

Authorised Version No. 002
Melbourne Strategic Assessment
(Environment Mitigation Levy) Act 2020

No. 1 of 2020

Authorised Version incorporating amendments as at
1 July 2021

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The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purpose

The purpose of this Act is to impose a levy to fund measures to mitigate impacts on the environment caused by the development of land in Melbourne's growth corridors.

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 2020, it comes into operation on that day.

3 Definitions

In this Act—

2010 Commonwealth approval means the approval under section 146B of the EPBC Act on 8 July 2010 relating to the MSA program titled "Approval decision for the taking of actions in accordance with an endorsed program under the Environment Protection and Biodiversity Conservation Act 1999", as amended from time to time;

2010 urban growth boundary means the urban growth boundary within the meaning of the **Planning and Environment Act 1987** as at the day on which the VPP Amendment VC 68 took effect in respect of the planning schemes for the Councils mentioned in the definition of **urban growth area**;

2013 Commonwealth approval means the approval under section 146B of the EPBC Act of the taking of actions in accordance with the MSA program, dated 5 September 2013, as amended from time to time;

2014 Commonwealth approval means the approval under section 146B of the EPBC Act of the taking of actions in accordance with the MSA program, dated 11 September 2014, as amended from time to time;

acquiring authority has the same meaning as in section 3(1) of the **Subdivision Act 1988**;

additional information notice means a notice under section 70(1);

assessment means an assessment of levy liability made by the Secretary under section 52;

authorised officer means a person appointed under section 109;

building has the same meaning as in section 3(1) of the **Building Act 1993**;

Building Code of Australia has the same meaning as in section 3(1) of the **Building Act 1993**;

building permit has the same meaning as in Part 3 of the **Building Act 1993**;

building work has the same meaning as in section 3(1) of the **Building Act 1993**;

certificate of no liability—see section 106;

certificate of partial release—see section 105;

certificate of release—see section 103;

certificate of staged payment approval—see section 104;

certification, in relation to a plan of subdivision, has the same meaning as in the **Subdivision Act 1988**;

component levy amount—see section 22(1) or (2);

conservation area means an area of land to which a conservation area declaration applies;

conservation area declaration means a declaration under section 11;

conservation outcomes means the outcomes specified in a notice under section 93;

Council has the same meaning as in section 3(1) of the **Local Government Act 2020**;

S. 3 def. of *Council* amended by No. 9/2020 s. 390(Sch. 1 item 70A).

Crown land means—

- (a) land reserved under the **Crown Land (Reserves) Act 1978**; or
- (b) unreserved Crown land;

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

- (a) if responsibility for the management of the Crown land is given by or under an Act to a person, that person; or
- (b) if responsibility for the management of the Crown land is not given by or under an Act to a person, the Minister administering the Act under which the land is managed;

Department means Department of Environment,
Land, Water and Planning;

dutiable transaction relating to land—

(a) means—

(i) a dutiable transaction within the
meaning of section 7(2) of the
Duties Act 2000 relating to
dutiable property referred to in
section 10(1)(a) of that Act; or

(ii) a sub-sale of dutiable property
referred to in section 10(1)(a) of
the **Duties Act 2000**; and

(b) does not include an acquisition of
beneficial ownership of dutiable
property referred to in section 10(1)(a)
of the **Duties Act 2000** that is a
dutiable transaction within the meaning
of section 7(2) of that Act because of
Part 4B of Chapter 2 of that Act;

environment mitigation dataset—see section 4;

environment mitigation information system
means the computer system established and
maintained under section 19(1);

environment mitigation levy or ***levy*** means the
levy imposed under section 21(1) and
includes interest payable under Part 4;

EPBC Act means the Environment Protection and
Biodiversity Conservation Act 1999 of the
Commonwealth;

excluded building work—see section 5;

excluded event—see section 6;

excluded event certificate means a certificate
issued under section 124;

excluded subdivision of land—see section 7;

extractive industry has the same meaning as in section 4(1) of the **Mineral Resources (Sustainable Development) Act 1990**;

extractive industry work authority has the same meaning as in section 4(1) of the **Mineral Resources (Sustainable Development) Act 1990**;

Golden Sun Moth habitat area means an area that—

- (a) is described and labelled in the environment mitigation dataset as a "Golden Sun Moth habitat area"; and
- (b) through the operation of the environment mitigation information system, is capable of being depicted on a map produced by that system as a "Golden Sun Moth habitat area";

Note

See also sections 4 and 19.

Growling Grass Frog habitat area means an area that—

- (a) is described and labelled in the environment mitigation dataset as a "Growling Grass Frog habitat area"; and
- (b) through the operation of the environment mitigation information system, is capable of being depicted on a map produced by that system as a "Growling Grass Frog habitat area";

Note

See also sections 4 and 19.

habitat area means any of the following—

- (a) a Golden Sun Moth habitat area;
- (b) a Growling Grass Frog habitat area;
- (c) a Matted Flax-lily habitat area;
- (d) a Native vegetation area;
- (e) a Southern Brown Bandicoot habitat area;
- (f) a Spiny Rice-flower habitat area;

land particulars means information, including geographic coordinates, that enables the location, area and boundaries of land to be identified or determined;

land transfer agreement means an agreement entered into under section 36(2);

levy area means the area of land to which a levy area declaration applies;

levy area declaration means a declaration under section 10(1);

levy assessment notice means a notice prepared under section 60(2);

levy default means a failure by a person to pay, in accordance with this Act, the whole or part of the environment mitigation levy that the person is liable to pay;

levy event—

- (a) means an event specified in column 2 of an item in the Table in section 21 in relation to the occurrence of which the environment mitigation levy is imposed under subsection (1) of that section; and

- (b) does not include an event in relation to which the environment mitigation levy cannot, under section 21(2), be imposed;

levy land—

- (a) means land specified in column 3 of an item in the Table in section 21 in respect of which the environment mitigation levy is imposed under subsection (1) of that section; and
- (b) does not include land in respect of which the environment mitigation levy cannot, under section 21(2), be imposed;

levy liability means a liability to pay the levy;

levy liability certificate—see section 107;

levy recording means a recording in the Register of a notification described in section 45;

levy scheme declaration means—

- (a) a conservation area declaration; or
- (b) a levy area declaration;

liable person means a person who—

- (a) has been assessed under Part 4 as liable to pay the environment mitigation levy; or
- (b) has paid an amount as the environment mitigation levy; or
- (c) is or may be liable to pay the environment mitigation levy;

lot has the same meaning as in the **Subdivision Act 1988**;

Matted Flax-lily habitat area means an area that—

- (a) is described and labelled in the environment mitigation dataset as a "Matted Flax-lily habitat area"; and
- (b) through the operation of the environment mitigation information system, is capable of being depicted on a map produced by that system as a "Matted Flax-lily habitat area";

Note

See also sections 4 and 19.

matters of national environmental significance means—

- (a) every matter protected (within the meaning of section 34 of the EPBC Act) by a provision of Part 3 of that Act as in force as at 2 February 2010; and
- (b) Seasonal Herbaceous Wetlands (Freshwater) of the Temperate Lowland Plains;

Melbourne Strategic Assessment Fund* or *Fund means the Fund established under section 89;

MSA program means the program called "Delivering Melbourne's Newest Sustainable Communities: Program Report", endorsed under section 146(2)(f) of the EPBC Act on 2 February 2010;

Native vegetation area means an area that—

- (a) is described and labelled in the environment mitigation dataset as a "Native vegetation area"; and

- (b) through the operation of the environment mitigation information system, is capable of being depicted on a map produced by that system as a "Native vegetation area";

Note

See also sections 4 and 19.

objection—see section 65;

objector means a liable person who lodges an objection under section 65;

owner has the same meaning as in section 3(1) of the **Planning and Environment Act 1987**;

parcel of land—

- (a) includes a lot; and
- (b) does not include—
- (i) a parcel, an allotment or a part of Crown land; or
 - (ii) a reserve (within the meaning of the **Subdivision Act 1988**); or
 - (iii) common property (within the meaning of the **Subdivision Act 1988**);

plan of subdivision has the same meaning as in section 3(1) of the **Subdivision Act 1988**;

planning scheme means a planning scheme under the **Planning and Environment Act 1987**;

reassessment means a reassessment of levy liability made by the Secretary under section 53;

Register means the Register under the **Transfer of Land Act 1958**;

relevant building surveyor has the same meaning as in section 3(1) of the **Building Act 1993**;

road has the same meaning as in section 3(1) of the **Road Management Act 2004**;

road infrastructure has the same meaning as in section 3(1) of the **Road Management Act 2004**;

Scattered tree location means a location that—

- (a) is described and labelled in the environment mitigation dataset as a "Scattered tree location"; and
- (b) through the operation of the environment mitigation information system, is capable of being depicted on a map produced by that system as a "Scattered tree location";

Seasonal Herbaceous Wetlands (Freshwater) of the Temperate Lowland Plains means the ecological community included in the list of threatened ecological communities under section 181 of the EPBC Act and described in the legislative instrument made under section 184(1)(a) of that Act, as then in force, and dated 14 March 2012;

Secretary means Department Head (within the meaning of the **Public Administration Act 2004**) of the Department;

single dwelling has the same meaning as in section 188A(4) of the **Building Act 1993**;

Southern Brown Bandicoot habitat area means an area that—

- (a) is described and labelled in the environment mitigation dataset as a "Southern Brown Bandicoot habitat area"; and

- (b) through the operation of the environment mitigation information system, is capable of being depicted on a map produced by that system as a "Southern Brown Bandicoot habitat area";

Note

See also sections 4 and 19.

