

Environment Reporting Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 12 August 1992

(Brought in by Mr Harrowfield and Mr Roper)

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 **Parliamentary Committees Act 1968**, the **Public Service Act 1974**, and the **Annual Reporting Act 1983**, and for other purposes.

Environment Reporting Act 1992

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 provide independent reports to Parliament on the state of the environment;
- 10 (b) to establish a mechanism to review and improve programs and public policy affecting environmental quality.

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—

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“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 (3) The Commissioner must not be a member of either House of the Parliament of Victoria or of the Commonwealth or any other State or Territory.

6. *Period of office*

- 20 (1) Subject to this Act, the Commissioner holds office for the period specified in his or her instrument of appointment, which must not—
- (a) exceed 4 years; or
- (b) extend beyond his or her 65th birthday.
- (2) The Commissioner may be re-appointed.

25 **7. *Suspension and loss of office***

- (1) The Governor in Council must remove the Commissioner from office on presentation of an address from both Houses of Parliament praying for his or her removal.
- 30 (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 or Territory.

- (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) 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
 - (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.

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.
- (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.

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.

(2) The Governor in Council may at any time remove the Acting Commissioner from office.

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

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

10 (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. Oath or affirmation

15 (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.

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

11. The Commissioner's staff

25 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

30 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 and the Commissioner's powers under Division 2 of Part 3) to an officer or employee on the Commissioner's staff.

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 monitor the achievement of environmental objectives and standards in legislation and national and international agreements;
 - (d) to provide a body of information, conclusions and advice about the quality of the environment for use in government decision-making and formulation of policies and priorities; 15
 - (e) to advise on future policy directions to guide government decision making and program priorities. 20
- (2) The Commissioner must carry out his or her objectives, functions and powers in accordance with any procedures in the regulations.

14. Functions

- The functions of the Commissioner are— 25
- (a) to prepare reports on the state of the environment;
 - (b) to report on action taken by public sector agencies to achieve their environmental objectives;
 - (c) to report on matters which the Natural Resources and Environment Committee refers to the Commissioner; 30
 - (d) to report on matters which the Minister refers to the Commissioner or where the Commissioner considers it appropriate to prepare a report;

- (e) to promote community awareness of the state of the environment, whether by publishing material or providing information in any other way;
- (f) any other functions conferred by this or any other Act.

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 or functions.

- (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 or functions.

- (3) A request must—

(a) be in writing;

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

(c) specify a period (being not less than 30 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 within the period specified by the Commissioner.

- (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 and functions.

16. Further powers

Without limiting the Commissioner's general powers the Commissioner may do all or any of the following things that the Commissioner considers necessary to enable the Commissioner's objectives or functions to be carried out—

- (a) carry out, or engage anyone else to carry out on his or her behalf, any research;
- (b) obtain information or advice from any other person or body or exchange information or advice with those persons or bodies; 5
- (c) make any agreement or arrangement with any other person or body.

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. 10
- (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. 15
- (3) In preparing a report, the Commissioner—
 - (a) may invite public comment or obtain information in any other way that the Commissioner thinks appropriate; 20
 - (b) may conduct hearings in public or in private or accept written submissions;
 - (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; 25
 - (d) subject to this section and the regulations may regulate his or her procedure. 30

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 cause the report— 35

- 5 (a) to be laid before each House of Parliament within 6 months after the end of that calendar year or if the House is not sitting at the end of that 6 month period, before the end of the seventh sitting day of the House after that period ends;
- (b) to be sent to the Natural Resources and Environment Committee immediately after it is laid before each House.

(2) The report must—

- 10 (a) identify future trends, particularly long term trends, in environmental quality based on an analysis of established environmental indicators;
- 15 (b) highlight key issues which, in the opinion of the Commissioner, need to be drawn to the Minister's attention for further action;
- (c) identify issues which require additional research;
- 20 (d) provide information about the achievement of environmental objectives and standards in legislation which have substantial environmental significance;
- (e) comment on actions taken by agencies in response to recommendations in previous state of the environment reports;

(3) The report may—

- 25 (a) make recommendations on any matter contained in the report;
- (b) recommend additions or alterations to environmental quality monitoring programs;
- 30 (c) compare Victoria's performance on environmental matters with the performance of other states, territories or countries;
- (d) contain any other information that the Commissioner determines.

