

Commissioner for the Environment Bill

No.

TABLE OF PROVISIONS

PART 1—PRELIMINARY

Clause

1. Purpose
2. Commencement
3. Definitions
4. Crown to be bound

PART 2—THE COMMISSIONER AND THE COMMISSIONER'S STAFF

5. Appointment of Commissioner
6. Period of office
7. Suspension and loss of office
8. Terms of appointment
9. Acting Commissioner
10. Oath or affirmation
11. The Commissioner's staff
12. Delegation

PART 3—WORK OF THE COMMISSIONER

Division 1—Objectives, functions and powers

13. Objectives
14. Functions
15. Powers
16. Research
17. What can the Commissioner report on?

Division 2—Reports to Parliament

18. State of the environment report
19. Response to state of the environment report
20. Special reports
21. Minister to respond to special reports

PART 4—GENERAL

Division 1—Disclosure of information

22. Commissioner must not disclose certain information
23. What information may be disclosed to the Commissioner?
24. Reserve powers of the Commissioner

Division 2—Miscellaneous provisions

25. Offence to give false information to Commissioner
26. Protection of Commissioner and staff
27. Proceedings for offences

28. Superannuation and reappointment to the Public Service

PART 5—REGULATIONS

29. Regulations

PART 6—CONSEQUENTIAL AMENDMENTS

30. Amendment of **Public Service Act 1974**
31. Amendment of **Annual Reporting Act 1983**

LEGISLATIVE ASSEMBLY

Read 1° 17 April 1991

(Brought in by Mr Crabb and Mr McCutcheon)

A BILL

to establish the Office of Commissioner for the Environment, with responsibility for collecting information and reporting to Parliament on the state of the environment, to amend the **Public Service Act 1974**, and the **Annual Reporting Act 1983**, and for other purposes.

Commissioner for the Environment Act 1991

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purpose*

The main purposes of this Act are—

- 5 (a) to provide for the appointment of a Commissioner for the Environment who is to collect information and report to Parliament on the state of the environment and the nature and impact of environmental change;
- 10 (b) to establish a mechanism to encourage public sector response to environmental change.

Section headings appear in bold italics and are not part of the Act (see **Interpretation of Legislation Act 1984**).

2. Commencement

This Act comes into operation on a day or days to be proclaimed.

3. Definitions

In this Act—

5

“**Acting Commissioner**” means the Acting Commissioner for the Environment appointed under Part 2;

“**annual report**” in relation to a public sector agency means an annual report required under an Act to be submitted by the agency to the Minister responsible for it, and then to be laid before Parliament; 10

“**Commissioner**” means the Commissioner for the Environment appointed under Part 2; 15

“**environment**” has the same meaning as in the **Environment Protection Act 1970**;

“**matter**” in relation to the environment includes a dispute, decision, action, omission, recommendation, policy or proposal; 20

“**principal officer**” means—

(a) the Chief Administrator of a public sector agency that is an administrative unit, associated administrative unit or office; or

(b) the presiding member of any other public sector agency; 25

“**public sector agency**” means—

(a) an administrative unit or associated administrative unit listed in Column One or Three of Schedule Two or in Schedule Three or Three A of the **Public Service Act 1974**; or 30

(b) a body (corporate or unincorporate) constituted for a public purpose by or under an Act, some or all of the members of which

are appointed by the Governor in Council or
a Minister—

but does not include a municipal council.

4. *Crown to be bound*

- 5 This Act binds the Crown in right of Victoria and also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

**PART 2—THE COMMISSIONER AND THE
COMMISSIONER'S STAFF**

10 **5. *Appointment of Commissioner***

- (1) The Governor in Council may appoint a person to be Commissioner for the Environment.
- (2) A person is not eligible to be appointed to be Commissioner if the person has reached the age of 65.

15 **6. *Period of office***

- (1) Subject to this Act, the Commissioner holds office for the period specified in his or her instrument of appointment, which must not—
- 20 (a) exceed 5 years; or
- (b) extend beyond his or her 65th birthday.
- (2) The Commissioner may be re-appointed.

