

**Version No. 003**  
**Sustainability Victoria Act 2005**  
**No. 65 of 2005**

Version incorporating amendments as at 2 November 2007

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**The Parliament of Victoria enacts as follows:**

**PART 1—PRELIMINARY MATTERS**

**1 Purpose**

The purpose of this Act is to—

- (a) establish Sustainability Victoria and provide for it to be the successor in law of the Sustainable Energy Authority Victoria and EcoRecycle Victoria;
- (b) amend the **Environment Protection Act 1970** by repealing the provisions relating to EcoRecycle Victoria and transferring the functions and powers of EcoRecycle Victoria to Sustainability Victoria;
- (c) repeal the **Sustainable Energy Authority Victoria Act 1990**;
- (d) consequentially amend certain Acts.

**2 Commencement**

- (1) Section 1 and this section come into operation on the day after the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in subsection (2) does not come into operation before 1 July 2006, it comes into operation on that day.

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### 3 Definitions

In this Act—

*Chief Executive Officer* means the Chief Executive Officer appointed under section 15;

*Department* means the Department of Sustainability and Environment;

*member* means a member of Sustainability Victoria;

*renewable energy* includes energy which comes from sources such as the sun, wind, waves, tides, the hydrological cycle, biomass and geothermal sources;

*resource efficiency* means using water, energy and materials more productively so as to ease demand pressures on our limited natural resources;

*Secretary* means the person who is the Department Head of the Department within the meaning of the **Public Administration Act 2004**;

*Sustainability Victoria* means Sustainability Victoria established by section 5;

*waste* has the same meaning as it has in section 4(1) of the **Environment Protection Act 1970**.

### 4 Principles

It is the intention of Parliament that in the administration of this Act the following are to be considered as guiding principles—

- (a) that decision making processes should effectively integrate both long-term and short-term economic, environmental, social and equity considerations;

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- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
  - (c) the need to consider the global dimension of environmental impacts of actions and policies;
  - (d) the need to develop a strong, growing and diversified economy which can enhance the capacity for environment protection;
  - (e) the need to maintain and enhance international competitiveness in an environmentally sound manner;
  - (f) the need to adopt cost effective and flexible policy instruments such as improved valuation, pricing and incentive mechanisms;
  - (g) the need to facilitate community involvement in decisions and actions on issues that affect the community.
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## PART 2—SUSTAINABILITY VICTORIA

### 5 Sustainability Victoria

- (1) There is established a body corporate called Sustainability Victoria.
- (2) Sustainability Victoria—
  - (a) has perpetual succession;
  - (b) is capable of acquiring, holding and disposing of property;
  - (c) may sue and be sued in its corporate name;
  - (d) has a common seal;
  - (e) subject to this Act, may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) The common seal of Sustainability Victoria can only be used in a way approved by Sustainability Victoria.
- (4) All courts and people acting judicially must take judicial notice of the common seal of Sustainability Victoria.

### 6 Objective

The objective of Sustainability Victoria is to facilitate and promote environmental sustainability in the use of resources.

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## 7 Functions

The functions of Sustainability Victoria are to—

- (a) ensure that its objective is met to the maximum extent that is practicable;
- (b) foster a stewardship ethos in relation to the use of resources;
- (c) facilitate the implementation of environmentally sustainable measures in all sectors of the Victorian economy, including local government, business and households;
- (d) provide information and advice on issues relating to environmental sustainability;
- (e) provide information and advice on the efficient use of energy, including renewable energy, and the resulting benefit to all sectors of the Victorian community;
- (f) encourage and promote the development and use of environmentally sustainable practices, markets, technologies and industries, including resource efficiency, energy efficiency, renewable energy and water;
- (g) promote throughout Victoria waste avoidance, waste reduction and recovery, re-use, recycling of resources and best practices in waste management;
- (h) facilitate the uptake of fledgling technologies, industries, markets and practices in environmental sustainability, including demonstration projects;
- (i) facilitate the development of voluntary environmental sustainability initiatives;

