

Authorised Version No. 012
**Commissioner for Environmental
Sustainability Act 2003**

No. 15 of 2003

Authorised Version incorporating amendments as at
1 December 2017

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The Parliament of Victoria enacts as follows:

Part 1—Preliminary

1 Purpose and outline of Act

- (1) The purpose of this Act is to provide for the appointment and objectives, functions and powers of the Commissioner for Environmental Sustainability.
- (2) In outline this Act—
 - provides for the appointment of the Commissioner for Environmental Sustainability and an Acting Commissioner for Environmental Sustainability;
 - sets out the objectives, functions and powers of the Commissioner for Environmental Sustainability and for the accountability of the Commissioner for Environmental Sustainability;
 - provides for the staffing and operation of the office of the Commissioner for Environmental Sustainability;
 - provides for the preparation of a periodical Report on the State of the Environment of Victoria and for the preparation of a periodical report on the environmental condition of Yarra River land;

**S. 1(2)
amended by
No. 49/2017
s. 64.**

- provides for annual reporting on the implementation of environmental management systems;
- requires the Commissioner for Environmental Sustainability to make reports and information available publicly and on the Internet.

(3) Subsection (2) is intended only as a guide to readers as to the general scheme of this Act.

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) Subject to subsection (3), 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 September 2003, it comes into operation on that day.

3 Definitions

In this Act—

S. 3 def. of
Administrative Office
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 35.1(a)).

Administrative Office means a body or group existing as an Administrative Office in relation to a Department by virtue of an order made under section 11 of the **Public Administration Act 2004**;

S. 3 def. of
Administrative Office Head
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 35.1(a)).

Administrative Office Head means a person employed as an Administrative Office Head under section 12 of the **Public Administration Act 2004**;

Agency means—

- (a) a Department; or
- (b) an Administrative Office;

Agency Head means—

- (a) in relation to a Department, the Head of that Department; or
- (b) in relation to an Administrative Office, the Head of that Administrative Office;

Commissioner means the Commissioner for Environmental Sustainability;

Department means a Department existing by virtue of an Order made under section 10 of the **Public Administration Act 2004**;

S. 3 def. of *Department* amended by No. 108/2004 s. 117(1) (Sch. 3 item 35.1(a)).

Department Head means a Department Head under section 12 of the **Public Administration Act 2004**;

S. 3 def. of *Department Head* amended by No. 108/2004 s. 117(1) (Sch. 3 item 35.1(a)).

ecologically sustainable development means the concept set out in section 4;

environmental management system means the organisational structure, policies, practices, processes and procedures for implementing environmental management, including systems for designating responsibility for and allocating resources to, environmental management;

lead agency has the same meaning as in the **Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017**;

S. 3 def. of *lead agency* inserted by No. 49/2017 s. 65(2).

S. 3 def. of
*public
authority*
substituted by
No. 108/2004
s. 117(1)
(Sch. 3
item 35.1(b)).

public authority has the same meaning as *public entity* has in section 5 of the **Public Administration Act 2004**;

public authority Head means chief executive officer (by whatever name called) of a public authority;

S. 3 def. of
*Report on the
State of the
Environment
of Victoria*
amended by
No. 49/2017
s. 65(1).

Report on the State of the Environment of Victoria means the report prepared under section 17;

S. 3 def. of
*Yarra River
land*
inserted by
No. 49/2017
s. 65(2).

Yarra River land has the same meaning as in the **Yarra River Protection (Wilip-gin Birrarung murron) Act 2017**.

4 What is ecologically sustainable development?

- (1) Ecologically sustainable development is development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends.
- (2) The objectives of ecologically sustainable development are—
 - (a) to enhance individual and community well-being and welfare by following a path of economic development that safeguards the welfare of future generations;
 - (b) to provide for equity within and between generations;

- (c) to protect biological diversity and maintain essential ecological processes and life-support systems.
- (3) The following are to be considered as guiding principles of ecologically sustainable development—
- (a) that decision making processes should effectively integrate both long-term and short-term economic, environmental, social and equity considerations;
 - (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.

