Climate Change Bill 2016

Introduction Print

EXPLANATORY MEMORANDUM

General

The Bill repeals and re-enacts the **Climate Change Act 2010** with amendments and makes consequential amendments to the **Environment Protection Act 1970** to give effect to changes arising from a review of the **Climate Change Act 2010**.

Section 18 of the **Climate Change Act 2010** required an independent review of the Act before 30 December 2015, and for the review to be tabled in the Victorian Parliament. The Independent Review of the **Climate Change Act 2010** (the review) was tabled in the Victorian Parliament on 11 February 2016.

The review made a series of recommendations for legislative change to improve the operation of the Act. The Victorian Government response to the review, released on 9 June 2016, endorsed the majority of the recommendations, which are given effect in this Bill.

The Bill provides for an enhanced and comprehensive legislative framework for action on climate change in Victoria.

Part 1 of the Bill provides for preliminary matters, namely the purposes, commencement of the Bill, and definitions.

Part 2 of the Bill provides for greenhouse gas emissions reduction targets, including long-term and interim targets.

Part 3 of the Bill provides for climate change considerations in decision-making.

Part 4 of the Bill provides for policy objectives and guiding principles to assist decision-makers.

Part 5 of the Bill provides for climate change planning, including the preparation of a climate change strategy, adaptation action plans, and emissions reduction pledges.

Part 6 of the Bill provides for further information and reporting requirements, including reporting on climate science and emissions data.

Part 7 of the Bill provides statutory recognition of a class of proprietary rights for forestry, carbon sequestration and soil carbon as an interest in land and enables the making of Forestry and Carbon Management Agreements.

Part 8 of the Bill empowers the Secretary to manage Crown land for the purposes of carbon sequestration on behalf of the Crown, facilitates the strategic assessment of Crown land available for carbon sequestration and enables the making of Carbon Sequestration Agreements.

Part 9 of the Bill provides for general matters, namely regulation-making powers.

Part 10 of the Bill provides for the repeal of the **Climate Change Act 2010** and transitional provisions.

Part 11 of the Bill amends the **Environment Protection Act 1970** to expressly enable the Environment Protection Authority to regulate the emission or discharge of greenhouses gas substances.

Clause Notes

Preamble

The Preamble provides a statement of the importance of recognising and taking action on climate change. The Preamble sets out the international setting for climate action and Victoria's commitments to respond.

Part 1—Preliminary

Clause 1 sets out the purpose of the Bill being to repeal and re-enact with amendments the **Climate Change Act 2010** to implement changes arising out of the review. In particular the Bill establishes long-term and interim greenhouse emissions reduction targets, facilitates consideration of climate change in government decision-making, sets policy objectives and guiding principles to inform decision-making, provides for strategic planning for climate change, creates greater accountability through information collection and reporting, provides a framework for carbon sequestration activities in relation to

private and Crown land, and makes a consequential amendment to the **Environment Protection Act 1970**.

Clause 2 provides for the commencement of the Bill. The provisions of the Bill come into operation on 1 November 2017, unless they are proclaimed earlier.

Clause 3 provides for definitions of various terms used in the Bill.

Many of these definitions are the same or similar to the definitions in section 3 of the **Climate Change Act 2010**. Key changes to the definitions are outlined below.

The definition of ***adaptation*** is updated to reflect the latest definition of adaptation used by the Intergovernmental Panel on Climate Change in its fifth Assessment Report.

Nominated Minister has 2 meanings within the Bill. In respect to Division 2 of Part 5, a nominated Minister is determined for the purposes of preparing an adaptation action plan under clause 34; in respect of Division 3 of Part 5, a nominated Minister is determined for the purposes of preparing a sector pledge under clause 43.

The Bill defines a number of "systems"—***built environment system***, ***education and training system***, ***health and human services system***, ***natural environment system***, ***primary production system***, ***transport system***, and ***water cycle system***.

These definitions relate to the preparation of adaptation action plans in Part 5 of the Bill, as adaptation action plans must be prepared in respect of these systems. The definitions reflect the general boundaries and scope of each system for which adaptation planning will occur under this Bill.

Clause 4 defines a ***forest carbon right*** as a carbon sequestration right, forestry right, and soil carbon right. The individual rights are further defined in clause 3. For the purposes of the Act, a forest carbon right is an interest in land, and is not to be considered an easement or right of way.

Clause 5 provides that the Bill binds the Crown in all its capacities, insofar as the power of the Parliament permits.

Part 2—Greenhouse gas emissions reduction targets

Part 2 provides for the long-term emissions reduction target and the process for setting interim emissions reduction targets.

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

Clause 6 defines the long-term emissions reduction target as an amount of net zero greenhouse gas emissions by the year 2050 (***long-term target***).

Subclause (2) provides that ***net zero greenhouse gas emissions*** means the 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 that amount any eligible offsets from outside of the State.

Clause 7 provides the Premier and the Minister with the power to determine the amount of total greenhouse gas emissions attributable to the State for the purposes of clause 6.

Clause 8 provides that the Premier and Minister must ensure that the State achieves the long-term emissions reduction target.

It is intended that to meet the long-term target of net zero, the Victorian Government will pursue a range of policy initiatives that will reduce Victoria's emissions to as close to zero as possible, maximise the removal of greenhouse gases from the atmosphere through sequestration activities in Victoria, and if the amount of sequestration does not balance any remaining emissions, secure eligible offsets from outside of Victoria to make up the difference.

The Minister is required to report on whether the long-term target was met under clause 55(e).

Clause 9 provides that eligible offsets for the purposes of meeting the long-term target will be prescribed in regulations.

Division 2—Interim emissions reduction targets

Clause 10 requires the Premier and Minister to determine interim emissions reduction targets (***interim targets***) for pre-determined five-yearly periods. The interim targets act as milestones to drive the achievement of the long-term target. It is intended the interim targets will help limit the State's cumulative greenhouse gas emissions between now and 2050 and ensure emissions reductions occur continuously.

Subclauses (2) to (6) require that the interim targets be determined by certain dates ahead of the interim target periods. For example, the first 2 targets must be determined on or before 31 March 2020 relating to the target periods of 1 January 2021 to 31 December 2025 and 1 January 2026 to 31 December 2030. Determining the first 2 targets in advance provides stakeholders with certainty and clarity about the pathway for achieving the long-term target. The remaining targets are to be determined 8 years in advance, again providing clarity and guidance on Victoria's short and medium-term ambitions to business and policy makers.

The timing requirements for determining interim targets mean that, at any one time, there will be determinations in force setting interim targets for 2 successive periods. This is an important feature for enabling forward planning in the economy.

The Minister is required to report on each interim target period under clause 54.

Clause 11 provides the form in which the interim targets must be expressed.

Subclause (1) sets out that interim targets must be expressed as an amount to be reduced by reference to the State's greenhouse gas emissions for the year 2005. This ensures interim targets are all expressed in a similar way and able to be directly compared with other interim targets.

Since interim targets are based on 2005 as the historical base year, subclause (2) provides the Minister with the power to determine a figure that represents the amount of Victoria's greenhouse gas emissions for that year. The Minister's power is constrained by reference to a formula to be prescribed through regulation.

Under clause 52(1), the Minister must report on the State's greenhouse emissions and the extent of the emissions reductions in relation to the 2005 base year.