Spiny Rice-flower habitat area means an area that—

- (a) is described and labelled in the environment mitigation dataset as a "Spiny Rice-flower habitat area"; and
- (b) through the operation of the environment mitigation information system, is capable of being depicted on a map produced by that system as a "Spiny Rice-flower habitat area";

Note

See also sections 4 and 19.

staged payment approval means an approval under section 27(1);

statement of compliance has the same meaning as in section 21 of the **Subdivision Act 1988**;

sub-sale of dutiable property—see section 8;

subdivision has the same meaning as in section 3(1) of the **Subdivision Act 1988**;

urban growth area means the area of land within the municipal districts of the following Councils that is within the 2010 urban growth boundary—

- (a) Cardinia Shire Council;
- (b) Casey City Council;

- (c) Hume City Council;
- (d) Melton City Council;
- (e) Mitchell Shire Council;
- (f) Whittlesea City Council;
- (g) Wyndham City Council;

utility infrastructure work means—

- (a) the construction of infrastructure that is to be used to provide water, sewerage, drainage, gas, electricity or telecommunications services; or
- (b) work for the installation of infrastructure that is to be used to provide water, sewerage, drainage, gas, electricity or telecommunications services;

VPP Amendment VC 68 means the amendment to the Victoria Planning Provisions prepared under the **Planning and Environment Act 1987**, and the amendments to every planning scheme, in respect of which a notice of ratification was published in the Government Gazette on 6 August 2010 under section 46AI of that Act;

working day means a day other than—

- (a) a Saturday or Sunday; or
- (b) a day appointed as a public holiday under the **Public Holidays Act 1993**.

4 Meaning of *environment mitigation dataset*

The ***environment mitigation dataset*** is data (including geographic coordinates) published on the internet site with the internet address www.msa.vic.gov.au on 17 September 2019 that—

- (a) describes and labels—
 - (i) an area within the levy area as—
 - (A) a "Golden Sun Moth habitat area";
or
 - (B) a "Growling Grass Frog habitat area"; or
 - (C) a "Matted Flax-lily habitat area";
or
 - (D) a "Native vegetation area"; or
 - (E) a "Southern Brown Bandicoot habitat area"; or
 - (F) a "Spiny Rice-flower habitat area"; or
 - (G) a composite of any one or more of the areas mentioned in sub-paragraphs (A) to (F); and
 - (ii) a location within the levy area as a "Scattered tree location"; and
- (b) through the operation of the environment mitigation information system, is capable of being depicted on a map or maps, as the case requires—
 - (i) as an area mentioned in paragraph (a)(i); or
 - (ii) as a "Scattered tree location".

Note

See also section 125.

5 Meaning of *excluded building work*

Excluded building work is any of the following kind of building work—

- (a) the demolition of a building or part of a building;
- (b) the construction of a building or part of a building that is or will be when constructed—
 - (i) a single dwelling; or
 - (ii) a prescribed kind of building;
- (c) the repair or reinstatement of an existing building;
- (d) additions or alterations to an existing building that do not change or increase the floor area of the building.

6 Meaning of *excluded event*

An *excluded event* is any of the following—

- (a) the issue of a statement of compliance for a plan of subdivision of land that is an excluded subdivision of land;
- (b) the certification of a plan of subdivision of land submitted under section 35 of the **Subdivision Act 1988**—
 - (i) for which that Act does not require the issue of a statement of compliance before registration; and
 - (ii) that is an excluded subdivision of land;
- (c) the making of an application under section 17 of the **Building Act 1993** for a building permit solely for excluded building work;

- (d) the approval of a variation of a work plan under section 77HB of the **Mineral Resources (Sustainable Development) Act 1990** to carry out an extractive industry if an excluded event certificate has been issued in relation to the extractive industry to be carried out;

Note

See also sections 25 and 124.

- (e) the completion of—
- (i) the construction of prescribed minor infrastructure; or
 - (ii) prescribed minor works for infrastructure—
- that is to be used to provide water, sewerage, drainage, gas or electricity services;
- (f) the completion of—
- (i) the construction of prescribed infrastructure; or
 - (ii) prescribed works for infrastructure—
- that is to be used to provide telecommunications services;
- (g) the construction of—
- (i) a prescribed road or a prescribed class of road; or
 - (ii) a prescribed part of a road or a prescribed class of a part of a road; or
 - (iii) prescribed minor road infrastructure;
- (h) an event to which an approval under Part 9 of the EPBC Act that is in force applies.

7 Meaning of *excluded subdivision of land*

(1) An *excluded subdivision of land* is any of the following—

- (a) a subdivision of land the purpose of which is solely to realign the common boundary between 2 lots and the area of either lot after the realignment is reduced by no more than 5% of its original area;

Example

The realignment of boundaries to accord with existing fence lines.

- (b) a subdivision of land the purpose of which is solely to create a lot not exceeding 2 hectares for the purposes of excising an existing dwelling on the land;

Example

A land owner subdivides a 40 hectare parcel of land with an existing house into 2 lots—one lot is 38 hectares in area and the other lot is 2 hectares in area and the house is situated on that smaller lot.

- (c) a subdivision of land that is not wholly within the levy area and the purpose of the subdivision is solely to create 2 lots, one lot being land wholly in the levy area and the other lot being land that is not within the levy area;

- (d) a subdivision of land that excises land—

- (i) within the boundaries of any of the planning schemes applying to the municipal districts of the following Councils—

- (A) Hume City Council;
(B) Melton City Council;
(C) Mitchell Shire Council;

- (D) Whittlesea City Council;
 - (E) Wyndham City Council; and
 - (ii) that is shown in those planning schemes as being affected by a transport infrastructure reservation;
 - (e) a subdivision of land the sole purpose of which is to excise land—
 - (i) forming part of extractive industry land; and
 - (ii) on which there is or will be a buffer zone.
- (2) In this section—
- buffer zone***, in relation to extractive industry land, means land on which there is only one or more of the following—
- (a) an access road or driveway to enable access to a road (within the meaning of the **Road Safety Act 1986**);
 - (b) a drain;
 - (c) bund walls or landscaping for the purpose of—
 - (i) keeping any emissions resulting from any extractive industry being carried out on the extractive industry land within the boundaries of that land; or
 - (ii) minimising the effect on the amenity of the area surrounding the extractive industry land of vehicular traffic, or noise, blasting, dust or vibration resulting from any extractive industry being carried out on that land;

- (d) trees or other plants planted and maintained to screen the extractive industry being carried out on the extractive industry land;

extractive industry land means—

- (a) a parcel of land on which an extractive industry may be carried out under an extractive industry work authority; or
- (b) a parcel of land to which a work plan within the meaning of the **Mineral Resources (Sustainable Development) Act 1990** that has been statutorily endorsed under Part 6B of that Act relates;

transport infrastructure reservation means a reservation under a planning scheme for transport infrastructure purposes that is prescribed.

8 Meaning of *sub-sale of dutiable property*

A *sub-sale of dutiable property* is a transfer of dutiable property referred to in section 10(1)(a) of the **Duties Act 2000** to a subsequent purchaser (within the meaning of Part 4A of Chapter 2 of that Act) as described in section 32B(1)(d), 32I(1)(d), 32O(1)(d) or 32P(1)(d) of that Act.

9 Act binds the Crown

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

Part 2—Levy scheme instruments and the information system

Division 1—Levy area and conservation area declarations

10 Declaration of the levy area

- (1) The Secretary, by instrument, may declare an area of land within the urban growth area that is not a conservation area to be the levy area for the purposes of this Act.
- (2) A levy area declaration must describe the levy area. The description of the levy area may be by reference to a map or maps prepared under section 14.

11 Declaration of conservation areas

- (1) The Secretary, by instrument, may declare an area of land within the urban growth area that is not the levy area to be a conservation area for the purposes of this Act.
- (2) A conservation area declaration must describe the conservation area. The description of a conservation area may be by reference to a map or maps prepared under section 14.

Notes

- 1 A land transfer agreement may be entered into in relation to land within a conservation area—see Division 4 of Part 3.
- 2 Payments may be made from the Fund for the conservation of conservation areas—see Part 5.

12 Secretary must have regard to certain Commonwealth approvals and any prescribed matter

In making a levy scheme declaration, the Secretary must have regard to—

- (a) the 2013 Commonwealth approval; and
-

- (b) the 2014 Commonwealth approval; and
- (c) any prescribed matter.

13 Notice of making of a levy scheme declaration

The Secretary must publish notice of the making of a levy scheme declaration in the Government Gazette within 10 working days after that making.

14 Preparation of maps to set out the levy area and conservation areas

- (1) For the purposes of sections 10 and 11, the Secretary may prepare a map or maps that set out the levy area and any conservation area.
- (2) A map prepared under subsection (1) must be—
 - (a) included in, or attached to, the levy scheme declaration that declares the levy area or conservation area; and
 - (b) lodged with the Central Plan Office before a notice under section 13 is published for that declaration.

15 When does a levy scheme declaration take effect?

A levy scheme declaration takes effect on—

- (a) the day on which notice of its making is published under section 13; or
- (b) if a later day is specified in that notice, that day.

16 Levy scheme declarations must be made available for inspection and published on the internet

The Secretary must—

- (a) make every levy scheme declaration that is in effect available for inspection, free of charge, by any person during office hours at the principal office of the Department; and

- (b) cause every levy scheme declaration that is in effect to be published on the internet.

17 Amending and revoked levy scheme declarations must be made available for inspection for at least 7 years

The Secretary must—

- (a) keep every levy scheme declaration that amends another levy scheme declaration or that is revoked for at least 7 years after the declaration's making or revocation; and
- (b) make a copy of a levy area declaration mentioned in paragraph (a) available for inspection, free of charge, by any person during office hours at the principal office of the Department for the period that the declaration is required to be kept under that paragraph.

