising a climate change strategy, the Minister must publish on the Internet site of the Department—

- (a) a draft of the climate change strategy; and

- (b) a statement that any person may make a written submission to the Minister in relation to the draft strategy; and
- (c) details of how a person may make a written submission; and
- (d) the date by which written submissions must be received by the Minister, being at least 28 days after the draft is published.

### **33 Publication of climate change strategy**

- (1) The Minister must cause a climate change strategy to be laid before each House of the Parliament within 10 sitting days of that House after the strategy is prepared.
- (2) The Minister must publish a climate change strategy on the Internet site of the Department as soon as practicable after the strategy is laid before each House of the Parliament under subsection (1).

## **Division 2—Adaptation action plans**

### **34 Preparation of adaptation action plans**

- (1) An adaptation action plan must be prepared by the relevant nominated Minister on or before 31 October 2021.
- (2) The nominated Minister must prepare further adaptation actions plans on or before 31 October in every fifth year after 31 October 2021 up to and including 31 October 2046.
- (3) An adaptation action plan must relate to the period of 5 years starting on 1 January in the year following its preparation.
- (4) An adaptation action plan must be prepared in respect of the following systems—
  - (a) the built environment system;

- (b) the education and training system;
- (c) the health and human services system;
- (d) the natural environment system;
- (e) the primary production system;
- (f) the transport system;
- (g) the water cycle system;
- (h) any other prescribed system.

### **35 Content of adaptation action plan**

- (1) An adaptation action plan must include—
  - (a) a statement of the roles and responsibilities of the Government of Victoria and other governments, persons and bodies in relation to the relevant system; and
  - (b) an assessment, in relation to the relevant system, of the extent to which existing policies of the Government of Victoria address the statement of priorities of a climate change strategy; and
  - (c) if identified under the assessment referred to in paragraph (b), a list of further actions over the next 5 years that could address the statement of priorities of a climate change strategy.
- (2) In addition to subsection (1), an adaptation action plan may include—
  - (a) a summary of any other climate change implications for the relevant system, including risks or vulnerabilities not included in the statement of priorities, and any possible actions to address those implications; or

- (b) information about any other proposals from any person or body, including the business sector or wider community, that relate to adaptation of the relevant system that the nominated Minister considers relevant; or
  - (c) any other data relied on in the development of the plan that the nominated Minister considers relevant; or
  - (d) any other information the nominated Minister considers necessary.
- (3) The nominated Minister must ensure that an adaptation action plan includes a report on the implementation and effectiveness, as at the time the plan is prepared, of any previous adaptation action plan prepared by that Minister.

**36 Matters for consideration when preparing adaptation action plan**

In preparing an adaptation action plan, a nominated Minister must consider—

- (a) the policy objectives; and
- (b) the guiding principles; and
- (c) any climate science reports; and
- (d) any written submissions in relation to the plan under section 37.

**37 Consultation requirements for adaptation action plan**

Before finalising an adaptation action plan, the nominated Minister must publish on the Internet site of the relevant Department—

- (a) a draft of the proposed adaptation action plan; and

- (b) a statement that any person may make a written submission to the nominated Minister in relation to the draft plan; and
- (c) details of how a person may make a written submission; and
- (d) the date by which written submissions must be received by the nominated Minister, being at least 28 days after the draft plan is published.

### **38 Responsibility for adaptation action plans**

- (1) The Minister may determine in writing any other Minister to be the nominated Minister for the purposes of preparing an adaptation action plan in respect of a system referred to in section 34(4).
- (2) The Minister must consult with the Premier before making a determination under subsection (1).
- (3) A determination may specify more than one Minister in respect of a system, or be made in respect of part of a system.
- (4) If the Minister does not make a determination in respect of a system, the Minister is taken to be the nominated Minister for that system.

### **39 Ministerial directions in relation to adaptation action plans**

- (1) The Minister may issue directions for or with respect to the preparation of adaptation action plans.
- (2) Without limiting subsection (1) the directions may specify the methodology to be applied to the identification of actions in the preparation of an adaptation action plan and recommend types of information to be used for that plan.
- (3) A nominated Minister must have regard to any directions in preparing an adaptation action plan.

#### **40 Publication of adaptation action plan**

- (1) The nominated Minister must cause an adaptation action plan to be laid before each House of the Parliament within 10 sitting days of that House after the plan is prepared.
- (2) The nominated Minister must publish an adaptation action plan on the Internet site of the relevant Department as soon as practicable after the plan is laid before each House of the Parliament under subsection (1).

### **Division 3—Emissions reduction pledges**

#### **41 Preparation of whole-of-government pledge**

- (1) The Minister must make a statement in respect of whole-of-government greenhouse gas emissions reductions on or before 1 August 2020.
- (2) The Minister must make further statements in respect of whole-of-government greenhouse gas emissions reductions on or before 1 August in every fifth year after 1 August 2020 up to and including 1 August 2045.
- (3) A whole-of-government pledge must relate to the period of 5 years starting on 1 January in the year following its preparation.

