

Authorised Version No. 010
Climate Change Act 2010

No. 54 of 2010

Authorised Version incorporating amendments as at
8 March 2013

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Preamble

The Parliament of Victoria recognises on behalf of the people of Victoria the overwhelming scientific consensus that human activity is causing climate change.

Climate change is a common concern of humankind and responding to climate change is a responsibility shared by all levels of government, industry, communities and the people of Victoria.

Victoria is particularly vulnerable to the adverse effects of climate change.

Early action is necessary to build Victoria's capacity to respond to the challenges of climate change and enable a more effective response and reduce any economic and social impacts, ensuring Victoria remains a prosperous and sustainable State.

Early action to reduce greenhouse gas emissions will ease the task of long term transition to an environmentally sustainable economy.

There is a need for urgent responses to climate change through coordinated State, Territory, national and international efforts to reduce greenhouse gas emissions.

The Parliament of Victoria recognises that some changes in the earth's climate are inevitable, despite all mitigation efforts and that early consideration of future adaptation measures is desirable.

The Parliament of Victoria therefore enacts:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

S. 1(a)
substituted by
No. 78/2012
s. 4(1).

- (a) to provide a framework for the Government of Victoria's roles and responsibilities in response to climate change in the context of national policy;
- (b) to facilitate the consideration of climate change issues in specified areas of decision making of the Government of Victoria;
- (c) to promote collaboration, cooperation and innovation in the Victorian response to climate change by strengthening the role of communities and other measures;

S. 1(d)
amended by
No. 78/2012
s. 4(2).

- (d) to provide for a strategic response by the Government of Victoria to climate change through a Climate Change Adaptation Plan and to set out guidance for the preparation of the plan;
- (e) to facilitate Victoria's contribution to national and international carbon sequestration efforts;
- (f) to provide for the creation of forestry rights, carbon sequestration rights and soil carbon rights;
- (g) to provide for Forestry and Carbon Management Agreements in relation to private land and Carbon Sequestration Agreements in relation to Crown land;
- (h) to promote transparency and accountability by providing basic, accessible information to the Victorian community on climate change.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 July 2011, it comes into operation on that day.

3 Definitions

In this Act—

adaptation means any change in natural or human systems in response to actual or expected climatic stimuli or their effects which moderates harm or exploits beneficial opportunities;

S. 3 def. of *adaptation* amended by No. 29/2011 s. 3(Sch. 1 item 13.1).

Carbon Sequestration Agreement means an agreement under section 45;

carbon sequestration right has the meaning set out in section 3B;

S. 3 def. of *carbon sequestration right* amended by No. 78/2012 s. 8(a).

climate change means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods;

Department means the Department of Sustainability and Environment;

forest carbon right has the meaning set out in section 3A;

S. 3 def. of *forest carbon right* amended by No. 78/2012 s. 8(b).

S. 3 def. of
forestry right
amended by
No. 78/2012
s. 8(c).

forest produce has the same meaning as in the
Forests Act 1958;

Forestry and Carbon Management Agreement
means an agreement entered into under
section 27;

forestry right has the meaning set out in
section 3C;

greenhouse gas emissions means emissions of—

- (a) carbon dioxide, methane, nitrous oxide
or sulphur hexafluoride; or
- (b) a hydrofluorocarbon or a
perfluorocarbon that is specified in
regulations made under the National
Greenhouse and Energy Reporting Act
2007 of the Commonwealth;

instrument has the same meaning as in the
Transfer of Land Act 1958;

land has the same meaning as in the **Transfer of
Land Act 1958**;

old agreement means a forest property agreement
or carbon rights agreement existing under the
Forestry Rights Act 1996;

owner, in relation to land, includes any person
entitled to be registered as the registered
proprietor of that land;

public land manager, in relation to Crown land,
means—

- (a) except as provided in paragraph (b), the
Minister, public authority or municipal
council responsible for the care or
management of the land; or

- (b) in relation to reserved Crown land that is managed by a committee of management, the committee of management;

Register has the same meaning as in the **Transfer of Land Act 1958**;

Registrar has the same meaning as in the **Transfer of Land Act 1958**;

relevant Act means—

- (a) **Crown Land (Reserves) Act 1978**;
- (b) **Forests Act 1958**;
- (c) **Land Act 1958**;
- (d) **National Parks Act 1975**;
- (e) **Sustainable Forests (Timber) Act 2004**;
- (f) **Victorian Plantations Corporation Act 1993**;

Secretary has the same meaning as in the **Conservation, Forests and Lands Act 1987**;

soil carbon right has the meaning set out in section 3D;

S. 3 def. of *soil carbon right* amended by No. 78/2012 s. 8(d).

vegetation means any part of a plant, whether alive or dead.

3A What is a forest carbon right?

- (1) In this Act ***forest carbon right*** means—
- (a) a carbon sequestration right; or
 - (b) a forestry right; or
 - (c) a soil carbon right.

S. 3A inserted by No. 78/2012 s. 9.

s. 3B

- (2) A forest carbon right is an interest in land.
- (3) A forest carbon right is not an easement or right of way.

S. 3B
inserted by
No. 78/2012
s. 9.

3B What is a carbon sequestration right?

In this Act *carbon sequestration right* means an exclusive right to the economic benefits associated with carbon sequestered by vegetation other than vegetation that has been harvested, lopped or felled.