18 Application of Subordinate Legislation Act 1994 to levy area declarations

- (1) A levy area declaration is a legislative instrument for the purposes of the **Subordinate Legislation Act 1994**.
- (2) However, Parts 2A and 3A of the **Subordinate Legislation Act 1994** do not apply to a levy area declaration. Schedule 1 of this Act applies instead.
- (3) In addition, Part 5A of the **Subordinate Legislation Act 1994** applies to a levy area declaration as if for section 25C(2)(a)(ii) of that Act there were substituted—
 - "(ii) in the case of failure to comply with clause 1(1) of Schedule 1 to the **Melbourne Strategic Assessment (Environment Mitigation Levy) Act 2020** in respect of a levy area declaration, on or before the 24th sitting day of that House after notice

of the making of the declaration has been published in accordance with section 13 of that Act; and".

Division 2—The environment mitigation information system

19 Establishment of environment mitigation information system

- (1) The Secretary must cause to be established and maintained in the Department a computer system (the *environment mitigation information system*) which does the following things—
- (a) through the use of the environment mitigation dataset, depict, on a map or maps, the following areas within the levy area—
 - (i) Golden Sun Moth habitat areas;
 - (ii) Growling Grass Frog habitat areas;
 - (iii) Matted Flax-lily habitat areas;
 - (iv) Native vegetation areas;
 - (v) Southern Brown Bandicoot habitat areas;
 - (vi) Spiny Rice-flower habitat areas;

Note

See also section 4.

- (b) through the use of the environment mitigation dataset, depict, on a map or maps, Scattered tree locations;
- (c) calculate, record or depict—
 - (i) the amount of the coverage of each area mentioned in paragraph (a) over any parcel of land, or a part of a parcel of land, within the levy area or any land in relation to which the levy may be

- payable under a staged payment approval; and
- (ii) the amount of the coverage of each area mentioned in paragraph (a) over any allotment or part of Crown land, within the levy area; and
 - (iii) the number of Scattered tree locations on any parcel of land or part of a parcel of land, or allotment or part of Crown land, within the levy area;
- (d) any other thing that the Secretary considers appropriate.
- (2) The Secretary must ensure that there is stored in the environment mitigation information system the environment mitigation dataset.
- (3) In addition, the environment mitigation information system must be capable of permitting the input of—
- (a) land particulars in relation to—
 - (i) levy land; or
 - (ii) any land in relation to which the levy may be payable under a staged payment approval; and
 - (b) any other information that the Secretary considers appropriate.
- (4) The Secretary must ensure that—
- (a) the environment mitigation information system meets any prescribed requirements; and
 - (b) the operation of the environment mitigation information system meets any prescribed standards.

20 Public access to environment mitigation information system data and information

The Secretary must give any person access to the environment mitigation information system so that the person is able to use the system. The access and use must be—

- (a) during office hours at the principal office of the Department; and
- (b) free of charge.

Part 3—The environment mitigation levy

Division 1—Imposition

21 Imposition of environment mitigation levy

- (1) Subject to subsection (2), if an event specified in column 2 of an item in the Table (that is not an excluded event) occurs, the environment mitigation levy is imposed in respect of the relevant land specified in column 3 of that item in the Table opposite that event.
- (2) The environment mitigation levy cannot be imposed more than once in respect of land specified in column 3 of an item in the Table even if an event specified in column 2 of that item (that is not an excluded event) occurs again in respect of that land.
- (3) For the purposes of items 4 and 5 in the Table, a *parcel of land* specified in column 3 of either of those items does not include a parcel of land that—
 - (a) is solely a buffer zone (within the meaning of section 7(2)); or
 - (b) has a buffer zone (within the meaning of section 7(2)) and an area to which the approved work plan referred to in column 2 for that item does not apply.
- (4) To avoid doubt, a person is not entitled to pay any amount in respect of the environment mitigation levy that the person may be liable to pay in respect of a levy event until the levy event occurs.

Table

<i>Column 1 Item</i>	<i>Column 2 Event</i>	<i>Column 3 Land</i>
1	The issue of a statement of compliance for a plan of subdivision in relation to a parcel of land wholly or partly within the levy area	If the parcel of land is wholly within the levy area, the whole of that parcel of land If the parcel of land is partly within the levy area, that part of the parcel of land within the levy area
2	The certification of a plan of subdivision submitted under section 35 of the Subdivision Act 1988 in relation to land wholly or partly within the levy area for which a statement of compliance is not required to be issued before registration of that plan under that Act	If the land acquired, or to be acquired, by the acquiring authority is a parcel of land wholly within the levy area, the whole of that parcel of land If the land acquired, or to be acquired, by the acquiring authority is a parcel of land partly within the levy area, that part of the parcel of land within the levy area
3	The making of an application for a building permit for the construction of a building on— (a) a parcel of land wholly or partly within the levy area; or (b) on Crown land within the levy area	The whole of the parcel of land, or if the parcel of land is partly within the levy area that part of the parcel of land within the levy area, on which a building may be constructed if a building permit is issued on that application The Crown land that will be directly impacted by any building work if a building permit is issued on that application
4	The approval of a work plan under section 77G of the Mineral Resources (Sustainable Development) Act 1990 to carry out an extractive industry on—	The whole of the parcel of land, or if the parcel of land is partly within the levy area that part of the parcel of land within the levy area, on which the extractive industry may be carried out under that approved work plan

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<i>Column 1 Item</i>	<i>Column 2 Event</i>	<i>Column 3 Land</i>
	(a) a parcel of land wholly or partly within the levy area; or (b) on Crown land within the levy area	The Crown land that will be directly impacted by the carrying out of the extractive industry under that approved work plan and any work carried out in connection with the carrying out of that extractive industry
5	The approval of a variation of a work plan under section 77HB of the Mineral Resources (Sustainable Development) Act 1990 to carry out an extractive industry on— (a) a parcel of land wholly or partly within the levy area; or (b) on Crown land within the levy area	The whole of the parcel of land, or if the parcel of land is partly within the levy area that part of the parcel of land within the levy area, on which the extractive industry may be carried out under that approved work plan The Crown land that will be directly impacted by the carrying out of the extractive industry under that approved work plan and any work carried out in connection with the carrying out of that extractive industry
6	The completion of utility infrastructure work on Crown land within the levy area	The Crown land directly impacted by the utility infrastructure work and any work carried out in connection with the carrying out of that utility infrastructure work
7	The completion of construction of a road, a part of a road or road infrastructure on Crown land within the levy area	The Crown land directly impacted by the work for the construction of the road or part of the road or road infrastructure and any other work carried out in connection with that construction

22 Amount of environment mitigation levy

- (1) If an event specified in column 2 of the Table in section 21 occurs in the 2020/2021 financial year in relation to levy land specified in column 3 of that Table opposite that event, the amount of the environment mitigation levy imposed under that section is the sum of any one or more of the following amounts (*component levy amounts*)—
- (a) if that land is covered by any Golden Sun Moth habitat area—the amount determined by applying the rate of \$10 005 per hectare for every hectare of that land covered by the Golden Sun Moth habitat area;
 - (b) if that land is covered by any Growling Grass Frog habitat area—the amount determined by applying the rate of \$7846 per hectare for every hectare of that land covered by the Growling Grass Frog habitat area;
 - (c) if that land is covered by any Matted Flax-lily habitat area—the amount determined by applying the rate of \$11 351 per hectare for every hectare of that land covered by the Matted Flax-lily habitat area;
 - (d) if that land is covered by any Native vegetation area—the amount determined by applying the rate of \$113 441 per hectare for every hectare of that land covered by the Native vegetation area;
 - (e) if on that land there are one or more Scattered tree locations—an amount of \$15 768 for every Scattered tree location on that land;
 - (f) if that land is covered by any Southern Brown Bandicoot habitat area when that event occurs—the amount determined by

- applying the rate of \$4138 per hectare for every hectare of that land covered by the Southern Brown Bandicoot habitat area;
- (g) if that land is covered by any Spiny Rice-flower habitat area—an amount determined by applying the rate of \$8522 per hectare for every hectare of that land covered by the Spiny Rice-flower habitat area;
- (2) If an event specified in column 2 of the Table in section 21 occurs in the 2021/2022 financial year, or in any financial year after that year, in relation to levy land specified in column 3 of that Table opposite that event, the amount of the environment mitigation levy imposed under that section is the sum of any one or more of the following amounts (*component levy amounts*)—
- (a) if that land is covered by any Golden Sun Moth habitat area—the amount determined by applying the applicable rate per hectare for every hectare of that land covered by the Golden Sun Moth habitat area;
- (b) if that land is covered by any Growling Grass Frog habitat area—the amount determined by applying the applicable rate per hectare for every hectare of that land covered by the Growling Grass Frog habitat area;
- (c) if that land is covered by any Matted Flax-lily habitat area—the amount determined by applying the applicable rate per hectare for every hectare of that land covered by the Matted Flax-lily habitat area;
- (d) if that land is covered by any Native vegetation area—the amount determined by applying the applicable rate per hectare for

- every hectare of that land covered by the Native vegetation area;
- (e) if on that land there are one or more Scattered tree locations—the amount determined by applying the applicable rate for every Scattered tree location on that land;
 - (f) if that land is covered by any Southern Brown Bandicoot habitat area—the amount determined by applying the applicable rate per hectare for every hectare of that land covered by the Southern Brown Bandicoot habitat area;
 - (g) if that land is covered by any Spiny Rice-flower habitat area—the amount determined by applying the applicable rate per hectare for every hectare of that land covered by the Spiny Rice-flower habitat area.
- (3) For the purposes of this section, if land specified in column 3 of the Table in section 21 is covered by an area that the environment mitigation dataset describes and labels as a composite of any one or more habitat areas (a *composite area*)—
- (a) the land is taken to be covered by each of the habitat areas composing that composite area; and
 - (b) the area of coverage for each habitat area is taken to be the area of the composite area.