#### **42 Content of whole-of-government pledge**

- (1) A whole-of-government pledge must include—
  - (a) a description of actions to be undertaken by an applicable government body over the next 5 years that are reasonably expected to contribute to the reduction of greenhouse gas emissions caused by government operations and activities; and

- (b) a reasonable estimate of the total level of greenhouse gas emissions reductions expected to result from the implementation of those actions.
- (2) In preparing a whole-of-government pledge, the Minister must consider—
  - (a) the policy objectives; and
  - (b) the guiding principles; and
  - (c) any independent expert advice obtained under section 12.
- (3) In addition to subsection (2), the Minister may consider any annual greenhouse gas emissions report in preparing a whole-of-government pledge.
- (4) In this section—

***applicable government body*** means—

  - (a) a Department within the meaning of the **Public Administration Act 2004**; and
  - (b) any prescribed entity established by or under a law of the State; and
  - (c) any other entity that has provided the Minister with any action to be included in a whole-of-government pledge.

### **43 Preparation of sector pledges**

- (1) The relevant nominated Minister must make a statement in respect of greenhouse gas emissions reductions for a prescribed category of emissions and removals on or before 1 August 2020.
- (2) The nominated Minister must make further statements in respect of greenhouse gas emissions reductions for a prescribed category of emissions and removals on or before 1 August in every

fifth year after 1 August 2020 up to and including 1 August 2045.

- (3) A sector pledge must relate to the period of 5 years starting on 1 January in the year following its preparation.

#### **44 Content of sector pledges**

- (1) A sector pledge must include—
  - (a) a description of actions to be undertaken by the Government of Victoria over the next 5 years that are reasonably expected to contribute to the reduction of greenhouse gas emissions from a prescribed category of emissions and removals; and
  - (b) a reasonable estimate of the total level of greenhouse gas emissions reductions expected to result from the implementation of those actions.
- (2) In preparing a sector pledge, the nominated Minister must consider—
  - (a) the policy objectives; and
  - (b) the guiding principles; and
  - (c) any independent expert advice obtained under section 12.
- (3) In addition to subsection (2), the nominated Minister may consider any annual greenhouse gas emissions report in preparing a sector pledge.

#### **45 Responsibility for sector pledges**

- (1) The Minister may determine in writing any other Minister to be the nominated Minister for the purposes of preparing a sector pledge in respect of a prescribed category of emissions and removals.

- (2) The Minister must consult with the Premier before making a determination under subsection (1).
- (3) A determination may specify more than one Minister in respect of a prescribed category of emissions or removals, or be made in respect of part of a category of emissions or removals.
- (4) If the Minister does not make a determination in respect of a prescribed category of emissions and removals, the Minister is taken to be the nominated Minister for that category.

#### **46 Preparation of Council pledges**

- (1) A Council may make a statement in respect of greenhouse gas emissions reductions resulting from the performance of the Council's powers and duties under the **Local Government Act 1989** on or before 1 August 2020.
- (2) A Council may make a statement in respect of greenhouse gas emissions reductions on or before 1 August in every fifth year after 1 August 2020 up to and including 1 August 2045.
- (3) A Council pledge must relate to the period of 5 years starting on 1 January in the year following its preparation.

#### **47 Content of Council pledges**

- (1) A Council pledge must include—
  - (a) a description of actions to be undertaken by the Council over the next 5 years that are reasonably expected to contribute to the reduction of greenhouse gas emissions caused or otherwise influenced by the Council; and
  - (b) a reasonable estimate of the total level of greenhouse gas emissions reductions expected to result from the implementation of those actions.

- (2) In preparing a Council pledge, a Council must consider—
- (a) the policy objectives; and
  - (b) the guiding principles.

#### **48 Notification of Council pledge**

A Council that prepares a Council pledge must give a copy of the pledge to the Minister as soon as practicable after its preparation.

#### **49 Ministerial directions in relation to emissions reduction pledges**

- (1) The Minister may issue directions for or with respect to the preparation of emissions reduction pledges.
- (2) Without limiting subsection (1) the directions may—
- (a) specify the methodology to be used in determining the estimated reduction in greenhouse gas emissions set out in the emissions reduction pledge; or
  - (b) specify the appropriate consultation to be undertaken by a nominated Minister or Council.
- (3) A nominated Minister or a Council must have regard to any directions in preparing an emissions reduction pledge.

#### **50 Variation of emissions reduction pledges**

- (1) The Minister, at any time, may vary a whole-of-government pledge that is in force at the time of the variation.
- (2) A nominated Minister, at any time, may vary a sector pledge that is in force at the time of the variation.

- (3) If the Minister or a nominated Minister varies an emissions reduction pledge after the publication of the climate change strategy in respect of the same period, the relevant Minister must—
- (a) publish notice of the variation in the Government Gazette; and
  - (b) publish an up-to-date consolidated version of the pledge on the Internet site of the relevant Department.

## **Part 6—Further information and reports**

### **51 Climate science report**

- (1) The Minister must prepare a report on the science and data relevant to climate change in the State.
- (2) The Minister must ensure that a report under subsection (1) sets out—
  - (a) a synthesis of the best practicably available climate change science and its implications for the State and any regions of the State; and
  - (b) data on observed changes in climate in the State; and
  - (c) any other information about the science and data relevant to climate change in the State, including any regions of the State, that the Minister considers appropriate.
- (3) The Minister must ensure that a report under subsection (1) is prepared on or before 31 October 2019 and on or before 31 October in every fifth year after that date up to and including 31 October 2044.
- (4) The Minister must cause a copy of a report under subsection (1) to be laid before each House of the Parliament within 10 sitting days of that House after the completion of the report.
- (5) The Minister must publish the report on the Internet site of the Department as soon as practicable after the report is laid before each House of the Parliament under subsection (4).