S. 3C
inserted by
No. 78/2012
s. 9.

3C What is a forestry right?

In this Act *forestry right* means an exclusive right to—

- (a) plant, establish, manage and maintain vegetation on land; and
- (b) take and deal with any vegetation that has been harvested, lopped or felled—

and includes a right of entry to land for that purpose.

S. 3D
inserted by
No. 78/2012
s. 9.

3D What is a soil carbon right?

In this Act *soil carbon right* means an exclusive right to the economic benefits of carbon sequestered underground, excluding carbon stored within plants.

4 Application to Crown

This Act binds the Crown in right of the State of Victoria and so far as the legislative power of the Parliament extends, the Crown in all its other capacities.

PART 2—GUIDING PRINCIPLES

Pt 2 (Heading)
amended by
No. 78/2012
s. 4(3).

* * * * *

Pt 2 Divs 1, 2
(Headings
and ss 5, 6)
repealed by
No. 78/2012
s. 4(4).

Division 3—Guiding Principles

7 Ministerial regard to guiding principles

S. 7
substituted by
No. 78/2012
s. 5.

- (1) The Minister may have regard to incorporating any of the principles set out in this Division in making or issuing Ministerial guidelines under section 15 if the Minister considers the principle is relevant in the circumstances.
- (2) The Minister must have regard to each of the principles set out in this Division in making a decision in the course of preparing a Climate Change Adaptation Plan under section 16.

8 Principle of informed decision making

A decision should be based on—

- (a) a comprehensive analysis of the best practicably available information about the potential impacts of climate change that are relevant to the decision under consideration; and
- (b) the potential contribution to Victoria's greenhouse gas emissions of the decision under consideration.

9 Principle of integrated decision making

A decision should integrate the competing long-term and short-term environmental, economic, health and other social considerations relating to climate change to ensure that—

- (a) all relevant issues relating to climate change associated with the decision will be taken into consideration during the decision making process; and
- (b) there is a proper examination of all the issues which are relevant to climate change; and
- (c) any measures adopted as a result of the decision are cost effective and in proportion to the problems relating to climate change that are relevant to the decision.

10 Principle of risk management

- (1) A decision should be based on—
 - (a) careful evaluation of the best practicably available information about the potential impacts of climate change to avoid, wherever practicable, serious or irreversible damage resulting from climate change; and
 - (b) an assessment of the consequences of each of the options in making a decision having regard to the risks of each of those options; and
 - (c) managing and allocating the risks associated with the potential impacts of climate change in a manner that is easily seen and understood and endeavouring to achieve best practice.

-
- (2) A decision should not rely on a lack of full scientific certainty as a reason to postpone appropriate measures to prevent serious or irreversible loss or damage as a result of climate change.

11 Principle of complementarity

A decision of the Government of Victoria in response to climate change should complement any actions of the Commonwealth Government relating to climate change including, but not limited to, an emissions trading scheme and any targets or caps on greenhouse emissions fixed by the Commonwealth Government or the Parliament of the Commonwealth.

12 Principle of equity

A decision should have regard to the following—

- (a) opportunities should be created by the present generation to increase the capacities within that generation and future generations to adapt to climate change;
- (b) in particular, the present generation should consider the opportunities to increase the capacities to adapt to climate change of those people most vulnerable to the potential impacts of climate change;
- (c) the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations and that any adverse impacts of climate change are minimised for future generations;
- (d) the present generation should consider both long and short term consequences of decisions that may impact on climate change.

13 Principle of community engagement

Community involvement in decisions relating to climate change that may affect members of the community or members of the community in future generations should be facilitated and this includes—

- (a) providing appropriate information to the community; and
 - (b) providing opportunities for the community to be involved in the decision; and
 - (c) providing for appropriate and adequate public consultation with the community.
-

PART 3—PLANNING FOR CLIMATE CHANGE

Division 1—Decision making

14 Decision makers to have regard to climate change

- (1) This section applies to any decision made or action taken that is authorised by—
 - (a) the provision of an Act specified in Schedule 1; or
 - (b) any other provision of an Act specified in Schedule 1 that is prescribed; or
 - (c) any prescribed provision of a subordinate instrument made under an Act specified in Schedule 1.
- (2) A person making a decision or taking an action referred to in subsection (1) must have regard to—
 - (a) the potential impacts of climate change relevant to the decision or action; and
 - (b) the potential contribution to Victoria's greenhouse gas emissions of the decision or action; and
 - (c) any guidelines issued by the Minister under section 15.
- (3) In having regard to the potential impacts of climate change, the relevant considerations for a person making a decision or taking an action are potential—
 - (a) biophysical impacts;
 - (b) long and short term economic, environmental, health and other social impacts;
 - (c) beneficial and detrimental impacts;

- (d) direct and indirect impacts;
 - (e) cumulative impacts.
- (4) In having regard to the potential contribution to Victoria's greenhouse gas emissions, the relevant considerations for a person making a decision or taking an action are potential—
- (a) short and long term greenhouse gas emissions;
 - (b) direct and indirect greenhouse gas emissions;
 - (c) increases and decreases in greenhouse gas emissions;
 - (d) cumulative impacts of greenhouse gas emissions.
- (5) The requirements of this Division apply in addition to and without limiting the power or duty of a person making a decision or taking an action referred to in subsection (1) to consider any other matter.
- (6) Nothing in this Division limits the power of a person making a decision or taking an action not referred to in subsection (1) to consider any potential impacts of climate change or potential contributions to Victoria's greenhouse gas emissions in making any other decision or taking any other action under any other Act or subordinate instrument.