Note

See also section 4(a)(i)(G).

- (4) For the purposes of calculating the amount of a component levy amount under subsection (1) or (2), the area of land specified in column 3 of the Table in section 21 in hectares that is covered by

any habitat area mentioned in that subsection is to be rounded off to the third decimal point.

(5) In this section—

applicable rate, for the 2021/2022 financial year and every financial year after that year, means the rate (in dollars) determined in accordance with Schedule 2.

23 Publication of adjusted rates for component levy amounts

(1) The Secretary must publish each applicable rate for a component levy amount determined in accordance with Schedule 2 for each financial year before 1 June in the financial year preceding that financial year—

- (a) in the Government Gazette; and
- (b) on the Department's internet site.

(2) In this section—

applicable rate has the meaning given by section 22(5).

Division 2—Persons liable to pay environment mitigation levy and by when

24 Who must pay the environment mitigation levy and by when

(1) Subject to this Part, if a levy event specified in column 2 in the Table occurs, the person specified in column 3 of the Table opposite that event is liable to pay to the Secretary the applicable environment mitigation levy within the period of time specified in column 4 of the Table opposite that person.

(2) In this section—

applicable environment mitigation levy means the sum of all of the component levy amounts relating to the levy land.

Table

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Item</i>	<i>Levy event</i>	<i>Person liable</i>	<i>Period of time within which levy must be paid</i>
1	Levy event specified in column 2 of item 1 in the Table in section 21 (issue of a statement of compliance for a plan of subdivision)	A person who is the owner of the levy land specified in column 3 of that item in that Table immediately after the issue of the statement of compliance	3 months after the date the statement of compliance is issued under the Subdivision Act 1988
2	Levy event specified in column 2 of item 2 in the Table in section 21 (certification of a plan of subdivision submitted under section 35 of the Subdivision Act 1988 for which a statement of compliance is not required to be issued before registration of that plan under that Act)	The acquiring authority of the levy land specified in column 3 of that item in that Table	3 months after the date the plan of subdivision is certified under the Subdivision Act 1988
3	Levy event specified in column 2 of item 3 in the Table in section 21 (application under	If the levy land specified in column 3 of that item in that Table is a parcel of land, a person who is	6 months after the date on which the application is made

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Item</i>	<i>Levy event</i>	<i>Person liable</i>	<i>Period of time within which levy must be paid</i>
	section 17 of the Building Act 1993 for a building permit)	the owner of the parcel of land immediately after the application is made If the levy land specified in column 3 of that item in that Table is Crown land, the person responsible for the carrying out of the building work	
4	Levy event specified in column 2 of item 4 in the Table in section 21 (approval of a work plan under section 77G of the Mineral Resources (Sustainable Development) Act 1990 to carry out an extractive industry)	If the levy land specified in column 3 of that item in that Table is a parcel of land, a person who is the owner of the parcel of land immediately after the approval is given (the <i>relevant owner</i>) If the levy land specified in column 3 of that item in that Table is Crown land, the person to whom the approval is given (the <i>approval holder</i>)	In the case of the relevant owner—3 months after the date on which the approval is given In the case of the approval holder—6 months after the date on which the approval is given

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Item</i>	<i>Levy event</i>	<i>Person liable</i>	<i>Period of time within which levy must be paid</i>
5	Levy event specified in column 2 of item 5 in the Table in section 21 (approval of a variation of a work plan under section 77HB of the Mineral Resources (Sustainable Development) Act 1990 to carry out an extractive industry)	<p>If the levy land specified in column 3 of that item in that Table is a parcel of land, a person who is the owner of the parcel of land immediately after the approval is given (the <i>relevant owner</i>)</p> <p>If the levy land specified in column 3 of that item in that Table is Crown land, the person to whom the approval is given (the <i>approval holder</i>)</p>	<p>In the case of the relevant owner— 3 months after the date on which the approval is given</p> <p>In the case of the approval holder— 6 months after the date on which the approval is given</p>
6	Levy event specified in column 2 of item 6 in the Table in section 21 (completion of utility infrastructure work)	The person responsible for the carrying out of the utility infrastructure work on the levy land specified in column 3 of that item in that Table	6 months after the date on which the utility infrastructure work is completed

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Item</i>	<i>Levy event</i>	<i>Person liable</i>	<i>Period of time within which levy must be paid</i>
7	Levy event specified in column 2 of item 7 in the Table in section 21 (completion of construction of a road or a part of a road or road infrastructure)	The person responsible for the carrying out of the construction on the levy land specified in column 3 of that item in that Table	6 months after the date on which the construction is completed

Notes

- 1 A failure to pay the environment mitigation levy or a part of the environment mitigation levy by the due date for payment will attract interest—see Subdivision 1 of Division 5 of Part 4.
- 2 The time for payment set out in column 4 of the Table does not apply in the case where a staged payment approval has been given or a land transfer agreement has been entered into by the Secretary and the liable person—see instead Divisions 3 and 4.

25 Liability for levy taken not to have arisen in certain cases

The liability to pay the environment mitigation levy that arises in respect of a levy event set out in column 2 of the Table is taken never to have arisen if the event set out in column 3 of the Table opposite that levy event occurs.

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Table

<i>Column 1 Item</i>	<i>Column 2 Levy event</i>	<i>Column 3 Event</i>
1	Levy event specified in item 3 of the Table in section 21 (application under section 17 of the Building Act 1993 for a building permit to carry out building work)	The application is withdrawn or the relevant building surveyor refuses to issue a building permit for any reason other than the reason that the requirements of section 24(4A) of the Building Act 1993 have not been complied with
2	Levy event specified in item 5 of the Table in section 21 (the approval of a variation of a work plan under section 77HB of the Mineral Resources (Sustainable Development) Act 1990 to carry out an extractive industry)	An excluded event certificate is issued on or after that approval

Note

See also sections 6(d), 21 and 124.

Division 3—Staged payment of environment mitigation levy

26 Application

- (1) This section applies to a person who is or may be liable to pay the levy in respect of—
- (a) any of the following levy events—
- (i) the issue of a statement of compliance for a plan of subdivision relating to a parcel of land wholly or partly within the levy area;

Note

See column 2 of item 1 in the Table in section 21.

- (ii) an application for a building permit to carry out building work on a parcel of land wholly or partly within the levy area;

Note

See column 2 of item 3 in the Table in section 21.

- (iii) an approval of a work plan, or a variation of a work plan, to carry out an extractive industry on a parcel of land wholly or partly within the levy area; or

Note

See column 2 of items 4 and 5 in the Table in section 21.

- (b) another levy event that is prescribed.
- (2) The person may apply to the Secretary for approval for the staged payment, by the person, of the levy imposed in respect of the levy event.
 - (3) An application under subsection (2) must—
 - (a) be made in a manner and form approved by the Secretary; and
 - (b) be accompanied by any information required by the Secretary; and
 - (c) be made before the end of the period of time within which the levy must be paid.
 - (4) The Secretary may require information in or accompanying an application under subsection (2) to be verified by statutory declaration.

27 Staged payment approvals

- (1) On receiving an application under section 26, the Secretary may approve or refuse to approve the staged payment of the levy by the person who applied for it.

- (2) If the Secretary approves the staged payment of the levy, the Secretary—
- (a) must make the approval subject to the conditions set out in subsection (3); and
 - (b) may make the approval subject to any other conditions that the Secretary considers appropriate.
- (3) For the purposes of subsection (2)(a), the conditions are—
- (a) the levy must be paid in stages in accordance with this Division and the conditions to which the approval is subject; and
 - (b) in the case of an approval relating to a plan of subdivision, each stage for payment must relate to a specified part of the land that is to be subdivided; and
 - (c) the payment for each stage must be paid by a specified date, a date on which a specified event occurs or a date that relates to the occurrence of a specified event (the *due date*); and
- Example**
- A specified event may be the issue of a statement of compliance for a stage of a staged subdivision of land or the completion of a mandatory notification stage under the **Building Act 1993** of a stage of building work.
- (d) there must be a final date specified for the payment of the whole of the levy; and
 - (e) the whole of the levy must be paid on or before the final date specified under paragraph (d); and

- (f) if there is a failure to make a payment for any stage by the due date for that stage, the whole of the levy for which the person is liable becomes payable on the day after the due date.

Note

See section 34.

28 Notice of staged payment approval

- (1) If the Secretary gives a staged payment approval to a person, the Secretary must give written notice of the approval to that person.
- (2) A notice under subsection (1) must—
 - (a) state that the Secretary has approved the staged payment of the levy by the person; and
 - (b) describe the whole of the land in respect of which the levy is imposed; and
 - (c) describe the levy event in respect of which the levy is imposed; and
 - (d) contain the name and contact details of the person; and
 - (e) set out the conditions to which the staged payment approval is subject; and
 - (f) contain any other information that the Secretary considers appropriate.

29 Amendment of conditions to which staged payment approval is subject

- (1) A person given a staged payment approval may apply to the Secretary for an amendment of any of the conditions to which the approval is subject.
- (2) An application under subsection (1) must—
 - (a) specify which of the conditions the person wants amended; and

- (b) state the person's reasons for wanting the amendments; and
 - (c) be made in a manner and form approved by the Secretary; and
 - (d) be accompanied by any other information required by the Secretary.
- (3) The Secretary may require information in or accompanying an application under subsection (1) to be verified by statutory declaration.
- (4) On receiving an application under subsection (1), the Secretary may amend or refuse to amend the conditions specified in the application.
- (5) If the Secretary decides to amend the conditions specified in a staged payment approval, the Secretary must give the person written notice of the amendment of the conditions.
- (6) A notice under subsection (5) must—
- (a) set out the amended conditions to which the approval is subject; and
 - (b) be in the same form as a notice under section 28.