5 Crown to be bound

This Act binds the Crown, not only in right of Victoria but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Part 2—The Commissioner for Environmental Sustainability

6 The Commissioner

- (1) The Governor in Council may appoint an officer to be called the Commissioner for Environmental Sustainability.
- (2) Subject to this section, the Commissioner holds office for a term not exceeding 5 years as is specified in the instrument of appointment.
- (3) The Commissioner is eligible for re-appointment.
- (4) The Commissioner is to be appointed on such terms and conditions, not inconsistent with this Act, as the Governor in Council determines.
- (5) The Commissioner is entitled to be paid the remuneration and allowances determined by the Governor in Council.
- (6) The **Public Administration Act 2004** (other than Part 3, except as provided by section 16, of that Act) applies to the Commissioner in respect of the office of Commissioner.
- (7) The Commissioner must not directly or indirectly engage in any paid employment outside the duties of the Commissioner.
- (8) The office of the Commissioner becomes vacant if the Commissioner is convicted of an indictable offence, or of an offence which, if committed in Victoria, would be an indictable offence.
- (9) The Commissioner may resign by notice in writing signed and addressed to the Governor in Council.

S. 6(6)
substituted by
Nos 108/2004
s. 117(1)
(Sch. 3
item 35.2),
80/2006
s. 26(Sch.
item 17).

- (10) The Governor in Council, on the recommendation of the Minister, may remove the Commissioner from office if the Commissioner has—
- (a) refused, neglected or failed to carry out the duties of the office; or
 - (b) demonstrated inefficiency or misbehaviour in carrying out the duties.
- (11) If the Commissioner is removed from office under subsection (10), the Minister must cause to be laid before each House of the Parliament a full statement of the grounds of the removal within 10 sitting days of that House after the removal.
- (12) An act or decision of the Commissioner is not invalid merely because of a defect or irregularity in, or in connection with, the appointment of the Commissioner.

7 Objectives of the Commissioner

The objectives of the Commissioner are to—

- (a) report on matters relating to the condition of the natural environment of Victoria;
- (b) encourage decision making that facilitates ecologically sustainable development;
- (c) enhance knowledge and understanding of issues relating to ecologically sustainable development and the environment;
- (d) encourage sound environmental practices and procedures to be adopted by the Government of Victoria and local government as a basis for ecologically sustainable development.

8 Functions of the Commissioner

The functions of the Commissioner are to—

- (a) prepare the Report on the State of the Environment of Victoria;
- (ab) prepare a report on—
 - (i) the environmental condition of Yarra River land; and
 - (ii) how the environmental condition of Yarra River land has changed since the last report on Yarra River land;
- (b) conduct annual strategic audits of, and prepare reports on, the implementation of environmental management systems by Agencies and public authorities;
- (c) audit public education programs relating to ecologically sustainable development and advise the Minister as to the effectiveness of the programs in encouraging the community to adopt ecologically sustainable development principles and practices;
- (d) advise the Minister in relation to any matter relating to ecologically sustainable development referred to the Commissioner by the Minister under section 10(2);
- (e) administer this Act.

S. 8(ab)
inserted by
No. 49/2017
s. 66.

9 Powers of the Commissioner

- (1) Subject to this Act, the Commissioner has power to do all things necessary or convenient to be done for or in connection with the performance of the Commissioner's functions and to enable the Commissioner to achieve the objectives of the Commissioner under this Act.

- (2) Without limiting the generality of subsection (1), the Commissioner may—
- (a) make formal requests to Agency Heads and public authority Heads for assistance and the provision of information for the purposes of this Act;
 - (b) subject to the approval of the Minister, establish a Reference Group for the purpose of providing advice to the Commissioner in respect of the performance of the functions of the Commissioner under this Act;
 - (c) subject to the approval of the Minister, appoint committees for the purpose of providing advice to the Commissioner on specific matters.

10 Accountability of the Commissioner

- (1) In performing the functions and exercising the powers under this Act, the Commissioner must have regard to the following principles—
- (a) the effective integration of economic, social and environmental considerations with the need to improve community well-being and the benefit of future generations;
 - (b) that actions should add value and be targeted to achieving the most benefit for the people of Victoria;
 - (c) that decision making should focus on developing solutions and achieving improvements;
 - (d) the need to ensure impartiality, openness, transparency and accountability.
- (2) The Commissioner must perform the functions and exercise the powers under this Act subject to any specific written directions given by the Minister to the Commissioner.

- (3) The Minister must cause a copy of any specific written direction to be laid before each House of the Parliament within 10 sitting days of that House after the specific written direction has been given to the Commissioner.
- (4) If a specific written direction includes a requirement that the Commissioner prepare a report for the Minister, the Minister must cause a copy of the report to be laid before each House of the Parliament within 10 sitting days of that House after the report has been presented to the Minister.