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- (j) contribute to the development of strategies and measures for the implementation of Government policy objectives on increased resource efficiency;
  - (k) develop and publish implementation strategies for the achievement of Government policy objectives for environmental sustainability, including increased resource efficiency;
  - (l) work in conjunction with the Department and, where appropriate, in conjunction with other Government Departments, on environmental sustainability policies and strategies;
  - (m) develop and implement community education and awareness strategies in relation to environmental sustainability;
  - (n) develop and implement strategies to foster sustainable markets for recovered resources and recycled materials;
  - (o) plan on a State-wide basis, and to facilitate, the management of waste in accordance with Victorian legislation and Government policies;
  - (p) develop, and contribute to the development of, plans, guidelines, codes of practice and reports on issues relating to environmental sustainability;
  - (q) monitor and evaluate research and development on environmental sustainability issues, including resource efficiency and renewable energy;
  - (r) develop tools to measure, monitor and report on Government waste, water and energy targets;
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- (s) enter into agreements to further environmental sustainability, including agreements to provide financial assistance for that purpose;
- (t) provide advice on the implementation of environmental sustainability policies;
- (u) provide advice to the Minister on issues concerning environmental sustainability and environmentally sustainable markets, including issues relating to resource efficiency, renewable energy, greenhouse gases and waste management.

## 8 Powers

- (1) Sustainability Victoria may do all things that are necessary or convenient to enable it to carry out its functions and achieve its objective.
- (2) Without limiting subsection (1), Sustainability Victoria may apply for, obtain and hold intellectual property rights, including patents, copyrights, trade marks and registered designs.

## 9 Members

- (1) Sustainability Victoria is to have not less than 7 members and not more than 9 members.
- (2) Members are to be appointed by the Minister.
- (3) Of the members—
  - (a) one is to be a member nominated by the Minister administering the **Electricity Industry Act 2000**;
  - (b) one is to be a member nominated by the Minister administering the **Water Act 1989**;
  - (c) one is to be a member nominated by the Minister administering the **Environment Protection Act 1970**.

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- (4) In appointing a member other than a member referred to in subsection (3), the Minister—
- (a) may only appoint a person who, in the opinion of the Minister, has skills, experience or knowledge that will assist Sustainability Victoria to carry out its functions and achieve its objective; and
  - (b) must attempt to ensure that collectively the members of Sustainability Victoria have skills, experience or knowledge relating to local government, the environment, industry, marketing, change management, business management, education, behavioural change, energy and resources and regional and rural affairs.
- (5) The Minister must appoint—
- (a) one of the members to be the Chairperson of Sustainability Victoria; and
  - (b) one of the members to be the Deputy Chairperson of Sustainability Victoria.

## **10 Conditions of appointment of members**

- (1) A member—
- (a) holds office for the period specified in the instrument of appointment, which must be a period of not more than 5 years;
  - (b) holds office on the terms and conditions determined by the Minister;
  - (c) may be re-appointed;
  - (d) may resign from office by delivering a signed letter of resignation to the Minister;
  - (e) may be removed from office at any time by the Minister;

S.10(1)(e)  
amended by  
No. 80/2006  
s. 26(Sch.  
item 99.1).

(f) is in respect of the office of member subject to the **Public Administration Act 2004** (other than Part 3 of that Act).

S.10(1)(f)  
inserted by  
No. 80/2006  
s. 26(Sch.  
item 99.2).

- (2) The Minister must remove a member from office if the member—
- (a) becomes an insolvent under administration within the meaning of the Corporations Act; or
  - (b) is convicted of an indictable offence or is imprisoned for any offence; or
  - (c) fails to comply with section 12.

## 11 Meetings

- (1) A meeting of Sustainability Victoria is to be presided over by—
- (a) the Chairperson; or
  - (b) in the absence of the Chairperson, the Deputy Chairperson; or
  - (c) in the absence of both the Chairperson and Deputy Chairperson, a member elected by the members present at the meeting.
- (2) A matter cannot be decided at a meeting unless at least a majority of the members are present.
- (3) The decision on a question of the majority of the members present and voting on the question is the decision of Sustainability Victoria.
- (4) The person presiding at a meeting has—
- (a) a deliberative vote; and
  - (b) in the event of an equality of votes on any question, a second or casting vote.