30 Subsequent owner of land in respect of which staged payment approval given liable to pay levy

- (1) This section applies if—
- (a) a staged payment approval has been given in relation to land; and
 - (b) the ownership of the undischarged part of the land is transferred to a person (the *subsequent owner*) other than the person given the approval (the *former owner*) as a result of the occurrence of a dutiable transaction relating to land.

- (2) On the occurrence of the dutiable transaction—
- (a) the liability to pay the levy is imposed on the subsequent owner from the time of the occurrence of the transaction; and
 - (b) the liability of the former owner to pay the levy is extinguished from the time of the occurrence of the transaction; and
 - (c) the subsequent owner is taken to have been given a staged payment approval for the staged payment of the levy that the subsequent owner is liable to pay under paragraph (a); and
 - (d) the approval taken to have been given under paragraph (c)—
 - (i) is subject to the same conditions as the approval given to the former owner; and
 - (ii) is taken to take effect from the date on which the dutiable transaction relating to land occurs.
- (3) Within 10 days after the date of occurrence of the dutiable transaction, the former owner must give the Secretary written notice of the transaction setting out the contact details for the subsequent owner.
- (4) The Secretary, on the application of the subsequent owner, must give to the subsequent owner a written notice in the same form as the notice in section 28 subject to subsection (2)(c) of that section being read as if the reference to "the levy event" were a reference to "the dutiable transaction relating to land".

(5) For the purposes of this section, a dutiable transaction relating to land occurs at the time at which the transaction would be taken to have occurred under Chapter 2 of the **Duties Act 2000**.

(6) In this section—

undischarged part of the land, in relation to a transfer of land, means the part of the land to which the staged payment approval relates in relation to which the liability to pay the levy has not been discharged before the transfer.

31 Time for paying levy does not apply if approval for staged payment

The time for payment of the levy under section 24 does not apply if the levy is subject to a staged payment approval.

32 Amount of the levy payable is the amount applicable to the financial year in which staged payment occurs

Despite section 22, the amount of the levy required to be paid for a stage in accordance with a staged payment approval is the amount determined by applying the relevant rates under section 22 for the financial year in which the amount is due for that stage under the approval.

33 Staged payment approval payments must be paid to Secretary

An amount of the levy required to be paid for a stage in accordance with a staged payment approval must be paid to the Secretary by the due date for the payment of that amount specified under the approval.

34 Failure to comply with condition of staged payment of approval

(1) If a liable person given a staged payment approval fails to comply with any condition of the approval, the whole amount of the levy for which the person

is liable under this Part becomes payable on the day after the day on which that failure occurs.

- (2) The amount of the levy that is payable under subsection (1) is the amount determined by applying the relevant rates under section 22 for the financial year in which that amount becomes payable.

Notes

- 1 The failure to pay the levy in accordance with this section is a levy default—see the definition of *levy default* in section 3.
- 2 Interest is payable on the occurrence of a levy default—see section 83.

35 Levy subject to staged payment approval may be a charge on land

- (1) This section applies if—
 - (a) the payment of the levy is subject to a staged payment approval; and
 - (b) a liable person given a staged payment approval fails to pay the amount required to be paid under section 34.
- (2) The Secretary, by written notice given to the owner of the land in relation to which a liable person's liability to pay the levy has not been discharged, may declare that the levy is to be a charge on the land on a specified date.
- (3) On the date specified in a notice under subsection (2), the levy is taken to be a charge on the land in respect of which the levy is imposed.
- (4) A levy that is a charge on the land under subsection (3) has priority over all encumbrances to which the land is subject except a charge under section 201SQ or 201SW of the **Planning and Environment Act 1987**.

- (5) If a bona fide purchaser for value of the land subject to the charge obtains a levy liability certificate from the Secretary in respect of the land, the charge does not secure any amount of the levy in respect of the land in excess of the amount set out in the certificate.

Notes

- 1 Section 106B of the **Transfer of Land Act 1958** applies to a charge under this section.
- 2 A person may apply under section 102 for the issue of a levy liability certificate under section 107.

Division 4—Reduction of environment mitigation levy through land transfer agreements

36 Secretary and other public entities may enter into land transfer agreements

- (1) This section applies on or after a levy event occurs.
- (2) The Secretary, in accordance with this Division, may enter into an agreement (a *land transfer agreement*) with—
 - (a) a liable person under which the liable person provides land within a conservation area to another person to meet the whole or a part of the liable person's liability to pay the levy; or
 - (b) a liable person and another person (the *other party*) under which the other party provides land to another person within a conservation area to meet the whole or a part of the liable person's liability to pay the levy.
- (3) A land transfer agreement may be entered into with other parties in addition to the persons referred to in subsection (2).

Note

Other parties may include a Minister or a public authority.

- (4) Before entering into a land transfer agreement, the Secretary must obtain the Minister's approval to do so.
- (5) A land transfer agreement relating to the levy may be entered into in conjunction with a staged payment approval.

37 Matters to be included in a land transfer agreement

- (1) A land transfer agreement must include the following matters—
 - (a) a description of any land to be transferred under the agreement;
 - (b) the date by which the agreement must be performed (an *agreement completion date*);
 - (c) the agreed value of the land to be transferred under the agreement;
 - (d) the agreed amount of the levy to be met under the agreement;
 - (e) any other matters that the Secretary considers appropriate.
- (2) An agreement completion date may be a date after the period of time within which the liable person must pay the levy under section 24 if not for the agreement.
- (3) A land transfer agreement may include provisions setting out the circumstances in which the agreement is terminated.

38 Amendment of land transfer agreement

The Secretary, with the agreement of every other party to a land transfer agreement, may amend the agreement to vary the terms of, or the parties to, the agreement.

39 Terminating a land transfer agreement

- (1) The Secretary, with the agreement of every other party to a land transfer agreement, may terminate the agreement.
- (2) The power to terminate a land transfer agreement under subsection (1) is in addition to any other right that the Secretary has to terminate the agreement in accordance with the agreement or at law.

40 Entering into a land transfer agreement does not discharge liability to pay levy

The entering into a land transfer agreement by a person to meet the whole or part of a liability to pay the levy does not discharge the person from that liability.

Note

It is not until the person performs their obligations in accordance with the land transfer agreement that the amount agreed to be met under the agreement can be taken to be a payment towards the levy owed—see section 41.

41 Performance of land transfer agreement taken to be payment of levy

A person who has entered into a land transfer agreement to meet the whole or part of a liability to pay the levy is taken to have paid to the Secretary the amount of that levy agreed to be met under the agreement when that agreement is wholly performed.

Note

See also section 37(1)(b) and (2).

42 Consequences when land transfer agreement is terminated before wholly performed

If a land transfer agreement is terminated before it is wholly performed, the liable person who was a party to the terminated land transfer agreement must pay the whole of the levy—

- (a) if the agreement is terminated before the end of the period of time within which the liable person would have been required to pay the levy under section 24, if not for the agreement—in accordance with that section; and
- (b) if the agreement is terminated after the period of time within which the liable person would have been required to pay the levy under section 24, if not for the agreement—by the end of the day after the day on which the agreement is terminated.

Notes

- 1 The failure to pay the levy in accordance with section 24 or by the end of the day after the day on which the agreement is terminated, as the case requires, is a levy default—see the definition of *levy default* in section 3.
- 2 Interest is payable on the occurrence of a levy default—see section 83.

Division 5—Notification of certain levy events on Crown land

43 Secretary to be notified of utility infrastructure or road construction work on Crown land within levy area

- (1) This section applies if any of the following work is completed on Crown land within the levy area—
 - (a) utility infrastructure work;

- (b) the construction of—
 - (i) a road or a part of a road; or
 - (ii) road infrastructure.
- (2) The person responsible for the carrying out of the work must give the Secretary written notice of the completion of the work within 14 days after that completion.
- (3) A notice under subsection (2) must include the following information—
 - (a) a description of the location of the Crown land;
Example
Crown allotment details.
 - (b) the part of the Crown land mentioned in paragraph (a) directly impacted by the work and any other work carried out in connection with that work;
 - (c) a description of the work;
 - (d) the dates on which the work was commenced and completed;
 - (e) the name and contact details of the person responsible for the carrying out of the work;
 - (f) the name and contact details of the entity that actually carried out the work;
 - (g) the name and contact details of the Crown land manager of the land if that manager is not the person responsible for the carrying out of the work;
 - (h) the name and contact details of any occupier of that land if that occupier is not the person responsible for the carrying out of the work.

- (4) This section does not apply to—
- (a) minor works for infrastructure prescribed for the purposes of section 6(e)(ii) or works for infrastructure prescribed for the purposes of section 6(f)(ii); or
 - (b) the construction of a road or a part of a road or road infrastructure that is prescribed.

Note

See also sections 111 and 112.

44 Secretary to be notified of building permit application for building work on Crown land within levy area

- (1) The person responsible for the carrying out of building work on Crown land within the levy area must, within 14 days after an application is made for a building permit for that work, give the Secretary—
- (a) written notice of the application; and
 - (b) a copy of the application; and
 - (c) the following information if the information is not contained in the application—
 - (i) a description of the location of the land on which the work is proposed to be carried out, including details of any Crown allotment if the work will be carried out on a Crown allotment;
 - (ii) the area of land on which the work is proposed to be carried out;
 - (iii) a description of the proposed building work and proposed use or purpose of the building to be constructed;
 - (iv) the date on which the application was made;

- (v) the applicant's name and contact details;
- (vi) the name and contact details of the person responsible for the carrying out of the work;
- (vii) the name and contact details of the Crown land manager of the land if that manager is not the person responsible for the carrying out of the work;
- (viii) the name and contact details of any occupier of that land if that occupier is not the person responsible for the carrying out of the work;
- (ix) the name and contact details of the relevant building surveyor to whom the application was made.