11 Acting Commissioner

- (1) The Minister may appoint a person to act in the office of Commissioner—
 - (a) during a vacancy in that office; or
 - (b) during any period, or during all periods, when the person holding that office is absent from duty or is, for any other reason, unable to perform the functions of that office—but a person so appointed to act during a vacancy must not continue so to act for more than 6 months.
- (2) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
- (3) The Minister—
 - (a) subject to this section, may determine the terms and conditions of appointment of a person acting in the office of Commissioner; and
 - (b) may terminate such an appointment at any time.

- (4) If a person is acting in the office of Commissioner in accordance with subsection (1)(b) and that office becomes vacant while that person is so acting, that person may continue so to act until—
- (a) the Minister otherwise directs; or
 - (b) the vacancy is filled; or
 - (c) a period of 6 months from the date on which the vacancy occurred expires—
- whichever first happens.
- (5) While a person is acting in the office of Commissioner in accordance with subsection (1), the person has, and may exercise, all the powers, and perform all the functions of that office under this Act.
- (6) The validity of anything done by or in relation to a person purporting to act in the office of Commissioner under an appointment made under subsection (1) is not to be called in question on the ground that—
- (a) the occasion for the appointment has not arisen; or
 - (b) there is a defect or irregularity in or in connection with the appointment; or
 - (c) the appointment has ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

12 Staff

- (1) Any employees that are necessary for the purposes of this Act may be employed under Part 3 of the **Public Administration Act 2004**.

S. 12(1)
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 35.3).

- (2) The Commissioner may enter into agreements or arrangements for the use of the services of any staff of an Agency or public authority.

13 Consultants

- (1) The Commissioner may engage persons with suitable qualifications and experience as consultants.
- (2) An engagement under subsection (1) may be on any terms and conditions the Commissioner considers appropriate.

14 Delegation

The Commissioner may by instrument delegate to a person referred to in section 12 any function or power of the Commissioner under this Act other than this power of delegation.

15 Business plan and budget

- (1) The Commissioner must not later than 30 June in each year submit a draft business plan and budget for the next financial year to the Minister for approval.
- (2) The draft business plan and budget must—
 - (a) specify the proposed activities of the Commissioner; and
 - (b) include an estimate of the financial and other resources required to perform each of the functions of the Commissioner.
- (3) In preparing the draft business plan and budget, the Commissioner must consult with—
 - (a) the Minister; and
 - (b) the Department Head of the Department responsible for administering the Commissioner's budget.

- (4) The Commissioner must operate in accordance with—
- (a) the business plan and budget as approved by the Minister; or
 - (b) the business plan and budget as amended with the approval of the Minister.

16 Annual report

The Commissioner must include—

- (a) a brief summary of all activities completed, commenced or conducted; and
- (b) a statement of the financial and other resources used in preparing reports under Part 3—

during the financial year in the relevant annual report of operations under Part 7 of the **Financial Management Act 1994**.

Part 3—Reports

17 Reports on the State of the Environment of Victoria

- (1) The Commissioner must prepare and submit to the Minister a periodical Report on the State of the Environment of Victoria prepared at intervals not exceeding—
 - (a) 5 years; or
 - (b) if the framework for environmental reporting specifies a shorter period, the shorter period.
- (2) A Report on the State of the Environment of Victoria must be prepared in accordance with a framework for environmental reporting developed by the Commissioner and approved by the Minister.
- (3) The Minister must cause a copy of the framework for environmental reporting developed under subsection (2) to be laid before each House of the Parliament within 10 sitting days of that House after the framework for environmental reporting has been approved by the Minister.
- (4) The Minister must cause a copy of a Report on the State of the Environment of Victoria to be laid before each House of the Parliament within 10 sitting days of that House after the Report on the State of the Environment of Victoria has been given to the Minister.
- (5) If a Report on the State of the Environment of Victoria includes recommendations made by the Commissioner, the Minister must, not later than the first sitting day after the period of 12 months since the sitting day on which the Report on the State of the Environment of Victoria was laid before each House of the Parliament, cause a statement of the response of the Government to be

laid before each House specifying the action (if any) proposed to be taken by the Government with respect to the recommendations.