## **52 Annual greenhouse gas emissions report**

- (1) The Minister must prepare an annual report on the State's greenhouse gas emissions that—
  - (a) sets out an overview and collation of the best practicably available information about the State's greenhouse gas emissions; and
  - (b) sets out the extent to which the amount of the State's greenhouse gas emissions has been reduced in relation to the amount of the State's greenhouse gas emissions for the year 2005 determined under section 11(2); and
  - (c) includes any other information about the State's greenhouse gas emissions that the Minister considers appropriate.
- (2) For the purposes of subsection (1)(b), the method for calculating any reduction in the amount of the State's greenhouse gas emissions is the method set out in section 53.
- (3) The Minister must prepare a report under subsection (1) on or before 31 October 2018 and on or before 31 October every following year.
- (4) The Minister must cause a copy of a report under subsection (1) to be laid before each House of the Parliament within 10 sitting days of that House after the completion of the report.
- (5) The Minister must publish a report under subsection (1) on the Internet site of the Department as soon as practicable after the report is laid before each House of the Parliament under subsection (4).

### **53 Calculation of reduction of greenhouse gas emissions**

A reduction in the amount of the State's greenhouse gas emissions is calculated in accordance with the formula—

$A - B$

where—

**A** is the carbon dioxide equivalent of the total amount of the State's greenhouse gas emissions for the year 2005 determined under section 11(2);

**B** is the carbon dioxide equivalent of the total amount of the State's greenhouse gas emissions, determined in accordance with the regulations, for the most recent year for which the State's greenhouse gas emissions data is practicably available.

### **54 End of interim target period report**

- (1) The Minister must prepare a report that includes the information specified in section 55 for each interim target period.
- (2) The Minister must ensure that a report under subsection (1) is prepared within 2 years after the end of the interim target period for which the report is prepared.
- (3) The Minister must cause a copy of a report under subsection (1) to be laid before each House of the Parliament within 10 sitting days of that House after the completion of the report.
- (4) The Minister must publish a report under subsection (1) on the Internet site of the Department as soon as practicable after the completion of the report.

## **55 Information to be included in end of interim target period report**

The Minister must ensure that a report under section 54—

- (a) sets out the total amount of the State's greenhouse gas emissions during the interim target period; and
- (b) states whether the interim emissions reduction target determined for the interim target period has been achieved; and
- (c) if the interim emissions reduction target has not been achieved—
  - (i) sets out the reasons why that target was not achieved; and
  - (ii) contains a statement of any implications of the failure to achieve the interim emissions reduction target for the achievement of subsequent interim emissions reduction targets; and
- (d) contains an assessment of the cumulative progress towards achieving the long-term emissions reduction target; and
- (e) in the case of the report prepared for the interim target period ending on 31 December 2050, states whether the long-term emissions reduction target has been achieved; and
- (f) assesses the implementation and effectiveness, including the cost effectiveness, of the emissions reduction pledges included in any climate change strategy that was in force during the interim target period; and
- (g) any other information relevant to the interim target period that the Minister considers appropriate.

## **Part 7—Forestry rights, carbon sequestration rights and soil carbon rights on private land**

### **Division 1—Introductory**

#### **56 Application of Part**

This Part does not apply to—

- (a) unalienated Crown land or reserved Crown land; or
- (b) land in an identified folio under the **Transfer of Land Act 1958**; or
- (c) a lease of Crown land registered under the **Transfer of Land Act 1958**; or
- (d) land not under the **Transfer of Land Act 1958**; or
- (e) carbon that is owned by the Crown in accordance with the **Greenhouse Gas Geological Sequestration Act 2008** or carbon sequestered in an underground geological storage formation within the meaning of that Act.

### **Division 2—Forest carbon rights**

#### **57 Creation and transfer of forest carbon rights**

- (1) A forest carbon right may be created by the execution of an instrument of transfer of the right by a person who is the registered proprietor of a freehold or leasehold estate in land to which the right applies.
- (2) If land is subject to a lease registered under the **Transfer of Land Act 1958**, the registered proprietor of a freehold estate in land cannot create a forest carbon right in relation to the land

for any part of the term of the lease unless the lessee consents to the creation of the right.

- (3) An instrument of transfer creating a forest carbon right must be in a form approved by the Registrar under the **Transfer of Land Act 1958**.
- (4) The instrument of transfer must specify each forest carbon right that is created.
- (5) The instrument of transfer must include a statement expressly stating that the forest carbon right is created in accordance with this Act.
- (6) The Registrar may register under the **Transfer of Land Act 1958** a forest carbon right that is created by instrument of transfer under this section.
- (7) The Registrar must not register more than one of each of the following in respect of particular land—
  - (a) a carbon sequestration right;
  - (b) a forestry right;
  - (c) a soil carbon right.
- (8) A registered forest carbon right—
  - (a) subject to this Part, may be dealt with under the **Transfer of Land Act 1958**; and
  - (b) may be transferred under that Act for a term of not less than 3 years.
- (9) A registered forest carbon right cannot be varied.

### **Division 3—Forestry and Carbon Management Agreements**

#### **58 Forestry and Carbon Management Agreements**

- (1) The registered proprietor of a freehold or leasehold estate in land may enter into a Forestry and Carbon Management Agreement in
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accordance with this Act with the owner of a forest carbon right (if any) relating to the land and with any other person.