7. *Suspension and loss of office*

- (1) The Governor in Council must remove the Commissioner from office on presentation of an address from both
25 Houses of Parliament praying for his or her removal.
- (2) The Commissioner ceases to hold office if he or she nominates for election for either House of the Parliament of Victoria, the Commonwealth or any other State.
- 30 (3) The Commissioner may resign from office by writing delivered to the Governor in Council.

- (4) At any time when the Parliament is not sitting the Governor in Council may suspend the Commissioner from office on the ground of disability, bankruptcy, neglect of duty or misconduct, or on any other ground which in the opinion of the Governor in Council makes the Commissioner unfit for office. 5
- (5) The Commissioner must be restored to office after suspension, unless—
- (a) a statement setting out the grounds for suspension is laid before each House of Parliament during the first 7 sitting days of that House following the suspension; and 10
- (b) each House of Parliament, within 20 sitting days after the statement is laid before it, passes an address praying for the removal from office of the Commissioner. 15

8. *Terms of appointment*

- (1) The Commissioner is not, in respect of the office of Commissioner, subject to the **Public Service Act 1974**.
- (2) The Commissioner is entitled to be paid the salary and travelling and other allowances fixed from time to time by the Governor in Council. 20
- (3) The Commissioner is entitled to any leave of absence that the Minister from time to time determines.
- (4) The Commissioner must not, without the consent of the Minister, engage in any remunerative employment outside the duties of Commissioner. 25

9. *Acting Commissioner*

- (1) The Governor in Council may appoint a person, who would be eligible to be appointed Commissioner, to be the Acting Commissioner for the Environment during a temporary absence of the Commissioner. 30
- (2) The Governor in Council may at any time remove the Acting Commissioner from office.

(3) The terms of appointment of the Acting Commissioner are—

(a) the same as those for the Commissioner under sections 6 and 8; and

5 (b) any other terms set out in the instrument of his or her appointment.

(4) During the absence of the Commissioner, the Acting Commissioner has all the powers, functions and duties of the Commissioner.

10 **10. *Oath or affirmation***

(1) The Commissioner and the Acting Commissioner must, before commencing the duties of office, take an oath or make an affirmation that he or she will faithfully and impartially perform the duties of that office.

15 (2) The oath or affirmation is to be administered by the Speaker of the Legislative Assembly.

11. *The Commissioner's staff*

20 Subject to the **Public Service Act 1974**, there may be appointed to the staff of the Commissioner any officers or employees that are necessary to enable the Commissioner to carry out the Commissioner's objectives, functions or powers.

12. *Delegation*

25 The Commissioner or Acting Commissioner may, by instrument, delegate all or any of the powers or functions of the Commissioner (except this power of delegation) to a member of or an officer or employee in a public sector agency.

PART 3—WORK OF THE COMMISSIONER**Division 1—Objectives, functions and powers****13. Objectives**

- (1) The objectives of the Commissioner are—
- (a) to identify, and inform the Parliament about, trends and conditions that may affect the state of the environment and their impact on the people and environment of Victoria; 5
 - (b) to increase community awareness of the complex issues affecting the quality of the environment; 10
 - (c) to provide a body of information and conclusions about the quality of the environment for use in government decision-making and formulation of policies and priorities;
 - (d) to promote alternatives for the resolution of environmental disputes. 15
- (2) The Commissioner must carry out his or her objectives, functions and powers in accordance with the regulations.

14. Functions

- The functions of the Commissioner are— 20
- (a) to prepare reports on the state of the environment;
 - (b) to report on matters which the Minister refers to the Commissioner or where the Commissioner considers it appropriate to prepare a report;
 - (c) any other functions conferred by this or any other Act. 25

15. Powers

- (1) The Commissioner may do anything necessary or convenient to be done to enable the Commissioner to carry out the Commissioner's objectives, functions or powers. 30
- (2) Without limiting the Commissioner's general powers,

the Commissioner may request the principal officer of a public sector agency to provide to the Commissioner any information that the Commissioner considers necessary to enable the carrying out of his or her objectives, functions or powers.