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- (5) Sustainability Victoria may conduct all or any part of a meeting by using telephones, video links or any other system of telecommunication.
  - (6) Subject to this Act, Sustainability Victoria may otherwise regulate its own procedure.

## **12 Disclosure of interests of members**

- (1) A member who has a direct or an indirect pecuniary interest in any matter being considered, or about to be considered, by Sustainability Victoria must disclose the nature of that interest at a meeting of Sustainability Victoria as soon as possible after becoming aware of the relevant facts.
  - (2) A member who holds an office or possesses property as a result of which, directly or indirectly, duties or interests may be created in conflict with his or her duties as a member, must disclose that fact at a meeting of Sustainability Victoria as soon as possible after becoming aware of the potential conflict.
  - (3) The person presiding at a meeting at which a disclosure under this section is made must ensure that the disclosure is recorded in the minutes of the meeting, and that the minutes also record full details of who voted on any matter in respect of which the disclosure was made.
  - (4) A person who has made a disclosure under this section must not take any further part in the discussion of, or vote on, the contract or other matter to which the disclosure relates.
  - (5) If a member votes on a matter in contravention of subsection (4), the vote of the member must be disallowed.
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- (6) A member is not to be regarded as having a pecuniary interest—
- (a) in a matter relating to the supply of goods or services to or by the member if the goods or services are, or are to be, available to members of the public on the same terms and conditions; or
  - (b) in a contract or arrangement only because that contract or arrangement may benefit a company or other body in which the member has a beneficial interest that does not exceed 1% of the total nominal value of beneficial interests in that company or body.

### **13 Validity of decisions**

- (1) An act or decision of Sustainability Victoria is not invalid merely because of—
  - (a) a vacancy in the membership of Sustainability Victoria; or
  - (b) a defect or irregularity in, or in connection with, the appointment of a member.
- (2) Anything done by or in relation to a person purporting to act as a member is not invalid merely because—
  - (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in relation to the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion for the person to act had not arisen or had ceased.

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## 14 Power of delegation

Sustainability Victoria may, by an instrument under its common seal, delegate to the Chairperson, a member, the Chief Executive Officer or any employee referred to in section 17 any function, duty or power of Sustainability Victoria under this Act or the regulations or under any other Act or regulations, other than this power of delegation.

## 15 Chief Executive Officer

- (1) Sustainability Victoria must, with the approval of the Minister, appoint a person as Chief Executive Officer of Sustainability Victoria.
- (2) The Chief Executive Officer holds office for the period, not exceeding 5 years, specified in the instrument of his or her appointment.
- (3) The Chief Executive Officer is responsible to Sustainability Victoria for the carrying out of Sustainability Victoria's functions.
- (4) The Chief Executive Officer must comply with the directions of Sustainability Victoria.
- (5) A person appointed to be the Chief Executive Officer who was, immediately before that appointment, an officer within the meaning of the **State Superannuation Act 1988** continues, subject to that Act, to be an officer within the meaning of that Act while holding the office of Chief Executive Officer.

## 16 Delegation of powers of Chief Executive Officer

The Chief Executive Officer may, by instrument, delegate to any employee referred to in section 17, any responsibility, power, authority, duty or function conferred on the Chief Executive Officer under this Act or the regulations, except this power of delegation.

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## 17 Staff

Any employees that are necessary to assist Sustainability Victoria to perform its functions are to be employed under Part 3 of the **Public Administration Act 2004**.

## 18 Minister may give directions to Sustainability Victoria

- (1) The Minister may issue written directions to Sustainability Victoria.
- (2) Sustainability Victoria must comply with a written direction of the Minister.