- (2) A public authority may be a party to a Forestry and Carbon Management Agreement for the purpose of—
  - (a) carrying out its functions in relation to native vegetation or soil management and biodiversity conservation; or
  - (b) carrying out its functions under any law affecting vegetation or soil.
- (3) A Forestry and Carbon Management Agreement must include a statement that the agreement is a Forestry and Carbon Management Agreement under this Act.
- (4) No more than one Forestry and Carbon Management Agreement can be entered into in respect of the same area of land.

### **59 Purpose of Forestry and Carbon Management Agreement**

- (1) The purpose of a Forestry and Carbon Management Agreement is to provide for the imposition of management obligations in relation to any of the following—
  - (a) carbon sequestration by vegetation;
  - (b) carbon sequestration underground;
  - (c) the management of vegetation.
- (2) An obligation under a Forestry and Carbon Management Agreement is not a restrictive covenant.

- (3) An obligation under a Forestry and Carbon Management Agreement may be positive or negative in nature.

## **60 Management obligations**

- (1) A Forestry and Carbon Management Agreement must specify—
- (a) in relation to the harvesting of vegetation—
    - (i) who is entitled to control decisions about the timing and extent of harvesting of vegetation; or
    - (ii) the process for determining how those decisions will be made; and
  - (b) any obligations agreed to by the parties in relation to the preservation, enhancement or management of vegetation or soil.
- (2) A Forestry and Carbon Management Agreement may include any other provisions the parties consider desirable including—
- (a) requirements for compliance with the requirements under any enactment in relation to vegetation; and
  - (b) requirements for biodiversity conservation; and
  - (c) prohibitions and restrictions on the use and development of land; and
  - (d) other provisions relating to the management and use of land; and
  - (e) provisions for the ending or conversion of an old agreement.

(3) An obligation specified in a Forestry and Carbon Management Agreement may be placed on any of the following—

- (a) any owner of land;
- (b) any other party to the agreement.

**Note**

Land is defined to include any interest in land which may include a forest carbon right.

## **61 Security**

A Forestry and Carbon Management Agreement may include conditions—

- (a) requiring a party to the agreement to deposit with a person specified in the agreement—
  - (i) a sum of money fixed in, or determined in accordance with, the agreement; or
  - (ii) an undertaking to pay that sum together with security in a form determined by or in accordance with the agreement; or
  - (iii) any other form of security provided for, by or under the agreement; or
- (b) requiring the sum or part of the sum to be forfeited if there is any failure by the owner to carry out the agreement; or
- (c) providing that any money deposited must be returned to the relevant party on a date or dates specified to the extent that it has not been forfeited.

## **62 Commencement of Forestry and Carbon Management Agreement**

(1) A Forestry and Carbon Management Agreement comes into effect on—

- (a) the date that it is executed by the parties; or
  - (b) any later date specified in the agreement.
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- (2) A Forestry and Carbon Management Agreement is binding on—
- (a) the parties to the agreement; and
  - (b) any person who has consented to the agreement.

### **63 Recording of Forestry and Carbon Management Agreement**

- (1) The registered proprietor of a relevant interest who is a party to a Forestry and Carbon Management Agreement may apply to the Registrar to record the agreement on any folio of the Register for land to which the agreement applies.
- (2) The application must—
- (a) be in a form approved by the Registrar under the **Transfer of Land Act 1958**; and
  - (b) be accompanied by a copy of the Forestry and Carbon Management Agreement.
- (3) The Registrar may make a recording of the Forestry and Carbon Management Agreement in the Register if the application complies with subsection (2).
- (4) In this section—
- relevant interest* means—
- (a) a fee simple estate; or
  - (b) a leasehold estate; or
  - (c) a forest carbon right.

### **64 Effect of recording of agreement**

In addition to section 62, on and from the recording of a Forestry and Carbon Management Agreement in the Register, the obligations specified in the agreement run with the land

affected and are binding on any person who derives title to an estate or interest in the land from a party to the agreement.

## **65 Variation of Forestry and Carbon Management Agreement**

- (1) The obligations under a Forestry and Carbon Management Agreement may be varied with the consent of all persons who are bound by the agreement.
- (2) A variation cannot be made to a Forestry and Carbon Management Agreement to—
  - (a) transfer or assign a forest carbon right; or
  - (b) vary a forest carbon right; or
  - (c) vary the date on which the agreement ends;  
or
  - (d) vary the land to which the agreement applies;  
or
  - (e) vary the parties to the agreement.
- (3) The registered proprietor of a relevant interest in land to which a Forestry and Carbon Management Agreement applies may apply to the Registrar to record the variation to the agreement in the Register.
- (4) Sections 63 and 64 apply to an application to record a variation of a Forestry and Carbon Management Agreement as if it were an application to record the agreement.
- (5) In this section—

*relevant interest* means—

  - (a) a fee simple estate; or
  - (b) a leasehold estate; or
  - (c) a forest carbon right.

## **66 Ending of Forestry and Carbon Management Agreement**

- (1) A Forestry and Carbon Management Agreement may provide that the agreement ends on a date specified in the agreement.
- (2) If no date is specified in a Forestry and Carbon Management Agreement for the ending of the agreement, the agreement may be ended by agreement between the persons bound by the agreement.
- (3) An agreement may be ended either wholly or in relation to a particular area of land.