15 Ministerial guidelines

- (1) The Minister may issue guidelines for a person making a decision or taking an action referred to in section 14(1) about the scope and application of the requirements of that section to consider the potential impacts of climate change and potential contributions to Victoria's greenhouse gas emissions.

- (2) The Minister must consult with the Minister administering an Act or subordinate instrument referred to in section 14(1) before making a guideline that relates to a decision or action under that Act or subordinate instrument.
- (3) The Minister must publish the guidelines in the Government Gazette.

Division 2—Climate Change Adaptation Plan

16 Climate Change Adaptation Plan

- (1) The Minister must prepare a Climate Change Adaptation Plan that sets out—
 - (a) an assessment of the potential impacts and risks of climate change in Victoria including specific regional impacts; and
 - (b) the Government of Victoria's roles and responsibilities in managing risks related to the potential impacts of climate change in Victoria and, if applicable, the respective roles and responsibilities of other governments, persons or bodies in managing those risks; and
 - (c) the Government of Victoria's strategic priorities for the management of risks related to the potential impacts of climate change in Victoria; and
 - (d) the Government of Victoria's adaptation measures and responses to the potential impacts of climate change in Victoria; and
 - (e) data on observed changes in the climate of Victoria; and
 - (f) a synthesis of the best practicably available climate change science relevant to Victoria; and

S. 16(1)
substituted by
No. 78/2012
s. 6.

- (g) any other information that the Minister considers appropriate.
- (2) The Minister must prepare the first plan on or before 31 December 2012 and a new plan on or before 31 December in every fourth year after that date.
- (3) The Minister must ensure that a new plan includes a report on the implementation and effectiveness of the previous plan.
- (4) The Minister must cause a plan prepared under this section to be laid before each House of the Parliament within 10 sitting days of that House after the completion of the plan.

Pt 3 Div. 3
(Heading)
amended by
No. 78/2012
s. 7(1).

Division 3—Review

S. 17
repealed by
No. 78/2012
s. 7(2).

* * * * *

18 Review of this Act

- (1) The Minister must ensure that an independent review of this Act is completed before 31 December 2015.
- (2) The Minister must ensure that the review is conducted by persons who—
 - (a) in the opinion of the Minister possess appropriate qualifications to undertake the review; and
 - (b) include one or more persons who are not employed by the State or a State authority and have not, since the commencement of this Act, provided services to the State or a

State authority under or in connection with a contract.

- (3) The persons conducting a review of the Act may have regard to—
- (a) other Victorian law relating to climate change and any other law or policy relating to climate change; and
 - (b) developments in climate change technologies and best practice in response to climate change; and
 - (c) any plan prepared under section 16; and
 - (d) whether the Act needs to be amended to include new purposes, policy objectives or programs.
- (4) A person who undertakes the review must give the Minister a written report of the review.
- (5) The Minister must cause a copy of a review to be laid before each House of the Parliament within 10 sitting days of that House after the completion of the review.

S. 18(3)(c)
substituted by
No. 78/2012
s. 7(3).

* * * * *

S. 19
repealed by
No. 78/2012
s. 7(4).

PART 4—FORESTRY RIGHTS, CARBON SEQUESTRATION RIGHTS AND SOIL CARBON RIGHTS ON PRIVATE LAND

Division 1—Introductory

20 Application of Part

This Part does not apply to—

- (a) unalienated Crown land or reserved Crown land; or
- (b) land in an identified folio under the **Transfer of Land Act 1958**; or
- (c) a lease of Crown land registered under the **Transfer of Land Act 1958**; or
- (d) land not under the **Transfer of Land Act 1958**; or
- (e) carbon that is 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.

Ss 21–24
repealed by
No. 78/2012
s. 10.

* * * * *

Division 2—Forest carbon rights

S. 25
repealed by
No. 78/2012
s. 10.

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26 Creation and transfer of forest carbon rights

- (1) A forest carbon right may be created by the execution of an instrument of transfer of the right by a person who is the registered proprietor of a freehold or leasehold estate in land to which the right applies.

- (2) If 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 in relation to the land for any part of the term of the lease unless the lessee consents to the creation of the right.
- (3) An instrument of transfer creating a forest carbon right must be in a form approved by the Registrar under the **Transfer of Land Act 1958**.
- (4) The instrument of transfer must specify each forest carbon right that is created.
- (5) The instrument of transfer must include a statement expressly stating that the forest carbon right is created in accordance with this Act.
- (6) The Registrar may register under the **Transfer of Land Act 1958** a forest carbon right that is created by instrument of transfer under this section.
- (7) The Registrar must not register more than one of each of the following in respect of particular land—
 - (a) a carbon sequestration right;
 - (b) a forestry right;
 - (c) a soil carbon right.
- (8) A registered forest carbon right—
 - (a) subject to this Part, may be dealt with under the **Transfer of Land Act 1958**; and
 - (b) may be transferred under that Act for a term of not less than 3 years.
- (9) A registered forest carbon right cannot be varied.