## 19 Annual business plan

- (1) Each year Sustainability Victoria must submit to the Minister for approval, on or before the date required by the Minister, a draft business plan that sets out—
    - (a) its objectives and priorities for the next 3 financial years;
    - (b) financial projections for that period;
    - (c) its budget for the next financial year;
    - (d) what it intends to do over the next financial year;
    - (e) any other matters that the Minister requires in writing.
  - (2) After amending its draft business plan in any way required by the Minister, Sustainability Victoria must submit a final business plan to the Minister for approval on or before the date required by the Minister.
  - (3) Sustainability Victoria must not depart significantly from its budget without first obtaining the approval of the Minister.
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- (4) Sustainability Victoria must have regard to its current business plan in carrying out its functions.
  - (5) Sustainability Victoria must ensure that a copy of its current business plan is—
    - (a) available for inspection by members of the public at its principal place of business whenever that place is open to the public; and
    - (b) published on the Internet.
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**PART 3—SAVINGS AND TRANSITIONAL PROVISIONS**

**20 Definitions applying to this Part**

In this Part—

*relevant day* means the date of commencement of this section;

*transferred employee* means a person who, immediately before the relevant day, was an employee of EcoRecycle Victoria.

**21 Sustainability Victoria to succeed former bodies**

- (1) Sustainability Victoria is the successor in law to—
  - (a) the Sustainable Energy Authority Victoria; and
  - (b) EcoRecycle Victoria.
- (2) On and after the relevant day, any reference in any Act (other than this Act), regulation, subordinate instrument or other document whatsoever to the Sustainable Energy Authority Victoria or to EcoRecycle Victoria is to be construed as a reference to Sustainability Victoria, unless the contrary intention appears.

**22 Arrangements concerning former EcoRecycle Victoria employees**

- (1) A transferred employee is to be regarded as—
  - (a) having been employed under Part 3 of the **Public Administration Act 2004**, with effect from the relevant day; and
  - (b) being employed from the relevant day by the Secretary; and

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- (c) having been so employed on the same terms and conditions as those that applied to him or her immediately before the relevant day as an officer or employee of EcoRecycle Victoria; and
- (d) having accrued an entitlement to benefits in connection with that employment under Part 3 of the **Public Administration Act 2004** that is equivalent to the entitlement that he or she had accrued, as an officer or employee of EcoRecycle Victoria, immediately before the relevant day.
- (2) The service of a transferred employee as an employee under Part 3 of the **Public Administration Act 2004** is to be regarded for all purposes as having been continuous with the service of the transferred employee, immediately before the relevant day, as an officer or employee of EcoRecycle Victoria.
- (3) A transferred employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an officer or employee of EcoRecycle Victoria because of the operation of this Part.
- (4) A certificate purporting to be signed by the Secretary certifying that a person named in the certificate was, with effect from the relevant day, employed, by virtue of this section, under Part 3 of the **Public Administration Act 2004**, is admissible in evidence in any proceedings and is conclusive proof of the matters stated in it.
- (5) The superannuation entitlements of a transferred employee are to be taken not to be affected by that person becoming a transferred employee.
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- (6) Nothing in this section prevents—
- (a) any of the terms and conditions of employment of a transferred employee from being altered by or under any law, award or agreement with effect from any time after the relevant day; or
  - (b) a transferred employee from resigning or being dismissed at any time after that commencement in accordance with the then existing terms and conditions of his or her employment under Part 3 of the **Public Administration Act 2004**.

**23 Consequential amendments to the Environment Protection Act 1970**

- (1) In section 4(1) of the **Environment Protection Act 1970**, after the definition of *statement of environmental audit insert*—
- "*Sustainability Victoria* means Sustainability Victoria established by section 5 of the **Sustainability Victoria Act 2005**";.
- (2) Division 2 of Part IX of the **Environment Protection Act 1970** is **repealed**.
- (3) In sections 49L(1), 49L(2), 49L(3)(h), 49L(5), 49M(1), 49M(2), 49O(1), 49P(1), 49P(2), 49Q(1), 49Q(2), 50LA(1), 50LA(4), 50R(4) and 60(4) of the **Environment Protection Act 1970**, for "EcoRecycle Victoria" (wherever occurring) **substitute** "Sustainability Victoria".
- (4) In section 49L(3)(c) of the **Environment Protection Act 1970**, for "EcoRecycle Victoria's" **substitute** "Sustainability Victoria's".