Clause 12 requires that before the Minister and Premier determine an interim target, the Minister obtain advice from one or more persons who are appropriately qualified to act as an independent expert. The purpose of obtaining advice in advance of setting the interim targets is to ensure the targets are robust and credible.

Subclause (2) specifies what must be included in the advice, while subclause (3) specifies the areas the expert must consider or turn their mind to when preparing the advice.

The purpose of specifying elements of the advice and areas for consideration is to ensure the advice is sufficiently well-balanced, as it will serve as a foundation document used by the Minister and Premier in determining the interim targets.

Subclause (4) clarifies that the Minister is only required to obtain one piece of advice in respect of the 2 targets that must be determined on or before 31 March 2020 under clause 10(2). It is intended the Minister seek advice before determining each of the remaining interim targets.

Clause 13 provides that the Minister must table a copy of the independent expert advice obtained under clause 12 before each House of Parliament within 10 sitting days of receiving the advice.

Subclause (2) requires the advice to be published on the Internet site of the Department. This creates a level of transparency regarding the process for setting interim targets.

Clause 14 sets out what the Premier and Minister must have regard to when determining an interim target. Specifically, the Premier and Minister must consider the long-term target set out under clause 6, the independent expert advice procured under clause 12, the policy objectives in clause 22, the guiding principles in Division 3 of Part 4, and any annual greenhouse gas emissions reports considered relevant under clause 52.

Subclause (2) requires the Premier and Minister to ensure that each interim target constitutes a greater reduction in greenhouse gas emissions from the 2005 baseline than any previous interim target. This is to ensure that interim targets are consistent with the longer term objective of phasing out greenhouse gas

emissions to meet the long-term target. This also functions to limit the State's cumulative greenhouse gas emissions.

Clause 15 provides that the Premier and Minister must table the interim targets before each House of Parliament within 10 sitting days after each interim target has been determined. Subclause (2) requires the interim target to be published on the Internet site of the Department.

Clause 16 enables the Premier and Minister to amend an interim target under circumstances they deem to be exceptional.

Subclause (1) provides that the same process for determining an interim target applies to a proposed amendment to an interim target. Specifically, this includes seeking advice under clause 12 on the proposed amendment.

Subclause (2) provides that the Premier and Minister may amend an interim target if, in the opinion of the Premier and Minister, exceptional circumstances apply.

Subclause (3) clarifies that the dates by which interim targets are required to be determined set out in clauses 10(2) to (6) do not apply to a proposed amendment to an interim target.

Subclause (4) provides that the publication of an amended interim target must be accompanied by a statement of the reasons why the amendment is necessary.

Part 3—Climate change considerations

Part 3 provides for a climate change decision making framework including setting out what decision makers must take into account in regards to specified decisions and enabling the Minister to issue guidelines for decision makers.

Clause 17 provides for a climate change decision making framework requiring decision makers to take into account the potential impacts of climate change and the potential contribution to Victoria's greenhouse gas emissions relevant to specified decisions or actions.

Subclause (1)(a) provides that the framework applies to a decision or action authorised by a provision of an Act specified in Schedule 1 to the Bill.

Subclause (1)(b) provides that the framework will also apply to any decision or action authorised by any other provision of an Act listed in Schedule 1, if that provision is prescribed by regulations.

Subclause (1)(c) provides that the framework will also apply to any decision or action authorised by a provision of a subordinate instrument made under an Act specified in Schedule 1, if that provision is prescribed by regulations.

Subclause (2) requires a person making a decision or taking an action referred to in clause 17(1) to have regard to the potential impacts of climate change relevant to the decision or action, the potential contribution to Victoria's greenhouse gas emissions of the decision or action, and any guidelines issued by the Minister under clause 18.

Subclause (3) sets out the relevant considerations that a person making a decision or taking an action must take into account in considering a potential impact of climate change.

Subclause (4) sets out the relevant considerations that a person making a decision or taking an action must take into account in considering a potential contribution to Victoria's greenhouse gas emissions.

Subclause (5) provides that the framework is additional to any other consideration required to be taken into account for a specified decision or action referred to in clause 17(1). That is, the framework will not limit the power or duty of a person to consider any other matter in making a decision or taking an action referred to in clause 17(1).

Subclause (6) provides that the framework will not limit consideration of the potential impacts of climate change or the potential contribution to Victoria's greenhouse gas emissions in decisions or actions under any other Act or subordinate instrument. That is, it is not intended that this Part restricts the consideration of climate change issues across the statute book.

A similar provision appeared in section 14 of the **Climate Change Act 2010**.

Clause 18 authorises the Minister to issue guidelines about the scope and application of the requirements in clause 17.

Subclause (2) requires the Minister to consult with the Minister administering an Act or subordinate instrument referred to in clause 17(1) before making a guideline about a decision or action authorised by that Act or subordinate instrument.

Subclause (3) requires the Minister to publish the guidelines in the Government Gazette.

A similar provision appeared in section 15 of the **Climate Change Act 2010**.

Clause 19 provides the Minister may have regard to incorporating any of the guiding principles under Division 3 of Part 4 in making or issuing any guidelines under clause 18 of the Bill.

A similar provision appeared in section 7 of the **Climate Change Act 2010**.

Part 4—Policy objectives and guiding principles

Part 4 of the Bill sets out the high level objectives and principles designed to broadly apply to whole of government decision-making and actions, as opposed to Part 3 climate change considerations which are intended to be applied to decisions and actions specified within Schedule 1.

The objectives and principles also play a role in the development of documents within the Bill, such as determining interim targets under Division 2 of Part 2, preparation of the climate change strategy under clause 29, preparation of adaptation action plans under clause 34, and the preparation of emissions reduction pledges under Division 3 of Part 5.

Division 1—Governmental regard to policy objectives and guiding principles

Clause 20 provides a statement of aspiration that the Government of Victoria will endeavour to appropriately take into account climate change if it is relevant, by considering the policy objectives and guiding principles in making any decision, or developing or implementing any policy, program or process.

It is intended that this clause will help holistically embed consideration of climate change into government decisions relating to policy, programs and processes.

Clause 21 enables the Minister to issue guidelines to assist the Government of Victoria about how to have regard to the policy objectives and guiding principles when making a decision or developing or implementing a policy, program or process.

Subclause (2) sets out Ministerial guidelines may provide practical guidance on the application of the policy objectives and guiding principles and guidance on when they should be taken into account. It provides that guidance can be provided on how an obligation to consider the policy objectives and guiding principles under the Bill may be discharged such as during the development of adaptation action plans or emissions reduction pledges under Part 5 of the Bill.

The guidelines are an important tool to help decision makers or policy developers in interpreting and applying these high level objectives and principles when exercising clause 20 or when considering these objectives and principles under the Bill.

Subclause (3) specifies the Minister has flexibility in preparing the guidelines, as the guidelines can be applied to all decisions, policies, programs, or processes, or specified classes of the same.

There may be a need for guidelines to be highly context specific For example, what these principles and objectives require of a water corporation in setting utility prices will be significantly different to what is required for a government department when reviewing its risk register or developing a strategy.

Division 2—Policy objectives

Clause 22 provides for a list of policy objectives relating to climate change. These objectives are relevant for the purposes of clause 12, clause 14, clause 20, clause 21, clause 31, clause 36, clause 42(2), clause 44(2) and clause 47(2).