## **67 Application to Registrar when agreement ends**

- (1) The registered proprietor of a relevant interest in land to which a Forestry and Carbon Management Agreement applies may apply to the Registrar to remove the recording in the Register relating to that land if the agreement ends in accordance with section 66 in relation to that land.
- (2) The application must be in the form approved by the Registrar under the **Transfer of Land Act 1958**.
- (3) The Registrar may remove any recording in the Register to which the application relates if the application is in accordance with this section.
- (4) In this section—  
*relevant interest* means—
  - (a) a fee simple estate; or
  - (b) a leasehold estate; or
  - (c) a forest carbon right.

## **68 Enforcement of Forestry and Carbon Management Agreement**

- (1) A person who is bound by a Forestry and Carbon Management Agreement may apply to VCAT to enforce the agreement.
- (2) On an application under this section, VCAT may—
  - (a) order a person to comply with a requirement specified within the Forestry and Carbon Management Agreement; or
  - (b) order a person to reinstate land that has been developed in contravention of the agreement; or
  - (c) make any other order it considers appropriate.

## **69 Disputes in relation to ending Forestry and Carbon Management Agreements**

- (1) This section applies to a dispute involving the ending of a Forestry and Carbon Management Agreement.
- (2) A person who is bound by the agreement may apply to VCAT for a declaration or order resolving the dispute.
- (3) Without limiting the orders that VCAT can make on an application under this section, VCAT may make a declaration as to whether the Forestry and Carbon Management Agreement has ended.

## **70 Registrar to give effect to VCAT orders**

In any proceeding in VCAT under section 68 or 69 relating to land, if VCAT directs the Registrar to make any amendment to the Register or otherwise to do any act or make any recordings necessary to give effect to an order of VCAT, the Registrar must obey that direction.

## **Part 8—Carbon sequestration on Crown land**

### **Division 1—Application**

#### **71 Application**

- (1) This Part applies to unalienated Crown land and reserved Crown land.
- (2) This Part applies to any Crown land that is subject to a lease whether or not that lease is registered under the **Transfer of Land Act 1958**.
- (3) This Part does not apply to—
  - (a) carbon that is owned by the Crown in accordance with the **Greenhouse Gas Geological Sequestration Act 2008**; or
  - (b) carbon sequestered in an underground geological storage formation within the meaning of that Act; or
  - (c) an underground geological storage formation within the meaning of that Act.
- (4) Nothing in this Part alters the ownership or control of Crown land under any other Act.
- (5) This Part continues to apply to Crown land in relation to which a carbon sequestration right or soil carbon right has been granted under a Carbon Sequestration Agreement made under this Part.

#### **72 Native title rights not affected**

Rights and interests created under this Part in relation to Crown land are not intended and are not to be taken to extinguish native title rights to the extent that they exist in relation to that land.

## **Division 2—Use of Crown land for carbon sequestration**

### **73 Declaration of land available for use for carbon sequestration**

- (1) The Governor in Council, on the recommendation of the Minister, by Order published in the Government Gazette, may do one or more of the following—
  - (a) declare specified Crown land or classes of Crown land to be available for carbon sequestration;
  - (b) direct that any forest produce on Crown land be placed under the control and management of the Secretary;
  - (c) invite expressions of interest for the use or development of Crown land for carbon sequestration purposes.
- (2) The Minister must not make a recommendation for an Order under subsection (1)(a) unless the Minister is satisfied that—
  - (a) the land is suitable for the sequestration of carbon by vegetation or in soil; and
  - (b) the use of the land for that purpose would not be contrary to the public interest.
- (3) The Minister must not make a recommendation for an Order under subsection (1)(b) unless the Minister responsible for the Act under which the right to forest produce was granted has consented to the recommendation.
- (4) An order made under subsection (1)(b) may be subject to any conditions specified in the Order.

**74 Role of Secretary in relation to carbon sequestration on Crown land**

- (1) Subject to this Part, the Secretary may—
  - (a) manage Crown land for the purposes of carbon sequestration; and
  - (b) do anything that is reasonable and necessary for the purposes of carbon sequestration on Crown land.
- (2) If Crown land is managed or controlled by a public authority other than the Secretary, the Secretary may exercise powers under this section in relation to that land only if and to the extent that an Order under section 73(1)(b) so provides.
- (3) Subject to section 75, the Secretary holds, manages and controls carbon sequestered on or under unalienated Crown land for and on behalf of the Crown.

**75 Carbon sequestration on encumbered Crown land**

- (1) This section applies to Crown land that is managed or controlled by a public authority or is subject to a lease, licence, instrument or agreement under any other Act.
- (2) The ownership of carbon sequestered on Crown land to which this section applies is subject to the provisions of the Act under which the land is managed, controlled, leased or licensed, or the instrument or agreement is made or entered into, and to the terms of the lease, licence, instrument or agreement.
- (3) The licensee of a plantation licence granted under Part 3A of the **Victorian Plantations Corporation Act 1993** before 1 July 2011 is entitled to a carbon sequestration right in relation to the land during the duration of the plantation licence.