See:  
Act No.  
8056.  
Reprint No. 14  
as at  
1 July 2002  
and  
amending  
Act Nos  
37/2002,  
59/2003,  
10/2004,  
81/2004,  
107/2004,  
108/2004 and  
18/2005.  
LawToday:  
www.  
legislation.  
vic.gov.au

**24 New section 49S inserted**

After section 49R of the **Environment Protection Act 1970** insert—

**"49S Sustainability Victoria to provide copy of strategy and plan**

Sustainability Victoria must ensure that a copy of any waste management strategy and any solid industrial waste management plan that it publishes is provided to each regional waste management group."

**25 New section 70E inserted**

After section 70D of the **Environment Protection Act 1970** insert—

**"70E Sustainability fund account**

For the purposes of the management of the sustainability fund account created within the Environment Protection Fund—

- (a) sections 70(6B)(b), 70A, 70B, 70C and 70D apply to and in respect of Sustainability Victoria; and
- (b) any reference in those sections to the Authority is to be construed as if it were a reference to Sustainability Victoria."

**26 Amendment of Electricity Industry Act 2000**

In section 23A(4) of the **Electricity Industry Act 2000**, for "Sustainable Energy Authority Victoria" substitute "Sustainability Victoria".

See:  
Act No.  
68/2000.  
Reprint No. 3  
as at  
14 July 2005.  
LawToday:  
www.  
legislation.  
vic.gov.au

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**27 Repeal of the Sustainable Energy Authority Victoria Act 1990**

- (1) The **Sustainable Energy Authority Victoria Act 1990** is repealed.
- (2) Except as in this Act expressly or by necessary implication provided, all persons, things and circumstances appointed or created by or under the **Sustainable Energy Authority Victoria Act 1990** immediately before the relevant day shall under and subject to this Act continue to have the same status, operation and effect as they respectively would have had if this section had not come into operation.
- (3) On and after the relevant day, any reference in any Act (other than this Act), regulation, subordinate instrument or other document whatsoever to the **Sustainable Energy Authority Victoria Act 1990** is to be construed as a reference to the **Sustainability Victoria Act 2005**, unless the contrary intention appears.
- (4) Nothing in this section limits or otherwise affects the operation of the **Interpretation of Legislation Act 1984**.

See:  
Act No.  
40/1990.  
Reprint No. 2  
as at  
1 July 2000  
and  
amending  
Act No.  
108/2004.  
LawToday:  
www.  
legislation.  
vic.gov.au

## ENDNOTES

### 1. General Information

*Minister's second reading speech—*

*Legislative Assembly: 11 August 2005*

*Legislative Council: 13 September 2005*

The long title for the Bill for this Act was "to establish Sustainability Victoria as the successor in law to the Sustainable Energy Authority Victoria and EcoRecycle Victoria, to amend the **Environment Protection Act 1970**, to repeal the **Sustainable Energy Authority Victoria Act 1990** and for other purposes."

The **Sustainability Victoria Act 2005** was assented to on 20 September 2005 and came into operation as follows:

Sections 1 and 2 on 21 September 2005: section 2(1); rest of Act on 1 October 2005: Government Gazette 29 September 2005 page 2171.

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## 2. Table of Amendments

This Version incorporates amendments made to the **Sustainability Victoria Act 2005** by Acts and subordinate instruments.

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**Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006,  
No. 80/2006**

<i>Assent Date:</i>	10.10.06
<i>Commencement Date:</i>	S. 26(Sch. item 99) on 11.10.06: s. 2(1)
<i>Current State:</i>	This information relates only to the provision/s amending the <b>Sustainability Victoria Act 2005</b>

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**Endnotes**

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**3. Explanatory Details**

No entries at date of publication.