Division 3—Guiding principles

Division 3 provides for guiding principles. These principles are relevant for the purposes of clause 12, clause 14, clause 19, clause 20, clause 21, clause 31, clause 36, clause 42(2), clause 44(2) and clause 47(2).

Clause 23 describes the principle of informed decision making. This principle provides that a decision, policy, program or process should be based on a comprehensive analysis of the best practicably available information about the potential impacts of

climate change, and that potential contributions to the State's greenhouse gas emissions should be taken into account.

Clause 24 describes the principle of integrated decision making. This principle provides that a decision, policy, program or process should integrate the competing long, medium, and short-term environmental, economic, and health considerations relating to climate change.

Clause 25 describes the principle of risk management. This principle provides that a decision, policy, program or process should be based on an assessment of risks by carefully evaluating the best practicably available information about potential climate change impacts, assessing consequences of options, and that risks should be managed and allocated in a manner that is easily seen and understood, striving to achieve best practice.

Subclause (2) embraces the precautionary principle, in that a decision, policy, program or process aimed at preventing serious or irreversible loss or damage as a result of climate change should not be postponed or dismissed based on a lack of full scientific certainty.

Clause 26 describes the principle of equity. This principle provides that a decision, policy, program or process should have regard to equitable concepts such as creating opportunities to adapt to climate change for current and future generations, creating opportunities to increase the adaptive capacities of the most vulnerable to climate change impacts, minimising adverse impacts of climate change on future generations by maintaining and enhancing the health, diversity and productivity of the environment, and ensuring long, medium, and short-term consequences of decisions, policies, programs or processes are considered.

Clause 27 describes the principle of community engagement. This principle provides that a decision, policy, program or process should incorporate community engagement by providing appropriate information, opportunities for involvement, and consultation.

Clause 28 describes the principle of compatibility. This principle provides that a decision, policy, program or process should seek to promote a coherent State-wide policy framework in relation to climate change issues.

Subclause (2) provides a decision, policy, program or process should seek to achieve cohesion among climate change policies, programs, initiatives, standards or commitments of other States or Territories, the government of the Commonwealth, governments of other countries, and international bodies and organisations.

Similar provisions appeared in sections 8 to 13 of the **Climate Change Act 2010**.

Part 5—Planning for climate change

Part 5 of the Bill provides the requirements and tools that relate to planning and preparing for climate change. Division 1 provides for the development of a climate change strategy, Division 2 provides for adaptation action plans and Division 3 provides for emission reduction pledges.

Division 1—Climate change strategy

Clause 29 provides direction on the preparation of the climate change strategy.

Subclauses (1) and (2) require the Minister to prepare a new climate change strategy every 5 years up to and including 2045, with the first to be finalised on or before 31 October 2020.

Subclause (3) requires the strategies to relate to the 5 year period starting 1 January of the year following the strategy's preparation. This timing is to ensure that a strategy coincides with each of the interim target periods, as set out under clause 10. For example, the interim target period 1 January 2021 to 31 December 2025 is intended to coincide with the climate change strategy in force from 1 January 2021 to 31 December 2025.

Clause 30 sets out what the climate change strategy should include.

Subclause (1) sets out the minimum requirements for the strategy's content, namely—

- a statement of priorities; and
- a specific adaptation component; and
- an emissions reduction component.

Subclause (2) clarifies that the statement of the priorities must contain the Government of Victoria's climate change priorities for the 5 year period to which the strategy relates. It must contain priorities relating to—

- adapting to the impacts of climate change; and
- reducing Victoria's emissions; and
- planning for the State's transition to meet the challenges of climate change and capitalise on the opportunities.

It is intended that these priorities could be State-wide; relate to a specific sector or sectors of the economy, relate to specific systems for which adaptation action plans are required (these are listed in Clause 34(4)), or relate to particular regions of Victoria.

The statement of priorities is also used to guide the development of the adaptation action plans (set out in Division 2 of this Part).

Subclause (3) clarifies that the adaptation component of the climate change strategy must include—

- a summary of the most recent climate science report prepared under clause 51, including the implications of climate change for the State and any regions of the State; and
- medium and long-term objectives in respect of adaptation; and
- actions which may be taken by the Government of Victoria to ensure that the effects of climate change are considered while carrying out its operations and activities. It is intended that this part of the strategy address any whole of government actions relating to government operations, as many of these will not necessarily fall within a system (and therefore are not covered by actions contained in adaptation action plans provided for in Division 2 of this Part).

Subclause (4) sets out what must be included in the emissions reduction component of the climate change strategy. At a minimum, this must include—

- the interim emissions reduction target, the whole-of-government pledge, sector pledges, and any Council for the period to which the strategy relates; and
- an assessment of the estimated total level of greenhouse gas emissions reductions resulting from the implementation of the emissions reduction pledges; and
- any information the Minister considers appropriate about other proposals from the business sector or wider community attempting to reduce greenhouse gas emissions. It is intended this could capture voluntary emissions reduction pledges.

The content included in this subclause is not intended to be exhaustive.

Subclause (5) requires the Minister to include a report on the implementation and effectiveness of any immediately preceding strategy. This requirement is important to measure progress and value each prior strategy has contributed.

Subclause (6) requires the Minister in relation to the first climate change strategy due on or before 31 October 2020 under clause 29(1) to include a report on implementation and effectiveness of any Climate Change Adaptation Plan which was prepared under the **Climate Change Act 2010** and is still in effect at the date that Act is repealed.

Clause 31 sets out what the Minister must consider when preparing a climate change strategy, including—

- the policy objectives and the guiding principles, which are described in Part 4; and
- any independent expert advice obtained under clause 12; and
- any climate science reports and any annual greenhouse gas emissions reports prepared under clauses 51 and 52, to ensure the strategy reflects the current and projected status of Victoria's emissions as well as current and projected impacts for Victoria and its regions; and

- any written submissions received as a consequence of the public consultation requirements contained in clause 32.

Clause 32 provides the requirements for public consultation on the draft climate change strategy.

Before finalising a strategy, the Minister must publish on the Internet site of the Department the draft climate change strategy, a statement advising that any person may make a written submission to the Minister in relation to the draft strategy, details of how a person may make a written submission, and the date by which written submissions must be received.

Clause 33 provides that the Minister must cause the final climate change strategy to be tabled before each House of Parliament within 10 sitting days, as well as publish the strategy on the Internet site of the Department.

Division 2—Adaptation actions plans

Adaptation action plans are the primary mechanism for adaptation planning in the Bill.

Clause 34 requires relevant nominated Ministers to prepare adaptation action plans.

Subclause (1) requires any nominated Minister to prepare an adaptation action plan on or before 31 October 2021. A Minister is nominated through a determination by the Minister, in consultation with the Premier, under clause 38.

The timing of the preparation of the adaptation action plans is sequenced to ensure that they are prepared the year following the finalisation of any climate change strategy. This will allow adaptation action plans to respond to the climate change priorities listed in a given strategy.

Subclause (2) requires the nominated Minister to prepare further adaptation plans on or before 31 October every fifth year following 2021 up to 31 October 2046. Where the responsibility for preparing a given adaptation action plan is subject to a new nomination under clause 38, this duty would then apply to any newly nominated Minister from the date of the nomination.