5

(3) A request must—

(a) be in writing;

(b) state what information is required, and in what form;

10

(c) specify a period (being not less than 14 days) within which the request must be complied with.

(4) The principal officer of a public sector agency must give to the Commissioner information that the agency holds and the Commissioner requests.

15

(5) The principal officer of each public sector agency must give to the Commissioner any assistance that the Commissioner reasonably requires to carry out the Commissioner's objectives, functions and powers.

16. Research

20

The Commissioner may carry out, or engage anyone else to carry out on his or her behalf, any research that the Commissioner considers necessary to enable the Commissioner's objectives, functions or powers to be carried out.

25 17. What can the Commissioner report on?

(1) For the purpose of carrying out his or her objectives, functions or powers, the Commissioner may, subject to this section, report on any matter, whether occurring before or after the commencement of this section.

30

(2) If the Commissioner becomes aware that a specific issue arising during the preparation of a report is or has been the subject of proceedings before a court, tribunal, royal commission or board of inquiry, the Commissioner must stop dealing with it, but may report on any general matter raised by or relating to that specific issue.

35

- (3) In preparing a report, the Commissioner—
- (a) may invite public comment or obtain information in any other way that the Commissioner thinks appropriate;
 - (b) may conduct hearings in public or in private or accept written submissions; 5
 - (c) before including in any report comments about a public sector agency or its staff, must give the principal officer of the agency an opportunity to give an explanation; 10
 - (d) subject to this section may regulate his or her procedure.
- (4) If—
- (a) a Minister requests the Commissioner to do so in relation to a matter being dealt with by the Commissioner; or 15
 - (b) a matter being dealt with by the Commissioner relates to a recommendation made to a Minister—
the Commissioner must consult the Minister before forming a final view on the matter. 20
- (5) At any time while the Commissioner is preparing a report, the Minister may ask the Commissioner to undertake consultations specified in the request, and the Commissioner must comply with the request before making the report. 25

Division 2—Reports to Parliament

18. *State of the environment report*

- (1) The Commissioner must, in respect of each calendar year, prepare an annual report about the state of the environment and submit it to the Minister not later than three months after the end of that year. 30
- (2) The report may—
 - (a) state what the Commissioner uses as indicators of the quality of the environment;

- (b) state what trends and conditions concerning environmental quality have been identified by the Commissioner during the year to which the report relates, using those indicators;
- 5 (c) state what extra information the Commissioner considers is needed in relation to those trends and conditions or to help to identify what trends or conditions may arise in the future;
- 10 (d) identify what the Commissioner considers to be major environmental issues requiring actions to be taken by public sector agencies;
- 15 (e) recommend what, if any, legislative or administrative changes the Commissioner considers necessary in relation to procedures concerning environmental quality;
- 20 (f) comment on whether or not recommendations in previous reports and concerning public sector agencies have been implemented and, if implemented, to what extent;
- (g) contain any other information that the Commissioner determines.
- (3) The Minister must cause the state of the environment report to be laid before each House of Parliament before the end of the seventh sitting day of that House after the
- 25 report is received by the Minister.
- (4) If the Commissioner does not submit a report on the state of the environment within three months after the end of the calendar year, the Minister must advise, or cause to be advised, each House of Parliament of that
- 30 failure and the reasons for it.

19. *Response to state of the environment report*

If in a state of the environment report the Commissioner recommends action to be taken by a public sector agency, the next annual report for that agency must state—

- 35 (a) whether or not the recommendations have been implemented;

- (b) if they have not been implemented, the reasons for this;
- (c) if they have been implemented when and how the recommendations were implemented.