(2) This section does not apply to prescribed building work.

Note

See also sections 111 and 112.

Division 6—Levy recordings for land that is not Crown land

45 Secretary must notify the Registrar of land that is not Crown land that may be subject to levy

The Secretary must lodge with the Registrar of Titles an application to record a notification on a folio of the Register relating to a parcel of land in relation to which the environment mitigation levy may be payable.

Note

See also section 106C of the **Transfer of Land Act 1958**.

46 Registrar must make a levy recording in relation to land that is not Crown land that may be subject to levy

The Registrar of Titles, on receiving an application under section 45 relating to a parcel of land, must record a notification on each folio of the Register relating to that parcel of land indicating that the environment mitigation levy may be payable in relation to that parcel of land.

47 Applications to remove levy recordings

The Secretary must lodge with the Registrar of Titles an application to remove a levy recording if—

- (a) the application under section 45 to record the notification was made in error; or
- (b) a parcel of land to which the recording relates is not a parcel of land in relation to which the environment mitigation levy may be imposed under this Part; or
- (c) if the Secretary—
 - (i) issues a certificate of partial release or a certificate of release relating to the land; and
 - (ii) is satisfied that the levy that may be imposed under this Part in relation to the land has been fully discharged.

Note

See also section 106C of the **Transfer of Land Act 1958**.

48 Registrar to remove a levy recording relating to a parcel of land not subject to levy

The Registrar of Titles must amend the Register to remove any levy recording on a folio of the Register made under section 46 relating to a

parcel of land on receipt of an application under section 47 relating to that parcel of land.

49 No entitlement to compensation in connection with Registrar's duties

A person is not entitled to receive from the Registrar of Titles any damages or compensation for anything done by the Registrar of Titles in compliance with section 46 or 48 or anything arising from that compliance.

Division 7—Miscellaneous

50 Environment mitigation levy is a debt payable to and recoverable by Secretary

The environment mitigation levy that is payable to the Secretary under this Part—

- (a) is a debt due to the State; and
- (b) may be recovered by the Secretary, for and on behalf of the State, in a court of competent jurisdiction.

51 Joint liability to pay environment mitigation levy

- (1) If 2 or more persons are jointly liable to pay the environment mitigation levy, the Secretary may recover the whole of the levy from—
 - (a) all of those persons; or
 - (b) any of those persons; or
 - (c) any one of those persons.
- (2) A person who is jointly and severally liable to pay the environment mitigation levy or an amount of the levy and who pays that levy or amount to the Secretary may recover a contribution from any other person who is liable to pay the whole or part of that levy.

Part 4—Assessment of levy liability and collection of environment mitigation levy

Division 1—Assessment

52 Assessment of levy liability

- (1) The Secretary may make an assessment of a levy liability of a person if—
 - (a) the Secretary is given—
 - (i) a notice under section 43(2) or 44(1)(a);
or
 - (ii) a notice under section 18D of the **Building Act 1993**; or
 - (iii) a notice under section 77G(5) or 77HB(5) of the **Mineral Resources (Sustainable Development) Act 1990**;
or
 - (iv) a notice under section 7A(2) or 21(10) of the **Subdivision Act 1988**; or
 - (b) the Secretary considers that a particular levy liability is or may be payable by the person.

Note

A levy liability is imposed under Division 1 of Part 3 and may be paid in accordance with Division 2 of Part 3 or in accordance with a staged payment approval.

- (2) In addition, if the Secretary gives or has given a staged payment approval to a person, the Secretary may make an assessment of the levy liability of the person in respect of each stage for payment of an amount of the levy.
- (3) An assessment of a levy liability may consist of, or include, a determination that there is not a particular levy liability.

53 Reassessment of levy liability

- (1) The Secretary must make one or more reassessments of the levy liability of a liable person if—
 - (a) it is necessary for the Secretary to give effect to a decision on an objection or review in relation to an assessment or reassessment made in relation to the liable person; or

Note
See also section 81(1).

 - (b) the Secretary gives a staged payment approval to the liable person; or
 - (c) the liable person fails to comply with a condition of a staged payment approval; or
 - (d) the Secretary enters into a land transfer agreement with the liable person; or
 - (e) a land transfer agreement to which the liable person is a party is terminated.
- (2) In addition, the Secretary may make one or more reassessments of the levy liability of a liable person—
 - (a) subject to section 54, on the Secretary's own initiative if it appears to the Secretary that a previous assessment is incorrect; or
 - (b) if at the time the original assessment or a reassessment was made, all the facts and circumstances affecting the levy liability of the liable person in respect of whom the original assessment or reassessment was made were not fully and truly disclosed to the Secretary; or
 - (c) subject to section 55, on the application of the liable person under section 59.

- (3) A reassessment supersedes the original assessment and any earlier reassessment.

54 Reassessments cannot be made more than 5 years after the date of original assessments of levy liability

- (1) A reassessment under section 53(2)(a) cannot be made more than 5 years after the date of the original assessment of the levy liability.
- (2) The time limited under subsection (1) applies even if the original assessment is withdrawn.

55 Secretary not required to consider vexatious or non-conforming applications for reassessment

The Secretary may refuse to consider an application of a liable person under section 59 if the Secretary is of the opinion that—

- (a) the application is, frivolous, vexatious, misconceived or lacking in substance; or
- (b) the grounds for reassessment stated in the application—
- (i) contain information that is wholly irrelevant; or
 - (ii) do not contain information that is materially different to information contained in grounds stated in the liable person's most recent application under that section.

56 Environment mitigation information system must be used for assessments and reassessments

The Secretary must use the environment mitigation information system in making an assessment or reassessment.

57 Information on which assessment or reassessment is made

- (1) The Secretary may make an assessment or reassessment on the information that the Secretary has from any source at the time the assessment or reassessment is made.
- (2) If the Secretary has insufficient information to make an exact assessment of a levy liability, the Secretary may make an assessment or reassessment by way of estimate.

58 Contents of reassessment determinations

- (1) Without limiting section 53, the Secretary, in making a reassessment of a levy liability, may determine any one or more of the following, as the case requires—
 - (a) that the liable person has liabilities that are additional to or greater than those under the original assessment or a reassessment;
 - (b) that the amount of the levy payable by the liable person is different to the amount determined in the original assessment or a reassessment;
 - (c) that an amount of interest is payable by the liable person;
 - (d) that a different amount of interest is payable by the liable person.
- (2) A reassessment may be made under section 53 in the circumstance described in subsection (1)(b) even if the liable person has already paid an amount originally assessed or reassessed as being payable by them.

59 Applications for reassessment

- (1) A liable person may apply to the Secretary for a reassessment of the levy liability of the person.
- (2) An application under subsection (1) must—
 - (a) be in writing; and
 - (b) state the grounds for the reassessment.
- (3) An application under subsection (1) cannot be made—
 - (a) more than 5 years after the date of the original assessment of the levy liability; or
 - (b) on the ground that the land particulars in relation to the levy land that the Secretary used for the purposes of making an assessment were incorrect or misdescribed.

60 Levy assessment notice

- (1) This section applies if the Secretary makes—
 - (a) an assessment that a person has a levy liability; or
 - (b) a reassessment of a levy liability of a person.
- (2) The Secretary must prepare and serve a notice on the person that contains the prescribed information.

Note

See also section 63.

61 Person served an assessment notice must pay the levy amount stated in the notice by the stated date

A person served a levy assessment notice that requires them to pay the levy or an amount of the levy stated in the notice by a date stated in the notice must pay the stated amount on or before the stated date.

62 Withdrawal of assessment or reassessment

- (1) Subject to this section, the Secretary may withdraw an assessment or reassessment within 5 years after the original assessment is made, whether or not the amount of the levy stated in the levy assessment notice has been paid.
- (2) The Secretary must withdraw an assessment or reassessment if—
 - (a) section 25 applies; or
 - (b) the Secretary, in making a reassessment, determines that the person in respect of whom there has been an assessment or reassessment is not a liable person; or
 - (c) it is necessary for the Secretary to give effect to a decision on an objection or review.
- (3) A withdrawal of an assessment or reassessment must be—
 - (a) in writing; and
 - (b) served on the person who was served the withdrawn assessment or reassessment, as the case requires.

Note

See also section 63.

63 Notice of certain joint assessments, reassessments and withdrawals

- (1) If the Secretary makes or withdraws a joint assessment or reassessment, or an assessment or reassessment of persons who are jointly and severally liable for the payment of the levy, the Secretary may serve a levy assessment notice or notice of withdrawal under section 62—
 - (a) on each of the persons assessed or reassessed, or jointly and severally liable; or

- (b) if all of those persons have given notice to the Secretary in a form approved by the Secretary nominating one of them as the person on whom the notice may be served—on the person nominated; or
 - (c) subject to subsection (2), on one of those persons.
- (2) Service of a levy assessment notice or notice of withdrawal under subsection (1)(c) is not valid unless the Secretary causes notice of the service to be served on the other person, or each of the other persons, who were jointly assessed or jointly and severally liable.

Division 2—Objections

64 Definition

In this Division—
assessment includes reassessment.

65 Objection

- (1) A liable person may lodge an objection with the Secretary if the liable person is dissatisfied with an assessment.
- (2) An objection must—
 - (a) be in writing; and
 - (b) state fully and in detail, the grounds for the objection.

66 Grounds for objection

A liable person cannot object to an assessment on any ground other than the following grounds—

- (a) they are not liable to pay the levy because they are not a liable person under this Act;

- (b) the event specified in the levy assessment notice as a levy event is not a levy event;

Example

The event is an excluded event.