Division 3—Forestry and Carbon Management Agreements

27 Forestry and Carbon Management Agreements

- (1) The registered proprietor of a freehold or leasehold estate in land may enter into a Forestry and Carbon Management Agreement in accordance with this Act with the owner of a forest carbon right (if any) relating to the land and with any other person.
- (2) A public authority may be a party to a Forestry and Carbon Management Agreement for the purpose of—
 - (a) carrying out its functions in relation to native vegetation or soil management and biodiversity conservation; or
 - (b) carrying out its functions under any law affecting vegetation or soil.
- (3) A Forestry and Carbon Management Agreement must include a statement that the agreement is a Forestry and Carbon Management Agreement under this Act.
- (4) No more than one Forestry and Carbon Management Agreement can be entered into in respect of the same area of land.

28 Purpose of Forestry and Carbon Management Agreement

- (1) The purpose of a Forestry and Carbon Management Agreement is to provide for the imposition of management obligations in relation to all or any of the following—
 - (a) carbon sequestration by vegetation;
 - (b) carbon sequestration underground;
 - (c) the management of vegetation.

- (2) An obligation under a Forestry and Carbon Management Agreement is not a restrictive covenant.
- (3) An obligation under a Forestry and Carbon Management Agreement may be positive or negative in nature.

29 Management obligations

- (1) A Forestry and Carbon Management Agreement must specify—
 - (a) in relation to the harvesting of vegetation—
 - (i) who is entitled to control decisions about the timing and extent of harvesting of vegetation; or
 - (ii) the process for determining how those decisions will be made;
 - (b) any obligations agreed to by the parties in relation to the preservation, enhancement or management of vegetation or soil.
- (2) A Forestry and Carbon Management Agreement may include any other provisions the parties consider desirable including—
 - (a) requirements for compliance with the requirements under any enactment in relation to vegetation; and
 - (b) requirements for biodiversity conservation; and
 - (c) prohibitions and restrictions on the use and development of land; and
 - (d) other provisions relating to the management and use of land; and
 - (e) provisions for the ending or conversion of an old agreement.

(3) An obligation specified in a Forestry and Carbon Management Agreement may be placed on all or any of the following—

- (a) any owner of land;
- (b) any other party to the agreement.

Note

Land is defined to include any interest in land which may include a forest carbon right.

30 Security

A Forestry and Carbon Management Agreement may include conditions—

- (a) requiring a party to the agreement to deposit with a person specified in the agreement—
 - (i) a sum of money fixed in, or determined in accordance with, the agreement; or
 - (ii) an undertaking to pay that sum together with security in a form determined by or in accordance with the agreement; or
 - (iii) any other form of security provided for by or under the agreement;
- (b) requiring the sum or part of the sum to be forfeited if there is any failure by the owner to carry out the agreement;
- (c) providing that any money deposited must be returned to the relevant party on a date or dates specified to the extent that it has not been forfeited.

31 Commencement of Forestry and Carbon Management Agreement

- (1) A Forestry and Carbon Management Agreement comes into effect on—
 - (a) the date that it is executed by the parties; or
 - (b) any later date specified in the agreement.

- (2) A Forestry and Carbon Management Agreement is binding on—
- (a) the parties to the agreement; and
 - (b) any person who has consented to the agreement.

32 Recording of Forestry and Carbon Management Agreements

- (1) 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.
- (2) The application must—
- (a) be in a form approved by the Registrar under the **Transfer of Land Act 1958**; and
 - (b) be accompanied by a copy of the Forestry and Carbon Management Agreement.
- (3) The Registrar may make a recording of the Forestry and Carbon Management Agreement in the Register if the application complies with subsection (2).
- (4) In this section *relevant interest* means—
- (a) a fee simple estate; or
 - (b) a leasehold estate; or
 - (c) a forest carbon right.

33 Effect of recording of agreement

In addition to section 31, 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.

34 Variation of Forestry and Carbon Management Agreement

- (1) The obligations under a Forestry and Carbon Management Agreement may be varied with the consent of all persons who are bound by the agreement.
- (2) A variation cannot be made to a Forestry and Carbon Management Agreement to—
 - (a) transfer or assign a forest carbon right; or
 - (b) vary a forest carbon right; or
 - (c) vary the date on which the agreement ends;
or
 - (d) vary the land to which the agreement applies;
or
 - (e) vary the parties to the agreement.
- (3) 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.
- (4) Sections 32 and 33 apply to an application to record a variation of a Forestry and Carbon Management Agreement as if it were an application to record the agreement.
- (5) In this section *relevant interest* means—
 - (a) a fee simple estate; or
 - (b) a leasehold estate; or
 - (c) a forest carbon right.

35 Ending of Forestry and Carbon Management Agreement

- (1) A Forestry and Carbon Management Agreement may provide that the agreement ends on a date specified in the agreement.
- (2) If no date is specified in a Forestry and Carbon Management Agreement for the ending of the agreement, the agreement may be ended by agreement between the persons bound by the agreement.
- (3) An agreement may be ended either wholly or in relation to a particular area of land.