- 20. *Special reports*** 5
- (1) The Commissioner may at any time submit to the Minister a report on any aspect of his or her functions that the Commissioner considers of major public importance.
 - (2) If the Minister refers a matter to the Commissioner for report, the Minister may include in the reference a request for the Commissioner to report on the matter to the Minister within a time stated in the request. 10
 - (3) The Minister must cause each report submitted under this section to be laid before each House of Parliament before the end of the seventh sitting day of that House after the report is received by the Minister. 15
- 21. *Minister to respond to special reports***
- Not later than—
- (a) 6 months after the Minister has laid a report under section 20 before a House of Parliament; or 20
 - (b) if the House is not sitting at the end of that 6 month period, before the end of the seventh sitting day after that period ends—
- the Minister must cause to be laid before each House of Parliament a statement setting out the Government's response to any recommendations in the report. 25

PART 4—GENERAL

Division 1—Disclosure of information

- 22. *Commissioner must not disclose certain information*** 30
- (1) The Commissioner must not, in carrying out his or her objectives, functions or powers, disclose information that is contained in an exempt document under the **Freedom of Information Act 1982**.

- (2) Despite sub-section (1), the Commissioner may decide to disclose information in—
- (a) an exempt document of the kind referred to in section 30 or 32 of the **Freedom of Information Act 1982**, with the consent of each agency or person for which it was prepared; or
 - (b) an exempt document of the kind referred to in section 33 of that Act, with the consent of each person to whom the information relates or, if that person is dead, the person's next of kin; or
 - (c) an exempt document of a kind referred to in section 30, 33, 34, 35 or 36 of that Act, if the Commissioner considers that there is an overriding public interest that warrants its disclosure.
- (3) A decision by the Commissioner to disclose information under sub-section (2) (c) does not take effect until—
- (a) the end of 28 days after the date on which the Commissioner gives notice of the decision to—
 - (i) each person whom the Commissioner considers might be able to consent to its disclosure; and
 - (ii) to the agency or person that it was prepared for; or
 - (iii) any other prescribed person or prescribed class of persons;
 - (b) if application to review the decision is made within that 28 day period, the decision is affirmed by the Administrative Appeals Tribunal.
- (4) Without limiting section 27 of the **Administrative Appeals Tribunal Act 1984**, a person affected by a decision of the Commissioner to disclose information under sub-section (2) may, within 28 days after the Commissioner gives to the person notice of that decision, apply to the Administrative Appeals Tribunal for review of the decision.
- (5) Section 50 of the **Freedom of Information Act 1982** applies to the review of a decision of the Commissioner under sub-section (2) of this section to disclose

information of the kind referred to in section 33 or 34 of that Act, as if the decision were made under that Act.

- (6) Sub-section (4) does not apply to the review of a decision which, because of sub-section (5) is reviewable under the **Freedom of Information Act 1982**. 5
- (7) If a provision of this section is inconsistent with a provision of the **Administrative Appeals Tribunal Act 1984**, the provision of this section prevails.
- (8) This section does not affect or take away from the provisions of the **Freedom of Information Act 1982**. 10

23. *What information may be disclosed to the Commissioner?*

- (1) Disclosure of information to the Commissioner is not a breach of any obligation to keep information secret or of any other restrictions on the disclosure of information imposed by any Act or law on a person in the service of the Crown or a public sector agency. 15
- (2) In responding to a request by the Commissioner for information the Crown is not entitled to any privilege concerning the production of documents or the giving of evidence in legal proceedings. 20
- (3) Subject to sub-sections (1) and (2), a person cannot, in responding to a request by the Commissioner, be compelled to produce documents or give evidence which the person could not be compelled to produce or give to a court. 25
- (4) On a request by the Commissioner, a person must not, and cannot be compelled to, give evidence or produce a document that relates to—
 - (a) the deliberations of Ministers; or
 - (b) the deliberations of a committee consisting of members of Parliament and formed to advise Ministers on deliberations referred to in paragraph (a). 30
- (5) A certificate appearing to be signed by the Attorney-General to the effect that evidence or a document 35

concerns deliberations mentioned in sub-section (4) (a) or (b) is conclusive proof of that fact.