- (c) the liability to pay the levy has been—
- (i) discharged; or
 - (ii) extinguished; or

Note

See sections 30 and 132.

- (iii) taken to have never arisen under section 25;
- (d) the levy has already been imposed on the whole or a part of the levy land specified in the levy assessment notice;
- (e) the amount of the levy stated in the levy assessment notice has been incorrectly calculated;

Note

See also sections 52(1) and (2) and 60(2).

- (f) the folio of the Register relating to the parcel of land in relation to which the levy liability is imposed was incorrectly recorded with a notification under section 46 indicating that the land may be land in relation to which the levy may be payable;
- (g) the land particulars specified in the levy assessment notice in relation to the levy land, or land in relation to which the levy may be payable under a staged payment approval, were incorrect or misdescribed;

- (h) the date of the levy event was incorrectly determined;
- (i) the date for payment of the levy or for a staged payment under a staged payment approval was incorrectly determined;
- (j) interest payable under this Part has been applied or calculated incorrectly.

67 Effect on objection if there is a reassessment before objection is determined

If an objection to an assessment is lodged but a reassessment is made before the objection is determined, the objection may be continued against the reassessment to the extent that it is liable to the same objection or to an objection that is the same, or similar, in substance.

68 Onus of proof on objection

On an objection, the objector has the onus of proving their case.

69 Time for lodging objection

- (1) An objection must be lodged with the Secretary within 90 days after the date of service of the levy assessment notice on the objector.
- (2) An objection is taken to have been lodged with the Secretary when it is received by the Secretary.

70 Secretary may request additional information for the purpose of determining objection

- (1) The Secretary, by written notice given to the objector, may request additional information in relation to the objection from the objector that the Secretary reasonably requires to consider the objection.

- (2) A notice under subsection (1) must—
 - (a) specify—
 - (i) the information to be given to the Secretary; and
 - (ii) the date by which that information must be given; and
 - (b) include a statement to the effect that if the information is not given to the Secretary by the specified date, the objection will lapse at the end of that day.
- (3) The date specified in a notice under subsection (1) must be at least 30 days after the day the notice is given to the objector.

71 Objector may apply for extension of time to give more information

- (1) An objector may apply to the Secretary for an extension of time to give the information required under an additional information notice.
- (2) An application for an extension of time must be made before the date specified in the additional information notice as the date by which the information must be given (the *lapse date*).
- (3) The Secretary may decide to extend the time to give the required information or refuse to extend that time.
- (4) The Secretary must give the objector written notice of the Secretary's decision under subsection (3).
- (5) If the Secretary decides to extend the time, the notice must specify a new date by which the required information must be given.

- (6) If the Secretary decides to refuse to extend the time and, at the date of the decision, the lapse date has passed or will occur within the next 14 days, the notice must set out a new lapse date that is 14 days from the date of the decision.

72 Objection lapses if there is non-compliance with an additional information notice

An objection lapses—

- (a) if the objector does not comply with an additional information notice before the end of the day specified in that notice; or
- (b) if the Secretary decides to extend or refuses to extend time under section 71(3) and the objector does not give the information by the date specified in the notice under section 71(4).

73 Suspension of determination of objection on giving of additional information notice

- (1) If the Secretary gives an objector an additional information notice the Secretary must suspend the determination of an objection on the day that notice is given to the objector.
- (2) The Secretary must not restart the determination of the objection until the objector, or another person, gives the information specified in the additional information notice by, as the case requires—
- (a) the date specified in the additional information notice; or
- (b) the date specified in a notice under section 71(4).
- (3) The information is taken to have been given to the Secretary when it is received by the Secretary.

74 Suspension of determination of objection at request of objector

The Secretary, at the request of the objector, may suspend the determination of an objection pending the outcome of any legal proceeding relating to a levy liability of the same kind as the levy liability that is the subject of the objection.

75 Determination of objection

- (1) The Secretary must consider an objection and either—
 - (a) allow the objection in whole or in part; or
 - (b) disallow the objection.
- (2) The Secretary may determine an objection that is subject to a right of review at any time before the hearing of the review proceeding commences.

76 Secretary must inform VCAT of certain determinations of objections

The Secretary must inform the principal registrar of VCAT if the Secretary determines an objection after an application is made for the review of the Secretary's failure to determine the objection.

77 Notice of determination

- (1) The Secretary must give written notice to the objector of the determination of the objection.
- (2) The Secretary must, in the notice, give the reasons for disallowing an objection or for allowing an objection in part only.

78 Payment of interest following determination of objection

Subdivision 1 of Division 5 applies to an amount of the levy required to be paid following the determination of an objection.

Division 3—Review of determinations of objections

79 Right of review by VCAT

- (1) This section applies if—
 - (a) a liable person is dissatisfied with the Secretary's determination of the liable person's objection; or
 - (b) 90 days (not including any period of suspension under Division 2) have passed since a liable person's objection was received by the Secretary and the Secretary has not determined the objection.
- (2) The liable person may apply to VCAT for review of—
 - (a) the Secretary's determination of the liable person's objection; or
 - (b) the Secretary's failure to determine the liable person's objection within 90 days (not including any period of suspension under Division 2) after the Secretary received the objection.
- (3) An application under this section—
 - (a) in the circumstances referred to in subsection (2)(a), must be made within 60 days after the date the liable person is given notice of the Secretary's determination of the objection; or
 - (b) in the circumstances referred to in subsection (2)(b), may be made at any time after the 90 day period (not including any period of suspension under Division 2).

80 Onus on review

On a review under this Division, the liable person has the onus of proving their case.

81 Giving effect to decision on review

- (1) The Secretary must take any action that is necessary to give effect to a decision on review within 60 days after the decision becomes final.
- (2) If no appeal to a court from a decision of VCAT on a review is commenced within 30 days after the day on which the decision is made, the decision is to be taken, for the purposes of this section, to have become final at the end of that period.

Division 4—Refunds

82 Secretary must refund levy overpayments

- (1) This section applies if a liable person—
 - (a) has paid an amount to the Secretary that is greater than the amount of the levy stated in a levy assessment notice; or

Note

The levy assessment notice may be in respect of an original assessment or a reassessment.

- (b) has paid to the Secretary the amount stated in the levy assessment notice and that notice is withdrawn by the Secretary after that payment.
- (2) The Secretary must refund to the liable person the amount that is the difference between the amount the liable person paid to the Secretary and the amount the person is required to pay under this Act.

Division 5—Interest

Subdivision 1—Interest on levy amounts

83 Interest in respect of levy defaults

- (1) If a levy default occurs, the liable person is liable to pay interest, at the applicable rate, on the amount of the levy that is unpaid calculated on a daily basis as follows—
 - (a) if there has been a failure to comply with a condition of a staged payment approval— from the start of the day after the day on which that failure occurred until the day the amount of the levy is paid;
 - (b) if a land transfer agreement is terminated before it is wholly performed and that termination is on a day after the day by which the liable person would have been required to pay the levy under section 24 if not for the agreement— from the start of the day after the day the amount of the levy was payable under section 42 until the day the levy is paid;
 - (c) in all other cases— from the start of the day after the last day of the period of time for payment under section 24 until the day the amount of the levy is paid.
- (2) For the purposes of subsection (1), the *applicable rate* is the rate fixed under section 2 of the **Penalty Interest Rates Act 1983** that applied on the first day of July immediately before the due date for the payment.
- (3) Interest is not payable in respect of any failure to pay interest under this Division.

84 Minimum amount of interest

There is no liability to pay an amount of interest if the amount is less than \$20.

85 Interest rate to prevail over interest otherwise payable on a judgment debt

If judgment is given by, or entered in, a court for an amount of an unpaid levy (or an amount that includes an amount of an unpaid levy), the interest rate determined in accordance with this Subdivision continues to apply, to the exclusion of any other interest rate, until the levy is paid.

86 Remission of interest

The Secretary, in any circumstances that the Secretary considers appropriate, may remit interest payable by a liable person under this Subdivision by any amount.

Subdivision 2—Interest on amounts payable by Secretary

87 Interest on refunds and on successful objection or review

- (1) This section applies if the Secretary refunds an amount under section 82(2) because the Secretary has given effect to a decision on an objection or review in relation to an assessment or reassessment made in relation to the liable person.
- (2) The Secretary must pay interest on the refunded amount in relation to the period—
 - (a) starting on the date the liable person paid the refunded amount; and
 - (b) ending on the date of the refund.
- (3) The Secretary must pay interest under this section on a daily basis calculated at the Bank Accepted Bills rate.

- (4) For the purposes of subsection (3)—
- (a) the Bank Accepted Bills rate in respect of any day is the average of the daily yields for 90-day Bank Accepted Bills published by the Reserve Bank of Australia for the month of May in the financial year preceding the financial year in which the day occurs; and
 - (b) the Bank Accepted Bills rate must be rounded to the second decimal place (rounding 0.005 upwards).

Division 6—Miscellaneous

88 Recovery of levy pending a determination of objection or determination of application for review

- (1) The fact that an objection regime decision is pending does not in the meantime affect the assessment or reassessment, or the decision to which the objection regime decision relates, and the following things apply—
- (a) the levy to which the objection regime decision relates may be recovered as if no objection regime decision were pending;
 - (b) Division 5 applies to any levy default of that levy as if no objection regime decision were pending.
- (2) In this section—
- objection regime decision*** means—
- (a) a determination of an objection under Division 2; or
 - (b) a determination of an application for review under Division 3.