Subclause (3) provides that adaptation action plans will apply for 5 years, from 1 January the year following their preparation to 5 years after this. This is to ensure their timing is closely linked to the strategy, always one year behind.

Subclause (4) lists the systems in relation to which adaptation action plans must be prepared. These systems are further defined in clause 3. The 7 systems are—

- built environment;
- education and training;
- health and human services;
- natural environment;
- primary production;
- transport;
- water cycle.

The systems are intended to provide a general guide to adaptation action plan development. These provisions do not intend that all elements of every system are expressly addressed in each round of adaptation action plans nor that the elements listed are exhaustive. They are intended to allow the emphasis or focus area of each adaptation action plan to shift depending on identified climate change vulnerabilities and risks or the priorities of a given climate change strategy (see clause 30).

In the event that further systems are required for comprehensive adaptation planning, additional systems can be prescribed.

Clause 35 outlines the content requirements for adaptation action plans, which contains both mandatory and discretionary components.

Subclause (1) sets out the mandatory components, including—

- a statement of roles and responsibilities of the Government of Victoria and other governments, persons and bodies in relation to the relevant system; and
- an assessment of the extent to which existing policies of the Victorian Government address or are able to address the priorities contained in the statement of priorities that are relevant to or relate to that system. This is intended to ensure that the adaptation action

plans do not duplicate existing policy, but rather build upon it; and

- if necessary, given the outcome of the assessment above, a list of any actions over the next 5 years required to address the statement of priorities.

Subclause (2) sets out other discretionary components of the adaptation action plans. The discretionary components are to demonstrate that adaptation action plans are a flexible mechanism that can be used by the nominated Minister to explore more specific system-based climate change risks or vulnerabilities, or facilitate more system-wide adaptation action beyond government. Specifically, the plans may include—

- a summary of any other climate change implications for the relevant system, including risks or vulnerabilities not included in the statement of priorities or contained in the climate science report, and any possible actions to address those implications; or
- information about any other proposals, which the nominated Minister considers relevant, that relate to the adaptation of that system (or sub-system) received from any person or body, including the business sector or wider community; or
- any other data relied upon in the development of the plan that the Minister considers relevant; or
- any other information the nominated Minister considers necessary.

Subclause (3) requires the nominated Minister to include a report on the implementation and effectiveness, at the time the plan is prepared, of any previously prepared plan prepared by that nominated Minister.

Clause 36 provides for what a nominated Minister must consider when preparing an adaptation action plan, including—

- the policy objectives and guiding principles described under Part 4; and
- any climate science report prepared under clause 51; and
- any written submissions submitted under clause 37.

Clause 37 provides the requirements for public consultation on the draft adaptation action plans.

Before finalising an adaptation action plan, the nominated Minister must publish on the Internet site of the relevant Department the draft adaptation action plan, a statement advising that any person may make a written submission to the nominated Minister in relation to the draft plan, details of how a person may make a written submission and the date by which written submissions must be received.

Clause 38 empowers the Minister to determine in writing any other Minister to be a nominated Minister for the purposes of preparing an adaptation action plan in respect of a system referred to in clause 34(4).

Subclause (2) states that the Minister must consult with the Premier before making a determination under subclause (1).

As provided in clause 34, it is intended adaptation action plans are prepared in respect of all the systems. However, it is not intended to mean that a single adaptation action plan must be prepared for each system. The number of adaptation action plans and their particular focus is intended to be determined through this nomination process.

Subclause (3) states that the determination may specify a single Minister for an system listed in clause 34(4), or it could break the system into a number of separate adaptation action plans, and nominate separate Ministers for each. It could also nominate multiple Ministers for a single system or extract and merge particular components into a new adaptation action plan, if this is considered necessary to address the statement of priorities of a given climate change strategy.

Subclause (4) states that 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.

It is not intended that new determinations would be required before each round of adaptation action plans, unless the responsibility for preparation needed to be shifted between Ministerial portfolios or a particular system needed to be broken up into sub-components and responsibility reallocated.

Clause 39 allows the Minister to issue directions to a nominated Minister in respect of the preparation of adaptation action plans.

Subclause (2) provides that such directions may, amongst other things, specify the methodology to be applied to the identification of actions to be included in an adaptation action plan.

Subclause (3) requires a nominated Minister to have regard to the directions.

Clause 40 provides that the nominated Minister must cause the final adaptation action plan to be tabled before each House of Parliament within 10 sitting days after it is prepared, as well as publish the adaptation action plan on the Internet site of the relevant Department.

Division 3—Emissions reduction pledges

Division 3 of Part 5 of the Bill provides for the making of emissions reduction pledges by State and local government to help drive emissions reduction to meet the interim targets and long-term target set out in Part 2 of the Bill. For the purposes of the Bill, an emissions reduction pledge is a statement in respect of emission reductions.

Clause 41 requires the Minister to prepare a whole-of-government pledge in relation to emissions arising from government operations and activities.

Subclause (1) requires the Minister to prepare the first pledge on or before 1 August 2020. This is to ensure that this pledge is prepared in time for inclusion in the climate change strategy prepared under clause 29 and for the Minister, when preparing this strategy, to have sufficient time to undertake an assessment of the cumulative impact of all of the pledges made under this Division.

Subclause (2) requires the Minister to prepare further pledges every 5 years after 1 August 2020 and up to and including 1 August 2045. This is to ensure that pledges coincide with each interim target period up until the sixth and final period set out in clause 10 of the Bill.

Subclause (3) states that the whole-of-government pledge must relate to the period of 5 years starting on 1 January in the year following its preparation.

Clause 42 outlines the content requirements for a whole-of-government pledge and matters that the Minister must consider when preparing a whole-of-government pledge.

Subclause (1) outlines the content that must be included in a whole-of-government pledge—

- 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. For example, this could include those emissions reduction programs or projects designed to reduce greenhouse gas emissions attributable to building energy use, waste management practices and government vehicle use; and
- a reasonable estimate of the total level of greenhouse gas emission reductions expected to result from the implementation of those actions. A reasonable estimate is only required because emissions reductions from some actions may not be quantifiable.

Subclause (2) provides that the Minister must consider the policy objectives described under Division 2 of Part 4, the guiding principles described under Division 3 of Part 4, and any independent expert advice obtained under clause 12.

Subclause (3) clarifies that the Minister can consider any annual greenhouse gas reports prepared under clause 52 of the Bill.

Subclause (4) defines ***applicable government body*** for the purposes of this clause. It is intended that in developing the whole-of-government pledge, the Minister will receive a description of actions from every Victorian Government department within the meaning of the **Public Administration Act 2004**, any entity prescribed by regulations that is established by or under a State law and any other entity that has voluntarily provided the Minister with any action to be included in a whole-of-government pledge.

Clause 43 requires relevant nominated Ministers to prepare sector pledges in relation to prescribed categories of emissions and removals.

Subclause (1) requires the relevant nominated Minister to prepare the first sector pledge on or before 1 August 2020. This timing is to ensure that sector pledges are prepared in time for inclusion in the climate change strategy prepared under clause 29.

Ministers are nominated under clause 45 of the Bill.

Subclause (2) requires the nominated Minister to prepare further pledges every 5 years after 1 August 2020 and up to and including 1 August 2045. This is to ensure that pledges coincide with each interim target period up until the sixth and final period set out in clause 10 of the Bill. Where the responsibility for preparing a given sector pledge is subject to a new nomination under clause 45, this duty would then apply to any newly nominated Minister from the date of the nomination.