19. *Response to state of the environment report*

- 35 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—

- (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. 5

20. *Special reports*

- (1) The Commissioner may prepare a report on any environmental matter—
 - (a) which the Commissioner considers it appropriate to report on; or 10
 - (b) referred to the Commissioner by the Natural Resources and Environment Committee; or
 - (c) referred to the Commissioner by the Minister.
- (2) The Commissioner must cause the report— 15
 - (a) to be laid before each House of Parliament before the end of the seventh sitting day of that House after the report is prepared;
 - (b) to be sent to the Natural Resources and Environment Committee immediately after it is laid before each House. 20

21. *Minister to respond to reports*

- (1) The Minister must cause to be laid before each House of Parliament a statement setting out the Government's response to a state of the environment report. 25
- (2) If, in a report under section 20, the Commissioner recommends that action be taken by a public sector agency, the Minister responsible for that agency must cause to be laid before each House of Parliament a statement setting out the Minister's response to that recommendation. 30
- (3) If a report has been made in response to a request from the Minister under section 20 (1) (c), the Minister must cause to be laid before each House of Parliament a

statement setting out the Minister's response to the report.

(4) The statement must be laid not later than—

- 5 (a) 6 months after the Commissioner has laid the report before a House of Parliament; or
- (b) if the House is not sitting at the end of that 6 month period, the end of the seventh sitting day of the House after that period ends.

PART 4—GENERAL

10 Division 1—Disclosure of information

22. *Disclosure of information*

- 15 (1) The Commissioner or any other person must not (except for a communication in the course of his or her duty made to another person performing duties under this Act) divulge or communicate any information which has come to his or her knowledge by reason directly or indirectly of section 23 (1) if the person from whom that information was obtained could not but for that subsection lawfully have divulged that information to the Commissioner or other person.
- 20 (2) Nothing in this section prevents the making, divulging or communicating in any report of the Commissioner of conclusions, observations or recommendations that are based on information obtained under this or any other Act.
- 25

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

- 30 (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.
- (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.

- (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. 5

24. *Reserve powers of the Commissioner*

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 Commissioner issued with a commission under the Evidence Act 1958 has under sections 17, 18, 19, 20 and 20A of that Act. 10 15

Division 2—Miscellaneous provisions

25. *Offence to give false information to Commissioner*

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. 20

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

26. *Protection of Commissioner and staff*

- (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 him or her to any civil or criminal liability, unless the act or omission was in bad faith. 25
- (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

- 5 (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

- 10 (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.
- (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.

15 **28. Superannuation and reappointment to the Public Service**

- (1) If the Commissioner, immediately before that appointment, was an officer of the Public service—
- 20 (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
- 25 (b) for the purposes of section 47 of the **Public Service Act 1974**, the Commissioner must be taken to have continued in the Public Service while appointed as Commissioner.
- 30 (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.
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- (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 pension scheme determined by the Governor in Council after consideration of a report by the Treasurer. 5

29. *Supreme Court—Limitation of jurisdiction*

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the bringing before the Supreme Court of an action or proceeding of a kind referred to in section 26. 10

PART 5—REGULATIONS

30. *Regulations*

- (1) The Governor in Council may make regulations for or with respect to—
- (a) the procedure to be followed in the carrying out of the Commissioner's objectives, functions or powers; and 15
 - (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. 20
- (2) A regulation under sub-section (1) must not prohibit or restrict the carrying out of the Commissioner's objectives, functions or powers.

PART 6—CONSEQUENTIAL AMENDMENTS

31. *Amendment of Parliamentary Committees Act 1968* 25

After section 4F (5) of the **Parliamentary Committees Act 1968** insert—

- “(6) Notwithstanding anything to the contrary in this section, the Natural Resources and Environment Committee must consider and report to each House of the Parliament about a state of the environment report referred to in section 18 of the **Environment** 30

Reporting Act 1992 on or before the eighteenth sitting day of that House after the Report is tabled.”.

32. Amendment of Public Service Act 1974

In Schedule Three A of the **Public Service Act 1974**—

- 5 (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. 8658.
Reprinted t
No. 50/1988,
subsequently
amended by
Nos 75/1988,
12/1988,
15/1988,
19/1988,
40/1988,
56/1988,
57/1988,
62/1988,
81/1988.

33. Amendment of Annual Reporting Act 1983

10 In Schedule 1 to the **Annual Reporting Act 1983**—

- (a) at the end of Column 1 insert “Office of the Commissioner of the Environment”; and
- (b) at the end of Column 2 insert “Commissioner of the Environment”.

No. 9941.
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No. 50/1988,
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