36 Application to Registrar when agreement ends

- (1) 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 section 35 in relation to that land.
- (2) The application must be in the form approved by the Registrar under the **Transfer of Land Act 1958**.
- (3) The Registrar may remove any recording in the Register to which the application relates if the application is in accordance with this section.
- (4) In this section *relevant interest* means—
 - (a) a fee simple estate; or
 - (b) a leasehold estate; or
 - (c) a forest carbon right.

37 Enforcement of Forestry and Carbon Management Agreement

- (1) A person who is bound by a Forestry and Carbon Management Agreement may apply to VCAT to enforce the agreement.
- (2) On an application under this section, VCAT may—
 - (a) order a person to comply with a requirement specified within the Forestry and Carbon Management Agreement; or
 - (b) order a person to reinstate land that has been developed in contravention of the agreement; or
 - (c) make any other order it considers appropriate.

38 Disputes in relation to ending Forestry and Carbon Management Agreements

- (1) This section applies to a dispute involving the ending of a Forestry and Carbon Management Agreement.
- (2) A person who is bound by the agreement may apply to VCAT for a declaration or order resolving the dispute.
- (3) Without limiting the orders that VCAT can make on an application under this section, VCAT may make a declaration as to whether the Forestry and Carbon Management Agreement has ended.

39 Registrar to give effect to VCAT orders

In any proceeding in VCAT under section 37 or 38 relating to land, if VCAT directs the Registrar to make any amendment to the Register or otherwise to do any act or make any recordings necessary to give effect to an order of VCAT, the Registrar must obey that direction.

PART 5—CARBON SEQUESTRATION ON CROWN LAND

Division 1—Application

40 Application

- (1) This Part applies to unalienated Crown land and reserved Crown land.
- (2) This Part applies to any Crown land that is subject to a lease whether or not that lease is registered under the **Transfer of Land Act 1958**.
- (3) This Part does not apply to—
 - (a) carbon that is owned by the Crown in accordance with the **Greenhouse Gas Geological Sequestration Act 2008**; or
 - (b) carbon sequestered in an underground geological storage formation within the meaning of that Act; or
 - (c) an underground geological storage formation within the meaning of that Act.
- (4) Nothing in this Part alters the ownership or control of Crown land under any other Act.
- (5) This Part continues to apply to Crown land in relation to which a carbon sequestration right or soil carbon right has been granted under a Carbon Sequestration Agreement made under this Part.

S. 40(5)
inserted by
No. 78/2012
s. 11.

S. 41
amended by
No. 78/2012
s. 12.

41 Native title rights not affected

Rights and interests created under this Part in relation to Crown land are not intended and are not to be taken to extinguish native title rights to the extent that they exist in relation to that land.

Division 2—Use of Crown land for carbon sequestration

42 Declaration of land available for use for carbon sequestration

- (1) The Governor in Council, on the recommendation of the Minister, may by Order published in the Government Gazette do one or more of the following—
 - (a) declare specified Crown land or classes of Crown land to be available for carbon sequestration;
 - (b) direct that any forest produce on Crown land be placed under the control and management of the Secretary;
 - (c) invite expressions of interest for the use or development of Crown land for carbon sequestration purposes.
- (2) The Minister must not make a recommendation for an Order under subsection (1)(a) unless the Minister is satisfied that—
 - (a) the land is suitable for the sequestration of carbon by vegetation or in soil; and
 - (b) the use of the land for that purpose would not be contrary to the public interest.
- (3) The Minister must not make a recommendation for an Order under subsection (1)(b) unless the Minister responsible for the Act under which the right to forest produce was granted has consented to the recommendation.
- (4) An order made under subsection (1)(b) may be subject to any conditions specified in the Order.

43 Role of Secretary in relation to carbon sequestration on Crown land

- (1) Subject to this Part, the Secretary may—
 - (a) manage Crown land for the purposes of carbon sequestration; and
 - (b) do anything that is reasonable and necessary for the purposes of carbon sequestration on Crown land.
- (2) If Crown land is managed or controlled by a public authority other than the Secretary, the Secretary may exercise powers under this section in relation to that land only if and to the extent that an Order under section 42(1)(b) so provides.
- (3) Subject to section 44, the Secretary holds, manages and controls carbon sequestered on or under unalienated Crown land for and on behalf of the Crown.

44 Carbon sequestration on encumbered Crown land

- (1) This section applies to Crown land that is managed or controlled by a public authority or is subject to a lease, licence, instrument or agreement under any other Act.
- (2) The ownership of carbon sequestered on Crown land to which this section applies is subject to the provisions of the Act under which the land is managed or controlled, or leased or licensed or the instrument or agreement is made or entered into and to the terms of the lease, licence, instrument or agreement.
- (3) The licensee of a plantation licence granted under Part 3A of the **Victorian Plantations Corporation Act 1993** before the commencement of this section is entitled to a carbon sequestration right in relation to the land during the duration of the plantation licence.