### **Division 3—Carbon Sequestration Agreements**

#### **76 Carbon Sequestration Agreements**

- (1) The Secretary may enter into a Carbon Sequestration Agreement in relation to Crown land—
  - (a) which is subject to a relevant Act; or
  - (b) to which a declaration under section 73(1)(a) applies.
- (2) The Carbon Sequestration Agreement must—
  - (a) comply with the requirements of this Part; and
  - (b) not be inconsistent with the requirements of any relevant law, including requirements relating to the following—
    - (i) the use and treatment of conservation workers within the meaning of the **Conservation, Forests and Lands Act 1987**;
    - (ii) environment protection and conservation of biodiversity;
    - (iii) native title and aboriginal cultural heritage.
- (3) A Carbon Sequestration Agreement may only be entered into in relation to reserved Crown land if the use of the land for carbon sequestration would not be inconsistent with the purposes for which the land was reserved.

- (4) The Secretary may enter into a Carbon Sequestration Agreement in relation to land that is proposed to be transferred or conveyed to the Crown.

**Note**

The entry into a Carbon Sequestration Agreement under this section may be a land use activity under the **Traditional Owner Settlement Act 2010** if it relates to public land to which a land use activity agreement under that Act applies.

**77 Requirements for Carbon Sequestration Agreements**

The Secretary, from time to time by notice published in the Government Gazette, may specify requirements for Carbon Sequestration Agreements including—

- (a) the contents of the agreements; and
- (b) management plans to be included in agreements, including the form and content of the management plans; and
- (c) the identification and protection of other uses of Crown land; and
- (d) water management; and
- (e) the provision of appropriate securities to the Crown.

**78 What may a Carbon Sequestration Agreement provide for?**

- (1) A Carbon Sequestration Agreement may—
- (a) grant a person a carbon sequestration right or soil carbon right in relation to Crown land for the term of the agreement; or

- (b) authorise a person to do any of the following—
    - (i) access Crown land;
    - (ii) plant and maintain vegetation on Crown land for the purposes of carbon sequestration;
    - (iii) control and exploit carbon sequestered or to be sequestered within vegetation or soil on Crown land;
    - (iv) manage the land for the purpose of carbon sequestration;
  - (c) set out agreements in relation to related matters, including management objectives, harvesting and ownership of harvested material; or
  - (d) impose obligations on a person in relation to fire management, fire prevention and fire suppression on the Crown land to which the agreement applies; or
  - (e) provide for the following—
    - (i) the ending of the agreement and for the rights of the parties if the Minister ends the agreement under section 87;
    - (ii) the periodic review of any provisions of the agreement;
    - (iii) the manner of varying the agreement;
    - (iv) the circumstances in which compensation is payable under the agreement;
    - (v) the rehabilitation or reinstatement of land to which the agreement applies.
- (2) A Carbon Sequestration Agreement cannot alter the ownership of forest produce.

**79 Grant of carbon sequestration right or soil carbon right**

- (1) The Secretary must not enter into a Carbon Sequestration Agreement that grants a person a carbon sequestration right or soil carbon right in relation to Crown land unless that person is a party to the agreement.
- (2) The Secretary must not grant a person a carbon sequestration right and a soil carbon right in relation to Crown land except under a separate Carbon Sequestration Agreement for each right.
- (3) A carbon sequestration right or soil carbon right granted in relation to Crown land under a Carbon Sequestration Agreement is extinguished on the date the agreement ends.

**80 Carbon Sequestration Agreement may also provide for security to be provided**

A Carbon Sequestration Agreement may include conditions requiring the provision of securities to the Crown, including the provision of indemnities or insurance.

**81 Carbon Sequestration Agreement may also include provisions relevant to orderly planning of land**

Subject to any enactment or law affecting the land, a Carbon Sequestration Agreement may include any provision that is relevant to the orderly planning of the land to which it applies including provisions for—

- (a) the allocation of risk between the Crown and any other party to the agreement; and
- (b) the responsibility for the performance of obligations affecting the land under any relevant law, including obligations with respect to the following—

- (i) fire management, fire prevention and fire suppression;
- (ii) water allocation;
- (iii) biodiversity conservation;
- (iv) mineral resource development and extractive industries;
- (v) compliance with any code of practice under any Act or subordinate instrument applying to the land.

## **82 Notice of proposed Carbon Sequestration Agreement**

- (1) The proponent of a proposed Carbon Sequestration Agreement must—
  - (a) publish notice of the proposed agreement in the Government Gazette; and
  - (b) give written notice of the proposed agreement to—
    - (i) the relevant public land manager; and
    - (ii) any existing lessee or licensee of the land; and
    - (iii) the Minister administering the **Water Act 1989**; and
    - (iv) the relevant Catchment Management Authority under the **Catchment and Land Protection Act 1994**; and
    - (v) any other public authority that the Secretary considers relevant; and
    - (vi) any Commonwealth regulatory body that the Secretary considers relevant.
- (2) The Secretary may give any notice under this section in place of the proponent.

### **83 Consent of lessee or licensee required for Carbon Sequestration Agreement**

The Secretary must not enter into a Carbon Sequestration Agreement without the consent of any lessee or licensee of the land.