24. Reserve powers of the Commissioner

5 With the approval of the Governor in Council, and in
accordance with any conditions on which the approval
is given, the Commissioner may, for the purposes of this
Act, exercise any of the powers which a sole
10 Commissioner issued with a commission under the
Evidence Act 1958 has under sections 17, 18, 19, 20 and
20A of that Act and under any rules or orders made
under section 20A (4) of that Act.

Division 2—Miscellaneous provisions

25. Offence to give false information to Commissioner

15 A person must not wilfully make a statement to the
Commissioner if the person knows that statement to be
false or misleading in a material respect.

Penalty: 10 penalty units or 12 months imprisonment or
both.

26. Protection of Commissioner and staff

20 (1) Nothing done or omitted to be done by the
Commissioner, Acting Commissioner or a member of
the Commissioner's staff in the exercise or purported
exercise of a function or power under this Act, subjects
25 him or her to any civil or criminal liability, unless the
act or omission was in bad faith.

(2) Despite sub-section (1), a person must not apply for, and
a court must not grant, an Order restraining the
Commissioner from carrying out, or compelling the
Commissioner to carry out, an enquiry under this Act.

30 (3) Information gained in the carrying out of the
Commissioner's objectives, functions or powers is not
admissible in evidence in any proceedings other than

proceedings for an offence against this Act or under section 19 of the **Evidence Act 1958**.

27. Proceedings for offences

- (1) Proceedings for an offence against this Act may be brought by the Commissioner or any person authorised generally or in a particular case by the Commissioner. 5
- (2) Proceedings brought against the Commissioner in relation to the exercise or purported exercise of the Commissioner’s functions or powers in bad faith may only be brought by or with the consent of the Director of Public Prosecutions. 10

28. Superannuation and reappointment to the Public Service

- (1) If the Commissioner, immediately before that appointment, was an officer of the Public service—
 - (a) on the termination of that appointment, the Commissioner is eligible, on the recommendation of the Public Service Board, to be reappointed to some office in the Public Service with a classification and emolument corresponding with or higher than that which the person held in the Public Service before appointment as Commissioner as if service as Commissioner had been service in the Public Service; and 15
 - (b) for the purposes of section 47 of that Act, the Commissioner must be taken to have continued in the Public Service while appointed as Commissioner. 20
- (2) If the Commissioner, immediately before that appointment, was an officer within the meaning of the **State Superannuation Act 1988** or a corresponding previous enactment, the Commissioner continues, subject to that Act, to be an officer within the meaning of that Act during the term of that appointment. 25
- (3) If the Commissioner, immediately before that appointment, was not an officer in the Public Service, the Commissioner may elect to be a contributor to a 30 35

pension scheme determined by the Governor in Council after consideration of a report by the Treasurer.

PART 5—REGULATIONS

29. Regulations

- 5 The Governor in Council may make regulations for or with respect to—
 - (a) the carrying out of the Commissioner’s objectives, functions or powers; and
 - 10 (b) any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed for giving effect to this Act.

PART 6—CONSEQUENTIAL AMENDMENTS

30. Amendment of Public Service Act 1974

- 15 In Schedule Three A of the **Public Service Act 1974**—
 - (a) at the end of Column One **insert** “Office of the Commissioner for the Environment”; and
 - (b) at the end of Column Two **insert** “Commissioner for the Environment”.

No. 8656.
Reprinted to No. 50/1988, subsequently amended by Nos 75/1988, 12/1988, 15/1989, 19/1989, 40/1989, 56/1989, 57/1989, 62/1989, 81/1989.

31. Amendment of Annual Reporting Act 1983

- 20 In Schedule 1 to the **Annual Reporting Act 1983**—
 - (a) at the end of Column 1 **insert** “Office of the Commissioner for the Environment”; and
 - (b) at the end of Column 2 **insert** “Commissioner for the Environment”.

No. 9941.
Reprinted to No. 50/1988, subsequently amended by No. 44/1989.