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

Clause 44 outlines the content requirements for a sector pledge and matters that the nominated Minister must consider when preparing a sector pledge.

Subclause (1) outlines the content that must be included in a sector pledge, namely—

- 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. It is intended that actions could relate to government policy, programs or regulation; and
- a reasonable estimate of the total level of greenhouse gas emission reductions expected to result from the implementation of those actions. A reasonable estimate is only required because some actions may not be quantifiable.

Categories of emissions and removals will be set out in regulations. It is intended that these categories will be based on the Australian National Greenhouse Gas Inventory and align with the international reporting system. These represent the main human activities that contribute to the release or capture of greenhouse gases into, or from, the atmosphere. Currently, these categories include—

- energy (including stationary energy, transport and fugitive emissions);
- industrial processes and product use;
- agriculture;
- waste;
- land use, land use change and forestry.

Subclause (2) provides that the nominated Minister must consider the policy objectives described under Division 2 of Part 4, the guiding principles described under Division 3 of Part 4, any independent expert advice obtained under clause 12.

Subclause (3) clarifies that the nominated Minister can also consider any annual greenhouse gas reports prepared under clause 52 of the Bill.

The content included in this clause is not intended to be exhaustive.

Clause 45 sets out a process for the Minister, in consultation with the Premier, to nominate Ministers to prepare sector pledges under clause 43. This clause is to enable flexibility in the responsibility for preparing sector pledges.

Subclause (1) provides that 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. This is to enable the Minister to assign responsibility for the preparation of sector pledges to those Ministers whose portfolio responsibility best places them to lead or share responsibility for preparing sector pledges.

Subclause (2) states that the Minister must consult with the Premier before making a determination under subclause (1).

Subclause (3) enables determinations to specify more than one Minister in respect of a prescribed category, or be made in respect of part of a prescribed category. This subclause allows determinations to disaggregate prescribed categories into areas of policy relevance or to combine multiple categories into one sector pledge.

Subclause (4) states that if the Minister does not make a determination in respect of a prescribed category, the Minister is taken to be the nominated Minister for that category.

It is not intended that new determinations would be required before each round of sector pledges, unless the responsibility for preparation needed to be shifted between Ministerial portfolios or a particular category needed to be broken up into sub-categories and responsibility reallocated.

Clause 46 enables Councils to prepare Council pledges.

Council pledges are intended to be 'opt-in', meaning a Council can choose to prepare a pledge for any period, but is not obliged to produce further pledges.

Subclause (1) enables Councils to prepare a Council pledge, being a statement in respect of emissions reductions resulting from, or influenced by, the performance of a Council's functions, powers and duties under the **Local Government Act 1989**, on or before 1 August 2020. This timing is to ensure that this pledge is prepared in time for inclusion in the climate change strategy prepared under clause 29.

Subclause (2) enables Councils to prepare further pledges every 5 years after 1 August 2020 and up to and including 1 August 2045. This is to ensure that pledges prepared coincide with each interim target period set out in clause 10 of the Bill.

Subclause (3) states that a Council pledge must relate to the period of 5 years starting on 1 January in the year following its preparation.

Clause 47 outlines the content requirements of a Council pledge and matters a Council must consider when preparing a pledge.

Subclause (1) outlines the content that must be included in a Council pledge—

- 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 Council operations and activities. For example, this could include emissions arising from Council building energy use, waste management and Council vehicle use; and
- a reasonable estimate of the total level of greenhouse gas emission reductions expected to result from the implementation of those actions. A reasonable estimate is only required because some actions may not be quantifiable.

Subclause (2) states that the Council must consider the policy objectives described under Division 2 of Part 4 and the guiding principles described under Division 3 of Part 4.

Clause 48 requires Councils to provide a copy of a Council pledge to the Minister as soon as practicable after its preparation. This is to enable the Minister to include Council pledges in the climate change strategy prepared under clause 29.

Clause 49 empowers the Minister to issue directions in relation to emissions reduction pledges.

Subclause (1) provides that the Minister may issue directions for or with respect to preparation of emissions reduction pledges.

Subclause (2) provides that direction under this clause may—

- specify the methodology to be used in determining the estimated reduction in greenhouse gas emissions set out in the pledge; or
- specify appropriate consultation to be undertaken by the nominated Minister.

Subclause (3) provides that a nominated Minister or Council must have regard to any directions in preparing a pledge.

The purpose of these directions is to ensure that pledges are prepared using a similar format and in a consistent manner prior to publication in the climate change strategy.

Clause 50 provides for the variation of emissions reduction pledges.

Subclause (1) provides that the Minister may at any time vary a whole-of-government pledge that is in force at the time of the variation.

Subclause (2) provides that a nominated Minister may at any time vary a sector pledge that is in force at the time of the variation.

Subclause (3) provides that if a variation of a pledge occurs after the publication of the climate change strategy in respect of the same period, the relevant Minister must publish notice of the variation in the Government Gazette, and publish an up-to-date consolidated version of the pledge on the Internet site of the relevant Department.

Part 6—Further information and reports

Part 6 of the Bill contains a series of reporting requirements designed for Government to keep the community informed, both about climate change generally, and in relation to work done and progress towards meeting the interim and long-term targets.

Clause 51 requires the Minister to prepare a report on climate change science, data on observed changes and the implications of climate change for the State. It is intended that these reports do not only focus on State-wide impact, but also (where appropriate and relevant) include regional impacts.

Subclause (2) outlines what should be contained in the report. This includes an assessment of the implications of climate change for the State and any regions of the State, data on observed changes in climate in the State, and any other information the Minister considers appropriate. This could extend to exploring some of the risks, vulnerabilities or even opportunities that climate change impacts present to the state, communities, sectors or systems, as defined in clause 3.

Subclause (3) requires the Minister to prepare all climate science reports prior to the 31 October the year before the preparation of the climate change strategy. This allows the strategy to be informed by the most up to date climate science available.

Subclause (4) and (5) requires the Minister to cause the tabling of any report in each House of the Parliament, and for the report to be published on the Internet site of the Department.

Clause 52 requires the Minister to prepare an annual report on greenhouse gas emissions. It is intended that the data in this report will be a key tool in assessing performance against interim targets and emissions reduction pledges, and in identifying future emissions reduction priorities.

Subclause (1) outlines the content that must be included in the annual report, including an overview and collation of the best practicably available information about the States greenhouse gas emissions, and the extent to which the amount of the States greenhouse gas emissions has been reduced in relation to 2005 levels.

Subclause (2) states that for the purposes of subclause (1)(b) the method for calculating any reduction in the amount of the State's greenhouse gas emissions for the year 2005 is the method set out in clause 53.

Subclause (3) requires the Minister to prepare the first report on or before 31 October 2018 and a report every following year.

Subclause (4) and (5) requires the Minister to cause a copy of the report to be tabled in each House of the Parliament, and for the report to be published on the Internet site of the Department.

It is intended that this report is based on the best practicably available greenhouse gas emissions data.

Clause 53 provides the formula for calculating a reduction in the State's greenhouse gas emissions for the purposes of the annual greenhouse gas report prepared under clause 52.