### **84 Matters to be considered by Secretary**

- (1) In determining whether to enter into a Carbon Sequestration Agreement in relation to Crown land, the Secretary must have regard to the following—
  - (a) the requirements of any Commonwealth law relating to the use of Crown land for carbon sequestration;
  - (b) the objectives and requirements of any relevant Act;
  - (c) the terms of any existing lease, licence or agreement that applies to the land;
  - (d) the desirability of preserving other legitimate uses of the land;
  - (e) the need to—
    - (i) balance economic, social and environmental considerations relevant to the land; and
    - (ii) manage Crown land for multiple purposes; and
    - (iii) maximise the value of Crown land, having regard to the objectives and principles of ecologically sustainable development; and
    - (iv) plan for the sustainable management of water and biodiversity in the relevant catchment; and

- (v) protect persons and property from the risk of fire;
  - (f) any economic risks and opportunities associated with setting land aside for carbon sequestration purposes;
  - (g) the interests of indigenous groups in the relevant area.
- (2) In addition to subsection (1), the Secretary may have regard to any other matters the Secretary considers relevant in the circumstances.

**85 Notice of making of Carbon Sequestration Agreement**

The Secretary must cause notice of the making of a Carbon Sequestration Agreement to be published in the Government Gazette as soon as practicable after it is made.

**86 Consent of Secretary required to transfer a Carbon Sequestration Agreement or assign rights under an agreement**

- (1) A person cannot transfer a Carbon Sequestration Agreement or assign any rights under a Carbon Sequestration Agreement without the written consent of the Secretary.
- (2) The Secretary must not consent to the transfer of a Carbon Sequestration Agreement to a person unless the carbon sequestration right or soil carbon right granted by the agreement is assigned to that person for the remainder of the term of the agreement.

### **87 Ending of Carbon Sequestration Agreement**

A Carbon Sequestration Agreement may be ended—

- (a) by the Minister on giving the parties to the agreement not less than 180 days written notice of termination; or
- (b) by agreement of the parties in accordance with the agreement; or
- (c) by further agreement of the parties.

### **88 Register of Carbon Sequestration Agreements**

- (1) The Secretary must maintain a Register of Carbon Sequestration Agreements in accordance with the regulations.
- (2) The Register of Carbon Sequestration Agreements must include details of—
  - (a) the making of Carbon Sequestration Agreements; and
  - (b) the carbon sequestration rights and soil carbon rights that are granted under Carbon Sequestration Agreements; and
  - (c) the variation of Carbon Sequestration Agreements; and
  - (d) the transfer of Carbon Sequestration Agreements and the assignment of carbon sequestration rights and soil carbon rights that are granted under Carbon Sequestration Agreements; and
  - (e) the termination of Carbon Sequestration Agreements.

### **89 Certificate of Secretary**

An extract from the Register of Carbon Sequestration Agreements certified by the Secretary to be a true copy and setting out that a

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person is a party to a Carbon Sequestration Agreement that grants the person—

- (a) a carbon sequestration right in relation to Crown land is evidence that the person is the owner of the carbon sequestration right; or
- (b) a soil carbon right in relation to Crown land is evidence that the person is the owner of the soil carbon right.

## **Division 4—Fire suppression and prevention**

### **90 Application**

This Division applies if a Carbon Sequestration Agreement affects land.

### **91 Directions by Secretary or authorised officer**

The Secretary or any authorised officer appointed under the **Conservation, Forests and Lands Act 1987** may direct a person to carry out works with respect to fire prevention, fire management or fire suppression.

### **92 Person must comply with direction**

A person must comply with a direction of the Secretary or an authorised officer (as the case requires) under this Division.

### **93 Secretary to reimburse for assistance**

If a person carries out works pursuant to a direction under section 91, the Secretary must reimburse the person for the reasonable costs incurred by that person in carrying out those works unless the Carbon Sequestration Agreement provides that the Secretary is not to be liable to reimburse the person for those costs.

**94 Division does not derogate from certain Acts**

Nothing in this Division derogates from the **Forests Act 1958**, the **Country Fire Authority Act 1958** or the **Sustainable Forests (Timber) Act 2004**.

**Division 5—Enforcement**

**95 Enforcement**

Part 9 of the **Conservation, Forests and Lands Act 1987** applies to a Carbon Sequestration Agreement as if that agreement were a relevant law within the meaning of that Act.

## **Part 9—General**

### **96 Application of planning laws**

The creation, transfer or registration of a right under Part 7 or 8 in relation to land is not—

- (a) a use or development of the land for the purposes of the **Planning and Environment Act 1987**; or
- (b) a subdivision of the land for the purposes of the **Subdivision Act 1988**.

### **97 Regulations**

- (1) The Governor in Council may make regulations for or with respect to—
  - (a) prescribing eligible offsets; and
  - (b) prescribing regulatory, accreditation or certification schemes; and
  - (c) prescribing other systems for the purposes of adaptation action plans; and
  - (d) prescribing entities for the purposes of whole-of-government emissions reduction pledges; and
  - (e) setting out categories of greenhouse gas emissions and removals for the purposes of sector emissions reduction pledges; and
  - (f) prescribing a method to determine a figure that represents the amount of the State's greenhouse gas emissions for the year 2005 for the purposes of section 11(2); and
  - (g) prescribing a method to determine whether an interim emissions reduction target has been achieved; and
  - (h) prescribing how the State's greenhouse gas emissions for a particular year are to be determined; and

- (i) generally prescribing any matter required or permitted to be prescribed by this Act or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
- (a) may be of general or limited application; and
  - (b) may differ according to differences in time, place or circumstance; and
  - (c) may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification, or method, formulated, issued, prescribed or published by any person whether—
    - (i) wholly or partially or as amended by the regulations; or
    - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
    - (iii) as formulated, issued, prescribed or published from time to time; and
  - (d) may leave anything for the approval or satisfaction of a specified person.