Division 3—Carbon Sequestration Agreements

45 Carbon Sequestration Agreements

- (1) The Secretary may enter into a Carbon Sequestration Agreement in relation to Crown land—
 - (a) which is subject to a relevant Act; or
 - (b) to which a declaration under section 42(1)(a) applies.
- (2) The Carbon Sequestration Agreement must—
 - (a) comply with the requirements of this Part; and
 - (b) not be inconsistent with the requirements of any relevant law, including requirements relating to the following—
 - (i) the use and treatment of conservation workers within the meaning of the **Conservation, Forests and Lands Act 1987**;
 - (ii) environment protection and conservation of biodiversity;
 - (iii) native title and aboriginal cultural heritage.
- (3) A Carbon Sequestration Agreement may only be entered into in relation to reserved Crown land if the use of the land for carbon sequestration would not be inconsistent with the purposes for which the land was reserved.
- (4) The Secretary may enter into a Carbon Sequestration Agreement in relation to land that is proposed to be transferred or conveyed to the Crown.

Note to s. 45
inserted by
No. 4/2013
s. 31.

Note

The entry into a Carbon Sequestration Agreement under this section may be a land use activity under the **Traditional Owner Settlement Act 2010** if it relates to public land to which a land use activity agreement under that Act applies.

46 Requirements for Carbon Sequestration Agreement

The Secretary may from time to time by notice published in the Government Gazette specify requirements for Carbon Sequestration Agreements including—

- (a) the contents of the agreements; and
- (b) management plans to be included in agreements, including the form and content of the management plans; and
- (c) the identification and protection of other uses of Crown land; and
- (d) water management; and
- (e) the provision of appropriate securities to the Crown.

47 What may a Carbon Sequestration Agreement provide for?

(1) A Carbon Sequestration Agreement may—

- (a) grant a person a carbon sequestration right or soil carbon right in relation to Crown land for the term of the agreement; and
- (b) authorise a person to do all or any of the following—
 - (i) access Crown land;
 - (ii) plant and maintain vegetation on Crown land for the purposes of carbon sequestration;

S. 47(1)(a)
amended by
No. 78/2012
s. 13.

- (iii) control and exploit carbon sequestered or to be sequestered within vegetation or soil on Crown land;
- (iv) manage the land for the purpose of carbon sequestration; and
 - (c) set out agreements in relation to related matters, including management objectives, harvesting and ownership of harvested material; and
 - (d) impose obligations on a person in relation to fire management, fire prevention and fire suppression on the Crown land to which the agreement applies; and
 - (e) provide for the following—
 - (i) the ending of the agreement and for the rights of the parties if the Minister ends the agreement under section 55;
 - (ii) the periodic review of any provisions of the agreement;
 - (iii) the manner of varying the agreement;
 - (iv) the circumstances in which compensation is payable under the agreement;
 - (v) the rehabilitation or reinstatement of land to which the agreement applies.

(2) A Carbon Sequestration Agreement cannot alter the ownership of forest produce.

47A Grant of carbon sequestration right or soil carbon right

- (1) The Secretary must not enter into a Carbon Sequestration Agreement that grants a person a carbon sequestration right or soil carbon right in relation to Crown land unless that person is a party to the agreement.

S. 47A
inserted by
No. 78/2012
s. 14.

- (2) The Secretary must not grant a person a carbon sequestration right and a soil carbon right in relation to Crown land except under a separate Carbon Sequestration Agreement for each right.
- (3) A carbon sequestration right or soil carbon right granted in relation to Crown land under a Carbon Sequestration Agreement is extinguished on the date the agreement ends.

48 Carbon Sequestration Agreement may also provide for security to be provided

A Carbon Sequestration Agreement may include conditions requiring the provision of securities to the Crown, including the provision of indemnities or insurance.

49 Carbon Sequestration Agreement may also include provisions relevant to orderly planning of land

Subject to any enactment or law affecting the land, a Carbon Sequestration Agreement may include any provision that is relevant to the orderly planning of the land to which it applies including provisions for—

- (a) the allocation of risk between the Crown and any other party to the agreement; and
- (b) the responsibility for the performance of obligations affecting the land under any relevant law including obligations with respect to the following—
 - (i) fire management, fire prevention and fire suppression;
 - (ii) water allocation;
 - (iii) biodiversity conservation;
 - (iv) mineral resource development and extractive industries;

- (v) compliance with any Code of Practice under any Act or subordinate instrument applying to the land.

50 Notice of proposed Carbon Sequestration Agreement

- (1) The proponent of a proposed Carbon Sequestration Agreement must—
 - (a) publish notice of the proposed agreement in the Government Gazette; and
 - (b) give written notice of the proposed agreement to—
 - (i) the relevant public land manager; and
 - (ii) any existing lessee or licensee of the land; and
 - (iii) the Minister administering the **Water Act 1989**; and
 - (iv) the relevant Catchment Management Authority under the **Catchment and Land Protection Act 1994**; and
 - (v) any other public authority that the Secretary considers relevant; and
 - (vi) any Commonwealth regulatory body that the Secretary considers relevant.

S. 50(1)(b)(iv)
amended by
No. 29/2011
s. 3(Sch. 1
item 13.2).

- (2) The Secretary may give any notice under this section in place of the proponent.

51 Consent of lessee or licensee required for Carbon Sequestration Agreement

The Secretary must not enter into a Carbon Sequestration Agreement without the consent of any lessee or licensee of the land.