Clause 54 requires the Minister to prepare a report for each interim target period. The purpose of this report is to function as an assessment and evaluation of the interim targets determined under Division 2 of Part 2 and emissions reduction pledges prepared under Division 3 of Part 5. This clause creates greater transparency and accountability to Parliament on the State's efforts to meet the interim targets and long-term target.

Subclause (2) requires the Minister to ensure that a report prepared under clause 54 is prepared within 2 years after the end of the interim target period for which the report is prepared.

Subclauses (3) and (4) requires the Minister to cause a copy of the report to be tabled in each House of the Parliament, and for the report to be published on the Internet site of the Department.

Clause 55 outlines the content that must be included in an end of interim target period report.

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

Division 1—Introductory

Clause 56 provides for the application of Part 7 by specifying which land the Part does not apply to.

Part 7 does not apply to unalienated Crown land, reserved Crown land, land in an identified folio under the **Transfer of Land Act 1958**, land not under the **Transfer of Land Act 1958** or carbon 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.

Unalienated Crown land and reserved Crown land and Crown land that is subject to a lease, whether or not that lease is registered under the **Transfer of Land Act 1958**, is dealt with under Part 8.

Parts 7 and 8 do not apply to general law land or land in an identified folio under the **Transfer of Land Act 1958**. It is intended that such land be brought under the **Transfer of Land Act 1958** before it can be dealt with in accordance with this Part.

The Bill does not enable the creation of rights in areas subject to the **Greenhouse Gas Geological Sequestration Act 2008**.

Division 2—Forest carbon rights

Division 2 provides for the creation and transfer of forest carbon rights.

Clause 57 provides for the creation and transfer of forest carbon rights in the Register.

Subclause (1) provides that a forest carbon right may be created by execution of an instrument of transfer by the registered proprietor of a freehold or leasehold estate in land to which the right applies.

Subclause (2) provides that where the 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 during the term of the lease without the consent of the lessee.

Subclause (3) requires the instrument of transfer creating the forest carbon right to be in a form approved by the Registrar under the **Transfer of Land Act 1958**.

Subclause (4) requires the instrument of transfer to specify each forest carbon right which is to be created.

Subclause (5) requires the instrument of transfer to specify that a forest carbon right is being created in accordance with this Bill.

Subclause (6) empowers the Registrar to make an entry in the Register recording the creation of a forest carbon right if it complies with the requirements of the clause.

Subclause (7) prohibits the Registrar from registering more than one of each category of forest carbon right in respect of the same area of land.

Subclause (8) ensures that a forest carbon right can be dealt with under the **Transfer of Land Act 1958**, save as otherwise provided in this Part of the Bill, and may be transferred for a term of not less than 3 years.

Subclause (9) prohibits the variation of a registered forest carbon right. A new right will need to be created in the event that the boundaries or term of a registered forest carbon right are required to be adjusted.

Division 3—Forestry and Carbon Management Agreements

Division 3 provides for the making, variation and ending of Forestry and Carbon Management Agreements, the recording of Forestry and Carbon Management Agreements in the Register and the effect of recording, and the enforcement of Forestry and Carbon Management Agreements.

Clause 58 provides for the making of Forestry and Carbon Management Agreements.

Subclause (1) provides that the registered proprietor of a freehold or leasehold estate may enter into a Forestry and Carbon Management Agreement with the owner of a forest carbon right and any other person.

Subclause (2) provides that a public authority may be a party to a Forestry and Carbon Management Agreement for certain purposes.

Subclause (3) requires a Forestry and Carbon Management Agreement to include a statement that the agreement is a Forestry and Carbon Management Agreement under this Bill.

Subclause (4) provides that no more than one Forestry and Carbon Management Agreement may be executed in respect of the same area of land.

Clause 59 provides for the purpose of Forestry and Carbon Management Agreements.

Subclause (1) outlines that the purpose of a Forestry and Carbon Management Agreement is the imposition of management obligations in relation to carbon sequestration by vegetation or underground and the management of vegetation.

Subclause (2) provides that an obligation under a Forestry and Carbon Management Agreement is not a restrictive covenant.

Subclause (3) provides that an obligation under a Forestry and Carbon Management Agreement may be positive or negative in nature.

Clause 60 sets out certain requirements which must be included and other requirements which may be included in a Forestry and Carbon Management Agreement.

Subclause (1) requires the Forestry and Carbon Management Agreement to—

- specify who is entitled to control harvesting decisions; and
- describe a process for determining how such decisions will be made; and
- to specify any relevant obligations relating to the preservation, enhancement or management of vegetation or soil.

Subclause (2) provides that a Forestry and Carbon Management Agreement may include other provisions the parties consider desirable.

Subclause (3) sets out that an obligation specified in a Forestry and Carbon Management Agreement may be placed on any owner of land or any other party to the agreement.

Clause 61 provides that a Forestry and Carbon Management Agreement may include conditions to provide security for compliance with the terms of the agreement.

Clause 62 provides that a Forestry and Carbon Management Agreement comes into effect on the date it is executed or such other date as is specified in the agreement.

Subclause (2) provides that a Forestry and Carbon Management Agreement is binding on parties to the agreement and any other person who has consented to the agreement.

Clause 63 makes provision for the recording of a Forestry and Carbon Management Agreement on folios of the Register.

Subclause (1) provides that 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.

Subclause (2) provides that the application must be in the form approved by the Registrar under the **Transfer of Land Act 1958** and be accompanied by a copy of the Forestry and Carbon Management Agreement.

Subclause (3) provides that the Registrar may make a recording of the Forestry and Carbon Management Agreement in the Register if the application complies with subclause (2).

Subclause (4) defines ***relevant interest*** for the purposes of clause 63 as a fee simple estate, a leasehold estate or a forest carbon right.

Clause 64 provides that in addition to clause 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.

Clause 65 provides for the variation of obligations under a Forestry and Carbon Management Agreement.

Subclause (1) provides that obligations may only be varied with the consent of all persons bound by the agreement.

Subclause (2) provides that certain matters cannot be the subject of a variation. Such changes will require a new agreement to be executed. This is to ensure that the Forestry and Carbon Management Agreement remains consistent with the rights recorded in the Register.

Subclause (3) provides that 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.

Subclause (4) provides that clauses 63 and 64 apply to an application to record a variation to an agreement as if it were an application to record the agreement.

Subclause (5) defines ***relevant interest*** for the purposes of clause 65 as a fee simple estate, a leasehold estate or a forest carbon right.

Clause 66 sets out how a Forestry and Carbon Management Agreement may be ended.

Subclause (1) provides that a Forestry and Carbon Management Agreement may be ended on the date specified in the agreement.

Subclause (2) provides that, if no date is specified, a Forestry and Carbon Management Agreement may be ended by agreement between the persons bound by the agreement.

Subclause (3) provides that an agreement may be ended wholly or in relation to a particular area of land.

Clause 67 makes provision for the removal of Forestry and Carbon Management Agreement from the Register on the ending of an agreement.

Subclause (1) provides that 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 clause 66 in relation to that land.

Subclause (2) requires the application to be in the form approved by the Registrar under the **Transfer of Land Act 1958**.

Subclause (3) provides that the Registrar may remove any recording in the Register if the application is in accordance with the clause.

Subclause (4) defines ***relevant interest*** for the purposes of clause 67 as a fee simple estate, a leasehold estate or a forest carbon right.