17A Reports on the environmental condition of Yarra River land

S. 17A
inserted by
No. 49/2017
s. 67.

- (1) The Commissioner must prepare and submit to the Minister a periodical report on the environmental condition of Yarra River land.
- (2) A report under subsection (1) may be prepared—
 - (a) as part of a Report on the State of the Environment of Victoria; or
 - (b) as a separate report.
- (3) If the report is prepared as a separate report, it must be prepared at intervals not exceeding—
 - (a) 5 years; or
 - (b) if the framework for environmental reporting specifies a shorter period, the shorter period.
- (4) The Minister must cause a copy of a report prepared under subsection (1) as a separate report to be laid before each House of the Parliament within 10 sitting days of that House after the report has been given to the Minister.
- (5) If a report prepared under subsection (1) as a separate report includes recommendations made by the Commissioner, the Minister must, not later than the first sitting day after the period of 12 months since the sitting day on which the report was laid before each House of the Parliament, cause a statement of the response of the Government to be laid before each House specifying the action (if any) proposed to be taken by the Government with respect to the recommendations.

(6) In this section—

framework for environmental reporting means the framework approved under section 17(2) for a Report on the State of the Environment of Victoria.

S. 17B
inserted by
No. 49/2017
s. 67.

17B Lead agency to provide assistance

The lead agency must give the Commissioner whatever assistance the Commissioner reasonably requires in preparing a report under section 17A.

18 Reports on environmental management systems

- (1) Subject to subsection (3), the Commissioner must not later than 31 January in each year submit a report on the implementation of environmental management systems by Agencies and public authorities to the Minister.
- (2) A report on environmental management systems—
 - (a) must include an analysis of progress in meeting the objectives and targets for the implementation of environmental management systems by Agencies and public authorities as determined by the Government of Victoria; and
 - (b) may include advice and recommendations in relation to the implementation of international best practice in environmental management systems.
- (3) If this section has not been in operation for at least 6 months as at the 31 January first occurring after the commencement of this section, the first report under this section is not required until the following 31 January.

- (4) The Minister must cause a copy of a report on environmental management systems to be laid before each House of the Parliament within 10 sitting days of that House after the report on environmental management systems has been given to the Minister.

19 Consultation

The Commissioner must in preparing a report under this Part consult with any Agency or public authority in relation to factual information concerning the responsibilities of the Agency or public authority to be contained in the report.

20 Commissioner may publish statements and guidelines

The Commissioner may publish statements and guidelines relating to the performance of the functions and the exercise of the powers of the Commissioner under this Act.

21 Public availability

- (1) This section applies to—
- (a) the following documents after a copy has been laid before each House of the Parliament—
 - (i) any specific written direction given to the Commissioner under section 10(2);
 - (ii) any report prepared by the Commissioner to meet a requirement in a specific written direction;
 - (iii) the framework for environmental reporting approved under section 17(2);
 - (iv) a Report on the State of the Environment of Victoria;

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Part 3—Reports

S. 21(1)(a)(iva)
inserted by
No. 49/2017
s. 68.

(iva) a report prepared under section 17A, if prepared as a separate report;

(v) a report on environmental management systems; and

(b) any document containing statements and guidelines under section 20.

(2) The Commissioner must ensure that copies of documents to which this section applies are—

(a) publicly available; and

(b) published on the Internet.

Pt 4 (Heading
and s. 22)
repealed by
No. 28/2007
s. 3(Sch.
item 9).

* * * * *

Endnotes

1 General information

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

Minister's second reading speech—

Legislative Assembly: 27 February 2003

Legislative Council: 8 April 2003

The long title for the Bill for this Act was "to provide for a Commissioner for Environmental Sustainability, to facilitate a periodical Report on the State of the Environment of Victoria and annual reporting on the implementation of environmental management systems, to consequentially amend the **Public Sector Management and Employment Act 1998** and for other purposes."

The **Commissioner for Environmental Sustainability Act 2003** was assented to on 13 May 2003 and came into operation as follows:

Sections 1 and 2 on 14 May 2003: section 2(1); rest of Act on 1 September 2003: section 2(3).

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

This publication incorporates amendments made to the **Commissioner for Environmental Sustainability Act 2003** by Acts and subordinate instruments.

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 35) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Commissioner for Environmental Sustainability Act 2003**

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

Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 17) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Commissioner for Environmental Sustainability Act 2003**

Statute Law Revision Act 2007, No. 28/2007

Assent Date: 26.6.07
Commencement Date: S. 3(Sch. item 9) on 27.6.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Commissioner for Environmental Sustainability Act 2003**

Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017, No. 49/2017

Assent Date: 26.9.17
Commencement Date: Ss 64–68 on 1.12.17: s. 2(3)
Current State: This information relates only to the provision/s amending the **Commissioner for Environmental Sustainability Act 2003**

3 Amendments Not in Operation

There are no amendments which were Not in Operation at the date of this publication.

4 Explanatory details

No entries at date of publication.