52 Matters to be considered by Secretary

- (1) In determining whether to enter into a Carbon Sequestration Agreement in relation to Crown land, the Secretary must have regard to the following—
 - (a) the requirements of any Commonwealth law relating to the use of Crown land for carbon sequestration;
 - (b) the objectives and requirements of any relevant Act;
 - (c) the terms of any existing lease, licence or agreement that applies to the land;
 - (d) the desirability of preserving other legitimate uses of the land;
 - (e) the need to—
 - (i) balance economic, social and environmental considerations relevant to the land;
 - (ii) manage Crown land for multiple purposes;
 - (iii) maximise the value of Crown land, having regard to the objective and principles of ecologically sustainable development;
 - (iv) plan for the sustainable management of water and biodiversity in the relevant catchment;
 - (v) protect persons and property from the risk of fire;
 - (f) any economic risks and opportunities associated with setting land aside for carbon sequestration purposes;

(g) the interests of indigenous groups in the relevant area.

(2) In addition to subsection (1), the Secretary may have regard to any other matters the Secretary considers relevant in the circumstances.

53 Notice of making of Carbon Sequestration Agreement

The Secretary must cause notice of the making of a Carbon Sequestration Agreement to be published in the Government Gazette as soon as practicable after it is made.

54 Consent of Secretary required to transfer a Carbon Sequestration Agreement or assign rights under an agreement

S. 54
substituted by
No. 78/2012
s. 15.

- (1) A person cannot transfer a Carbon Sequestration Agreement or assign any rights under a Carbon Sequestration Agreement without the written consent of the Secretary.
- (2) The Secretary must not consent to the transfer of a Carbon Sequestration Agreement to a person unless the carbon sequestration right or soil carbon right granted by the agreement is assigned to that person for the remainder of the term of the agreement.

55 Ending of Carbon Sequestration Agreement

A Carbon Sequestration Agreement may be ended—

- (a) by the Minister on giving the parties to the agreement not less than 180 days written notice of termination; or
- (b) by agreement of the parties in accordance with the agreement; or
- (c) by further agreement of the parties.

56 Register of Carbon Sequestration Agreements

- (1) The Secretary must maintain a Register of Carbon Sequestration Agreements in accordance with the regulations.
- (2) The Register of Carbon Sequestration Agreements must include details of—
 - (a) the making of Carbon Sequestration Agreements; and
 - (ab) the carbon sequestration rights and soil carbon rights that are granted under Carbon Sequestration Agreements; and
 - (b) the variation of Carbon Sequestration Agreements; and
 - (ba) the transfer of Carbon Sequestration Agreements and the assignment of carbon sequestration rights and soil carbon rights that are granted under Carbon Sequestration Agreements; and
 - (c) the termination of Carbon Sequestration Agreements.

S. 56(2)(ab)
inserted by
No. 78/2012
s. 16(1).

S. 56(2)(ba)
inserted by
No. 78/2012
s. 16(2).

S. 56A
inserted by
No. 78/2012
s. 17.

56A Certificate of Secretary

An extract from the Register of Carbon Sequestration Agreements certified by the Secretary to be a true copy and setting out that a person is a party to a Carbon Sequestration Agreement that grants the person—

- (a) a carbon sequestration right in relation to Crown land is evidence that the person is the owner of the carbon sequestration right;
- (b) a soil carbon right in relation to Crown land is evidence that the person is the owner of the soil carbon right.

Division 4—Fire suppression and prevention

57 Application

This Division applies if a Carbon Sequestration Agreement affects land.

58 Directions by Secretary or authorised officer

The Secretary or any authorised officer appointed under the **Conservation, Forests and Lands Act 1987** may direct a person to carry out works with respect to fire prevention, fire management or fire suppression.

59 Person must comply with direction

A person must comply with a direction of the Secretary or an authorised officer (as the case requires) under this Division.

60 Secretary to reimburse for assistance

If a person carries out works pursuant to a direction under section 58, the Secretary must reimburse the person for the reasonable costs incurred by that person in carrying out those works unless the Carbon Sequestration Agreement provides that the Secretary is not to be liable to reimburse the person for those costs.

61 Division does not derogate from certain Acts

Nothing in this Division derogates from the **Forests Act 1958** or the **Country Fire Authority Act 1958** or the **Sustainable Forests (Timber) Act 2004**.

Division 5—Enforcement

62 Enforcement

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

PART 6—GENERAL

63 Application of planning laws

The creation, transfer or registration of a right under Part 4 or 5 in relation to land is not—

- (a) a use or development of the land for the purposes of the **Planning and Environment Act 1987**; or
- (b) a subdivision of the land for the purposes of the **Subdivision Act 1988**.

64 Regulations

- (1) The Governor in Council may make regulations generally in relation to any matter required or permitted to be prescribed by this Act or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
 - (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstance; and
 - (c) may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification, or method, formulated, issued, prescribed or published by any person whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
 - (iii) as formulated, issued, prescribed or published from time to time; and
 - (d) may leave anything for the approval or satisfaction of a specified person.

S. 64(1)
substituted by
No. 78/2012
s. 18.

65 Transitional provisions

Schedule 2 has effect.

Pt 7 (Heading
and ss 66–74)
repealed by
No. 54/2010
s. 74.

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Pt 8 (Heading
and ss 75–81)
repealed by
No. 54/2010
s. 81.