Clause 68 provides for the enforcement of Forestry and Carbon Management Agreements.

Subclause (1) provides that a person bound by a Forestry and Carbon Management Agreement may apply to the Victorian Civil and Administrative Tribunal to enforce the agreement.

Subclause (2) provides that on application under this clause the Victorian Civil and Administrative Tribunal may order a person to comply with a requirement specified within a Forestry and Carbon Management Agreement, order a person to reinstate land that has been developed in contravention of the agreement or make any other order it considers appropriate.

Clause 69 applies to disputes regarding the ending of Forestry and Carbon Management Agreements and empowers the Victorian Civil and Administrative Tribunal to resolve the dispute and to make declarations regarding whether an agreement has ended. A person bound by the agreement may apply to the Victorian Civil and Administrative Tribunal for a declaration or order resolving the dispute.

Clause 70 requires the Registrar to give effect to any order of the Victorian Civil and Administrative Tribunal under clauses 68 and 69.

Part 8—Carbon sequestration on Crown land

Division 1—Application

Division 1 provides for the application of Part 8 and that native title rights are not affected by any rights created under this Part.

Clause 71 provides for the application of Part 8.

Subclause (1) provides that this Part applies to unalienated Crown land and reserved Crown land.

Subclause (2) provides that this Part applies to any Crown land that is the subject to a lease, whether or not that is registered under the **Transfer of Land Act 1958**.

Subclause (3) provides that this Part does not apply to carbon owned by the Crown under the **Greenhouse Gas Geological Sequestration Act 2008**, or carbon sequestered in a geological storage formation or an underground geological storage formation within the meaning of that Act.

Subclause (4) clarifies that this Part does not alter the ownership or control of Crown land under any other Act.

Subclause (5) clarifies that that even though the granting of a carbon sequestration right or soil carbon right could be taken to be an alienation of Crown land, Part 8 of the Bill continues to apply.

Clause 72 provides that rights and interests created under this Part of the Bill are not intended to and are not to be taken to extinguish native title.

Division 2—Use of Crown land for carbon sequestration

Division 2 facilitates the strategic assessment of Crown land available for carbon sequestration and empowers the Secretary to manage Crown land for the purposes of carbon sequestration on behalf of the Crown.

Clause 73 provides for the Governor in Council on recommendation of the Minister to declare land available for the use of carbon sequestration.

Subclause (1) provides that the Governor in Council, on the recommendation of the Minister, may by Order published in the Government Gazette declare specified Crown land to be available for carbon sequestration, direct that any forest produce on Crown land be placed under the control and management of the Secretary and invite expressions of interest for the use and development of Crown land for carbon sequestration purposes.

Subclause (2) provides that the Minister must not make a recommendation to declare land available for carbon sequestration unless the Minister is satisfied that the land is suitable for carbon sequestration by vegetation or in soil and that such use would not be contrary to the public interest.

Subclause (3) requires the Minister to obtain the consent of the Minister administering the Act under which the right to forest produce was granted before recommending that any forest produce be placed under the control of the Secretary.

Subclause (4) provides that any order directing that any forest produce on Crown land be placed under the control and management of the Secretary may be subject to conditions.

Secretary is defined in clause 3 as having the same meaning as in the **Conservation Forests and Lands Act 1987**, that is, the body corporate established under Part 2 of the **Conservation Forests and Lands Act 1987**.

Clause 74 provides for the role of the Secretary in relation to carbon sequestration on Crown land.

Subclause (1) provides that subject to this Part, the Secretary may manage Crown land for the purposes of carbon sequestration and do anything that is reasonable and necessary for the purposes of carbon sequestration on Crown land.

Subclause (2) provides that if Crown land is managed or controlled by a public authority other than the Secretary, the Secretary may only exercise the powers under this clause to the extent provided for under any Order under clause 73(1)(b).

Subclause (3) provides that subject to clause 75, the Secretary holds, manages and controls carbon sequestered on or under unalienated Crown land for and on behalf of the Crown.

Clause 75 provides for the ownership of carbon sequestered on encumbered Crown land. It is not intended that the Bill alter existing ownership arrangements of carbon sequestered on encumbered Crown land prior to the commencement of the Bill.

Subclause (1) provides that this clause applies to Crown land managed or controlled by a public authority or subject to a lease, licence, instrument or agreement under any other Act.

Subclause (2) provides that the ownership of carbon sequestered on such land is subject to the provisions of the Act under which the land is managed and the terms of the lease, licence, instrument or agreement.

Subclause (3) provides that 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 licence.

Division 3—Carbon Sequestration Agreements

Division 3 provides for the Secretary to grant carbon sequestration rights and soil carbon rights in relation to Crown land to third parties through Carbon Sequestration Agreements.

Clause 76 enables the Secretary to execute a Carbon Sequestration Agreement in relation to specified Crown land.

Subclause (1) enables the Secretary to enter into a Carbon Sequestration Agreement in relation to Crown land which is subject to a relevant Act, or land which is subject to a declaration made under clause 73(1)(a) specifying Crown land or classes of Crown land to be available for carbon sequestration.

relevant Act is defined in clause 3 to mean—

- **Crown Land (Reserves) Act 1978**;
- **Forests Act 1958**;
- **Land Act 1958**;
- **National Parks Act 1975**;
- **Sustainable Forests (Timber) Act 2004**;
- **Victorian Plantations Corporation Act 1993**.

No declaration under clause 73(1)(a) is required for Crown land under a relevant Act as the land will already be subject to the control of the Secretary.

Subclause (2) sets out certain requirements for a Carbon Sequestration Agreement and provides that the agreement must not be inconsistent with the requirements of relevant laws.

Subclause (3) provides that the Carbon Sequestration Agreement may only be made in relation to reserved Crown land where the use of the land for carbon sequestration would not be inconsistent with the purposes for which the land was reserved.

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

Clause 77 provides that the Secretary may by notice published in the Government Gazette specify requirements for Carbon Sequestration Agreements.

Clause 78 sets out the matters which a Carbon Sequestration Agreement may provide for.

Subclause (1)(a) provides that a Carbon Sequestration Agreement may grant a person a carbon sequestration right or a soil carbon right in relation to Crown land for the term of the agreement.

Subclause (1)(b) provides that a Carbon Sequestration Agreement may authorise a person to access Crown land, plant and maintain vegetation on Crown land for the purposes of carbon sequestration, control and exploit carbon sequestered within vegetation or soil and manage the land for the purpose of carbon sequestration.

Subclause (1)(c) provides that a Carbon Sequestration Agreement can set out agreements for related matters.

Subclause (1)(d) provides that a Carbon Sequestration Agreement can include provisions to address fire management obligations.

Subclause (1)(e) authorises a Carbon Sequestration Agreement to provide for the ending and review of the agreement, the manner of varying the agreement, compensation entitlements and requirements for the rehabilitation of land.

Subclause (2) provides that a Carbon Sequestration Agreement cannot alter the ownership of forest produce. ***Forest produce*** is defined in clause 3 as having the same meaning as in the **Forests Act 1958**.

Clause 79 sets out certain requirements in relation to the granting of carbon sequestration rights or soil carbon rights by the Secretary.