## **Part 10—Repeal and transitional provisions**

### **Division 1—Repeal of Climate Change Act 2010**

#### **98 Repeal of Climate Change Act 2010**

The **Climate Change Act 2010** is repealed.

### **Division 2—Transitional provisions**

#### **99 Carbon Sequestration Agreement**

On the repeal of the **Climate Change Act 2010**, a Carbon Sequestration Agreement entered into under section 45 of that Act that is in effect immediately before that repeal is taken to be a Carbon Sequestration Agreement under section 76.

#### **100 Forestry and Carbon Management Agreement**

On the repeal of the **Climate Change Act 2010**, a Forestry and Carbon Management Agreement entered into under section 27 of that Act that is in effect immediately before that repeal is taken to be a Forestry and Carbon Management Agreement under section 58.

## **Part 11—Amendment to the Environment Protection Act 1970**

### **101 Powers, duties and functions of Authority**

Before section 13(1)(ga)(ii) of the **Environment Protection Act 1970** insert—

"(i) to regulate the emission of greenhouse gas substances to contribute to the State's long-term emissions reduction target and interim emissions reduction targets under the **Climate Change Act 2017**; and".

### **102 Repeal of Part 11**

This Part is **repealed** on 1 November 2018.

#### **Note**

The repeal of this Part does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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## Schedule 1—Acts and decisions or actions

Section 17

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<i>Name of Act</i>	<i>Decision or action</i>
<b>Catchment and Land Protection Act 1994</b>	An approval or refusal of an approval of a management plan by the Minister, or the return of a plan to the Authority with any recommendations for change, under clause 3 of Schedule 2.  The revocation of a management plan by the Minister under clause 7 of Schedule 2.
<b>Coastal Management Act 1995</b>	Consideration by the Minister of a draft Coastal Strategy under section 17.  The endorsement by the Minister of a Coastal Action Plan under section 26.
<b>Environment Protection Act 1970</b>	A recommendation of the Environment Protection Authority under section 16.  A recommendation of the Environment Protection Authority under section 16A.  The issue of or refusal to issue a works approval by the Environment Protection Authority under section 19B.  A decision by the Environment Protection Authority relating to the licensing of scheduled premises under section 20.
<b>Flora and Fauna Guarantee Act 1988</b>	The preparation, making and amendment of a Flora and Fauna Guarantee Strategy by the Secretary under section 17 and 18.  The preparation and amendment of an action statement by the Secretary under section 19.

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Climate Change Act 2017  
No. 5 of 2017  
Schedule 1—Acts and decisions or actions

<i>Name of Act</i>	<i>Decision or action</i>
	The preparation of a management plan by the Secretary under section 21.
	The amendment or revocation of a management plan by the Secretary under section 22.
	The review of a management plan by the Secretary under section 24.
	The making of an interim conservation order by the Minister under section 26.
	The confirmation or revocation of an interim conservation order by the Minister under section 31.
	The amendment of a confirmed interim conservation order by the Minister under section 33.
	The amendment of an interim conservation order by the Minister under section 35.
<b>Public Health and Wellbeing Act 2008</b>	The preparation of a municipal public health and wellbeing plan by a Council under section 26.
	The preparation of a State Public Health and Wellbeing Plan by a person under section 49.
<b>Water Act 1989</b>	Consideration of a draft Sustainable Water Strategy by the Minister under section 22G.

## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

*Minister's second reading speech—*

*Legislative Assembly: 23 November 2016*

*Legislative Council: 7 February 2017*

The long title for the Bill for this Act was "A Bill for an Act to repeal and re-enact with amendments the **Climate Change Act 2010**, to establish greenhouse gas emissions reduction targets for Victoria, to set out policy objectives and guiding principles, to provide for climate change planning and reporting, to provide for forestry rights and carbon sequestration rights and to make consequential amendments to the **Environment Protection Act 1970** and for other purposes."

The **Climate Change Act 2017** was assented to on 28 February 2017 and came in to operation on 1 November 2017: section 2(2).

### INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

#### Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

#### References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

#### Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

## 2 Table of Amendments

There are no amendments made to the **Climate Change Act 2017** by Acts and subordinate instruments.

### 3 Amendments Not in Operation

This publication does not include amendments made to the **Climate Change Act 2017** by the following Act/s.

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#### **Climate Change Act 2017, No. 5/2017**

<i>Assent Date:</i>	28.2.17
<i>Commencement Date:</i>	S. 102 on 1.11.17: s. 2(2)
<i>Note:</i>	S. 102 repeals Pt 11 (ss 101, 102) on 1.11.18
<i>Current State:</i>	This information relates only to the provision/s amending the <b>Climate Change Act 2017</b>

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At the date of this publication, the following provisions amending the **Climate Change Act 2017** were Not in Operation:

#### **Amending Act/s:**

#### **Climate Change Act 2017, No. 5/2017**

##### **102 Repeal of Part 11**

This Part is **repealed** on 1 November 2018.

#### **Note**

The repeal of this Part does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

**4 Explanatory details**

No entries at date of publication.