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SCHEDULES

SCHEDULE 1

Section 14

ACTS AND DECISIONS OR ACTIONS

<i>Name of Act</i>	<i>Decision or action</i>
Catchment and Land Protection Act 1994	An approval or refusal of an approval of a management plan by the Minister, or the return of a plan to the Authority with any recommendations for change, under clause 3 of Schedule 2. The revocation of a management plan by the Minister under clause 7 of Schedule 2.
Coastal Management Act 1995	Consideration by the Minister of a draft Coastal Strategy under section 17. The endorsement by the Minister of a Coastal Action Plan under section 26.
Environment Protection Act 1970	A recommendation of the Environment Protection Authority under section 16. A recommendation of the Environment Protection Authority under section 16A. The issue of or refusal to issue a works approval by the Environment Protection Authority under section 19B. A decision by the Environment Protection Authority relating to the licensing of scheduled premises under section 20.

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<i>Name of Act</i>	<i>Decision or action</i>
Flora and Fauna Guarantee Act 1988	<p>The preparation, making and amendment of a Flora and Fauna Guarantee Strategy by the Secretary under section 17 and 18.</p> <p>The preparation and amendment of an action statement by the Secretary under section 19.</p> <p>The preparation of a management plan by the Secretary under section 21.</p> <p>The amendment or revocation of a management plan by the Secretary under section 22.</p> <p>The review of a management plan by the Secretary under section 24.</p> <p>The making of an interim conservation order by the Minister under section 26.</p> <p>The confirmation or revocation of an interim conservation order by the Minister under section 31.</p> <p>The amendment of a confirmed interim conservation order by the Minister under section 33.</p> <p>The amendment of an interim conservation order by the Minister under section 35.</p>
Public Health and Wellbeing Act 2008	<p>The preparation of a municipal public health and wellbeing plan by a council under section 26.</p> <p>The preparation of a State Public Health and Wellbeing Plan by a person under section 49.</p>
Water Act 1989	<p>Consideration of a draft Sustainable Water Strategy by the Minister under section 22G.</p>

SCHEDULE 2

Section 65

TRANSITIONAL PROVISIONS

1 Definitions

In this Schedule—

carbon rights agreement has the same meaning as it has in the Forestry Rights Act;

forest property agreement has the same meaning as in the Forestry Rights Act;

forest property right has the same meaning as it has in the Forestry Rights Act;

Forestry Rights Act means the **Forestry Rights Act 1996**;

FRA carbon sequestration right means a carbon sequestration right granted in accordance with section 12 of the Forestry Rights Act.

2 Existing agreements and rights to continue

Subject to this Schedule, despite the repeal of the Forestry Rights Act, that Act (as in force immediately before its repeal) continues to apply to—

- (a) any forest property agreement or carbon rights agreement existing immediately before the repeal; or
- (b) any forest property right or FRA carbon sequestration right existing immediately before that repeal.

3 Existing agreements cannot be extended or varied

A forest property agreement or carbon rights agreement cannot be extended or amended.

4 Existing agreements to be ended before new agreement recorded

- (1) This clause applies if a forest property agreement is recorded in the Register in relation to land.
- (2) A Forestry and Carbon Management Agreement cannot be recorded in the Register under section 32 in relation to that land or part of that land unless the forest property owner has advised the Registrar under section 10 of the Forestry Rights Act of the ending of the forest property agreement relating to that land or that part of the land.

5 Forest carbon right cannot be created

A forest carbon right cannot be created under Part 4 in relation to that land or part of that land if a forest property agreement is recorded in the Register in relation to that land or part of that land.

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 29 July 2010

Legislative Council: 12 August 2010

The long title for the Bill for this Act was "A Bill for an Act to provide a framework for action on climate change in Victoria, to set a target to reduce greenhouse gas emissions, to provide for forestry rights, carbon sequestration rights and soil carbon rights on land, to repeal the **Forestry Rights Act 1996**, to amend the **Conservation, Forests and Lands Act 1987**, the **Environment Protection Act 1970**, the **Transport Integration Act 2010** and other Acts and for other purposes."

The **Climate Change Act 2010** was assented to on 14 September 2010 and came into operation on 1 July 2011: section 2(2).

2. Table of Amendments

This Version incorporates amendments made to the **Climate Change Act 2010** by Acts and subordinate instruments.

Climate Change Act 2010, No. 54/2010

Assent Date: 14.9.10
Commencement Date: S. 74 on 1.7.12: s. 74; s. 81 on 1.7.12: s. 81
Current State: This information relates only to the provision/s amending the **Climate Change Act 2010**

Statute Law Revision Act 2011, No. 29/2011

Assent Date: 21.6.11
Commencement Date: S. 3(Sch. 1 item 13) on 22.6.11: s. 2(1)
Current State: This information relates only to the provision/s amending the **Climate Change Act 2010**

Climate Change and Environment Protection Amendment Act 2012, No. 78/2012

Assent Date: 18.12.12
Commencement Date: Ss 4–18 on 13.2.13: Special Gazette (No. 44) 12.2.13 p. 1
Current State: This information relates only to the provision/s amending the **Climate Change Act 2010**

Traditional Owner Settlement Amendment Act 2013, No. 4/2013

Assent Date: 19.2.13
Commencement Date: S. 31 on 8.3.13: Special Gazette (No. 70) 5.3.13 p. 1
Current State: This information relates only to the provision/s amending the **Climate Change Act 2010**

3. Explanatory Details

No entries at date of publication.