Subclause (1) has the effect of providing that a person who enters into a Carbon Sequestration Agreement with the Secretary must be the same legal person to be granted the carbon sequestration right or soil carbon right. Effectively, this means that the carbon sequestration right or soil carbon right and the Carbon Sequestration Agreement are co-dependent, which ensures the individual receiving the economic benefit of the right also has the corresponding obligations under the Carbon Sequestration Agreement.

Subclause (2) provides that the Secretary must not grant a person a carbon sequestration right and carbon soil right in relation to Crown land in the same Carbon Sequestration Agreement. The Secretary must issue separate Carbon Sequestration Agreements for the different types of rights because the Act treats carbon sequestration rights and soil carbon rights as independent legal rights, which may be issued to different persons and under different terms.

Subclause (3) provides that a carbon sequestration right or a soil carbon right granted under a Carbon Sequestration Agreement is extinguished on the date the agreement ends. This amendment is necessary to give effect to the co-dependent relationship between the carbon sequestration right or soil carbon right and the Carbon Sequestration Agreement.

Clause 80 provides that the Carbon Sequestration Agreement may include requirements for the provision of securities in favour of the Crown.

Clause 81 provides that a Carbon Sequestration Agreement may include provisions dealing with the allocation of risk between the parties to the agreement, and responsibility for compliance with relevant laws.

Clause 82 provides that the proponent of a proposed Carbon Sequestration Agreement must publish notice of the proposed agreement in the Government Gazette and provide written notice of the proposed agreement to specified persons.

Subclause (2) provides that the Secretary may give any notice under the section in place of the proponent.

Clause 83 provides that before the Secretary enters into a Carbon Sequestration Agreement consent is required from any lessee or licensee of the land.

Clause 84 specifies the matters which the Secretary is required to have regard to in determining whether to or not to enter into a Carbon Sequestration Agreement.

Clause 85 provides for the Secretary to cause notice of the making of a Carbon Sequestration Agreement to be published in the Government Gazette.

Clause 86 provides that the written consent of the Secretary is required before any transfer of a Carbon Sequestration Agreement or any rights arising under a Carbon Sequestration Agreement are assigned.

Subclause (2) provides the Secretary must not consent to a transfer of a Carbon Sequestration Agreement to a person unless the right granted by the agreement is assigned to that person for the remainder of the term of the agreement.

Clause 87 provides for the ending of Carbon Sequestration Agreements by the Minister on giving the parties not less than 180 days written notice of termination, by agreement of the parties in accordance with the Carbon Sequestration Agreement or by further agreement of the parties.

Clause 88 requires the Secretary to maintain a Register of Carbon Sequestration Agreements in accordance with regulations. The Register of Carbon Sequestration Agreements must include details of the making, the rights granted, variation, transfer or termination of the agreements.

Clause 89 provides that an extract from the Register of Carbon Sequestration Agreements, certified by the Secretary, setting out that a person is a party to a Carbon Sequestration Agreement is evidence of that person being the owner of a carbon sequestration right or soil carbon right, as the case may be.

Division 4—Fire suppression and prevention

Division 4 provides for fire suppression and prevention.

Clause 90 provides that this Division applies if a Carbon Sequestration Agreement affects land.

As the Secretary has responsibilities under section 62(2) of the **Forests Act 1958** in relation to the prevention and suppression of fire in every State forest and national park and on all protected public land a provision is required to outline that the Secretary's powers may be applied to land which is the subject of a Carbon Sequestration Agreement.

Clause 91 provides that the Secretary or any authorised officer appointed under the **Conservation, Forests and Lands Act 1987** may direct a person to carry out works for fire prevention, fire management or fire suppression.

Clause 92 requires a person to comply with a direction of the Secretary or authorised officer under this Division.

Clause 93 requires the Secretary to reimburse a person for the reasonable cost of works carried out in accordance with a direction under clause 91 unless the Carbon Sequestration Agreement provides that the Secretary is not liable for such costs.

Clause 94 provides that this Division does not derogate from the **Forests Act 1958**, the **Country Fire Authority Act 1958** or the **Sustainable Forests (Timber) Act 2004**.

Division 5—Enforcement

Division 5 provides for the application of Part 9 of the **Conservation, Forests and Lands Act 1987** to a Carbon Sequestration Agreement.

Clause 95 provides for the application of Part 9 of the **Conservation, Forests and Lands Act 1987** to a Carbon Sequestration Agreement as if that agreement were a relevant law within the meaning of that Act.

Part 9—General

Clause 96 provides that the creation, transfer or registration of a right under Part 7 or 8 is not a use or development of the land for the purposes of the **Planning and Environment Act 1987** or a subdivision of land for the purposes of the **Subdivision Act 1988**.

Clause 97 enables the Governor in Council to make regulations in relation to—

- prescribing eligible offsets and regulatory, accreditation or certification schemes for the purposes of clause 9; and
- prescribing other systems for adaptation action plans for the purposes of clause 34; and
- prescribing entities for the purposes of whole-of-government emissions reduction pledges under clause 42; and
- setting out categories of greenhouse gas emissions and removals for the purposes of the sector pledges under clause 43(1); and
- prescribe a method to determine a figure that represents the amount of Victoria's greenhouse gas emissions for the year 2005 for the purposes of clause 11(2); and
- prescribe a method to determine whether an interim emissions reduction target has been achieved; and
- prescribe how the State's greenhouse gas emissions for a particular year are to be determined; and
- any other matter authorised or permitted to be prescribed for the purposes of the Bill.

Subclause (2) permits the regulations to be of general or limited application, to differ according to differences in time, place or circumstance, to apply, adopt or incorporate by reference any matter contained in any document, code, standard, rules, specification, or method, formulated, issued, prescribed or published by any person, and to 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

Clause 98 provides for the repeal of the **Climate Change Act 2010**.

Division 2—Transitional provisions

Clause 99 provides that upon repeal of the **Climate Change Act 2010**, a Carbon Sequestration Agreement entered into under section 45 of that Act, is taken to be a Carbon Sequestration Agreement entered into under clause 76 of the Bill.

Clause 100 provides that upon repeal of the **Climate Change Act 2010**, a Forestry and Carbon Management Agreement entered into under section 27 of that Act, is taken to be a Forestry and Carbon Management Agreement entered into under clause 58 of the Bill.

Part 11—Amendments to the Environment Protection Act 1970

Clause 101 amends section 13(1) of the **Environment Protection Act 1970** to provide the Environment Protection Authority with an express power, duty and function in respect to the regulation of greenhouse gas substances.

New section 13(1)(ga)(i) enables the Environment Protection Authority to recommend to the Governor in Council the making of statutory policies and regulations to regulate the emission of greenhouse gas substances to contribute to the State's long-term emission reduction target and interim emissions reduction targets under clauses 6 and 10 respectively.

It is not intended that the amendment limit the Environment Protection Authority's existing powers, duties and functions whether in relation to the regulation of greenhouse gas substances or otherwise.

Clause 102 provides for the repeal of Part 11 on 1 November 2018.

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**).

Schedule 1—Acts and decisions or actions

Schedule 1 specifies the Acts and decisions and actions authorised by those Acts to which the decision making framework in Part 3 of the Bill applies. Those Acts are the **Catchment and Land Protection Act 1994**, the **Coastal Management Act 1995**, the **Environment Protection Act 1970**, the **Flora and Fauna Guarantee Act 1988**, the **Public Health and Wellbeing Act 2008** and the **Water Act 1989**.