Part 5—The Melbourne Strategic Assessment Fund

89 Establishment of Melbourne Strategic Assessment Fund

- (1) There must be established in the Public Account as part of the Trust Fund an account to be known as the Melbourne Strategic Assessment Fund.
- (2) There must be paid into the Fund—
 - (a) all money received by the Secretary as payment of the levy; and
 - (b) interest paid on outstanding amounts of the levy; and
 - (c) interest received from the investment of money in the Fund; and
 - (d) all money directed or authorised to be paid into the Fund by or under any other Act; and
 - (e) money paid by persons to the State in compliance with the 2010 Commonwealth approval.
- (3) In addition, any money standing to the credit of the Fund may be invested in any securities that are approved by the Treasurer and any interest derived from any such investment must be paid into the Fund.

90 Application of Melbourne Strategic Assessment Fund

- (1) There must be paid out of the Melbourne Strategic Assessment Fund amounts authorised by the Secretary, with the approval of the Minister, to be used for the following purposes—
 - (a) the acquisition of land, the management of land, and the carrying out of other activities on land, for the conservation of—

- (i) Grassy Eucalypt Woodland of the Victorian Volcanic Plain; and
 - (ii) Natural Temperate Grassland of the Victorian Volcanic Plain;
 - (b) the acquisition of land, the management of land, and the carrying out of other activities in conservation areas, for the conservation of native vegetation or matters of national environmental significance;
 - (c) the carrying out of prescribed activities for the conservation of—
 - (i) native vegetation; or
 - (ii) prescribed matters of national environmental significance;
 - (d) costs and expenses that are associated with the purposes mentioned in paragraphs (a) to (c).
- (2) There must also be paid out of the Fund—
- (a) amounts authorised by the Secretary, with the approval of the Minister, for the payment of costs and expenses incurred—
 - (i) in administering this Act; and
 - (ii) in monitoring and reporting on the financial operations and financial position of the Fund; and
 - (b) amounts authorised by the Secretary for the payment of refunds and interest on refunds under Part 4 or the remission of interest under that Part.

(3) In this section—

Grassy Eucalypt Woodland of the Victorian Volcanic Plain means the ecological community included in the list of threatened ecological communities under section 181 of the EPBC Act described in the legislative instrument made under section 184(1)(a) of that Act, as then in force, and dated 18 June 2009;

Natural Temperate Grassland of the Victorian Volcanic Plain means the ecological community included in the list of threatened ecological communities under section 181 of the EPBC Act described in the legislative instrument made under section 184(1)(a) of that Act, as then in force, and dated 29 May 2008.

91 Minister to report financial position of Melbourne Strategic Assessment Fund

The Minister must include in the annual report of operations of the Department under section 45 of the **Financial Management Act 1994**—

- (a) details of the income and expenditure of the Melbourne Strategic Assessment Fund; and
- (b) the balance of the Fund.

Part 6—Review of environment mitigation levy

92 Definitions

In this Part—

full cost recovery means that the costs incurred in adopting the measures and carrying out the activities identified under section 94(3)(d) would be met by the total available revenue;

levy indexation mechanism means Schedule 2;

review means a review of component levy amounts and the levy indexation mechanism;

total available revenue, in relation to a report under section 94, means—

- (a) the total amount of money standing to the credit of the Fund as at the date of the report available to be paid out to achieve the conservation outcomes; and
- (b) an estimate as at the date of the report of future payments into the Fund that will be available to be paid out to achieve the conservation outcomes.

93 Conservation outcomes

The Minister, for the purposes of this Part, must, by notice published in the Government Gazette, specify conservation outcomes in relation to the matters of national environmental significance that are prescribed.

94 Review and report on review

- (1) The Minister must cause a review to be carried out and a report to be prepared on that review.

- (2) The object of a review is to determine whether the component levy amounts are at an appropriate level to fund the most effective and efficient measures and activities to achieve the conservation outcomes.
- (3) A report on a review must—
- (a) specify the measures adopted and activities carried out to achieve the conservation outcomes (and which have been paid for through payments out of the Fund) in the review period; and
 - (b) analyse the effectiveness of the measures and activities mentioned in paragraph (a) in achieving the conservation outcomes; and
 - (c) contain a cost-benefit analysis of different measures that could be adopted, and different activities that could be carried out, to achieve the conservation outcomes; and
 - (d) as a result of the cost-benefit analysis mentioned in paragraph (c), identify the most effective and efficient measures that should be adopted, and activities that should be carried out, to achieve the conservation outcomes (the *preferred measures and activities*); and
 - (e) contain an analysis of whether the total available revenue would be sufficient to cover the costs that would be incurred if the preferred measures and activities were to be adopted and carried out; and
 - (f) if the review concludes that the total available revenue would not be sufficient to cover the costs that would be incurred if the preferred measures and activities were to be adopted and carried out, set out the reasons for the shortfall and any

- recommendations as to new component levy amounts; and
- (g) if the review concludes that the total available revenue would exceed the costs that would be incurred if the preferred measures and activities were to be adopted and carried out, recommend a reduction of the component levy amounts and the amount of each reduction; and
 - (h) contain an analysis of the effectiveness of the levy indexation mechanism to ensure full cost recovery, including any recommendations as to any amendments to the levy indexation mechanism to ensure full cost recovery by the end of the year 2060.
- (4) A cost-benefit analysis referred to in subsection (3)(c) must include—
- (a) an assessment of the following things in relation to the different measures that could be adopted, and activities that could be carried out, to achieve the conservation outcomes—
 - (i) the economic, environmental and social impact of the different measures and activities;
 - (ii) the likely administration and compliance costs associated with the adoption of each of the measures and carrying out of each of the measures; and
 - (b) the reasons why the preferred measures and activities were preferred over the other measures and activities that were assessed.

(5) In this section—

review period means—

- (a) for the first review commenced under this Part, the period—
 - (i) beginning on the day on which Part 3 comes into operation; and
 - (ii) ending on the date stated in the notice under section 96 for that review as the end date for the review; and
- (b) for every review after the first review, the period which is the subject of the review.

95 Commencement of review

The Minister must cause a review to be commenced—

- (a) before the third anniversary of the commencement of Part 3; and
- (b) after that, by the end of the third year in each consecutive 5 year period, where the first such period commences immediately after the fifth anniversary of the commencement of Part 3.

96 Notice of review

- (1) The Minister must cause notice of a review to be published on the internet.
- (2) A notice under subsection (1) must state—
 - (a) the process by which the review will be carried out; and
 - (b) the timeline for the review, including the end date for the review.

97 Preparation of draft report on a review

- (1) The Minister must—
 - (a) prepare a draft report on a review; and
 - (b) cause the draft report, and notice of its preparation, to be published on the internet.
- (2) A notice under subsection (1)(b) must invite submissions and comments from the public about the draft report by a specified date (the *submission closing date*).
- (3) The submission closing date must be at least 90 days after the date on which the notice is published on the internet.

98 Minister must have regard to public comments

In preparing a report on a review, the Minister must have regard to submissions and comments received by the submission closing date.

99 Publication of report at end of review

- (1) The Minister must cause a report on a review to be published on the internet as soon as practicable after it is prepared.
- (2) If a report is not published within 18 months after the publication of a notice under section 96, the Minister must, on publication of the report, publish, with the report, reasons for the delay in the publication of the report.

100 Report to be publicly available for at least 10 years after publication

The Minister must ensure that every report published under section 99 is made publicly available on the internet for at least 10 years after it is first published on the internet.

Part 7—General

Division 1—Register of Crown land with no levy liability

101 Register of Crown land with no levy liability

- (1) The Secretary must keep a register of Crown land within the levy area in relation to which there is no liability under this Act to pay the levy.
- (2) The Secretary must include in the register—
 - (a) the location or description of the part of Crown land in relation to which there is no liability under this Act to pay the levy; and
 - (b) the basis for the inclusion of that part of Crown land in the register; and
 - (c) any other prescribed matter.
- (3) The Secretary must make the register available for inspection, free of charge, by any person during office hours at the principal office of the Department.

Division 2—Levy-related certificates

102 Application for a certificate

- (1) A person may apply to the Secretary for any of the following certificates—
 - (a) a certificate of release;
 - (b) a certificate of staged payment approval;
 - (c) a certificate of partial release;
 - (d) a certificate of no liability;
 - (e) a levy liability certificate.

- (2) An application must be—
 - (a) in the form approved by the Secretary; and
 - (b) accompanied by the information and documents that the Secretary specifies.
- (3) The Secretary may require the person to verify, by a statutory declaration signed by the person, any information—
 - (a) in the form or accompanying the application; or
 - (b) in a document accompanying the application.

103 Certificate of release

- (1) The Secretary must issue to a person a certificate (a *certificate of release*) if the person has applied for that kind of certificate in accordance with section 102 and—
 - (a) the Secretary is satisfied that the person has paid the whole amount of the levy and any applicable interest imposed under this Act; or
 - (b) if the person has been given a staged payment approval for the staged payment of the levy and—
 - (i) the Secretary is satisfied that the person has paid the whole amount of the levy and any applicable interest imposed under this Act in accordance with that approval; or
 - (ii) the liability of the person to pay the levy has been extinguished under section 30 or 132.

Note

See also section 131(2)(a).

- (2) A certificate of release must—
- (a) state the date of issue of the certificate; and
 - (b) describe the land in relation to which the levy was imposed; and
 - (c) describe the levy event in respect of which the levy was imposed; and
 - (d) state that the levy liability in relation to that land has been discharged or extinguished, as the case requires; and
 - (e) state the date on which the levy liability has been discharged or extinguished, as the case requires; and
 - (f) contain the person's name and contact details; and
 - (g) contain any other information that the Secretary considers appropriate.

104 Certificate of staged payment approval

- (1) The Secretary must issue a certificate (a *certificate of staged payment approval*) to a person who is or may be liable to pay the levy if the person has applied for that kind of certificate in accordance with section 102 and—
- (a) the Secretary is satisfied that—
 - (i) a levy event specified in item 3, 4 or 5 in the Table in section 21, or a levy event prescribed for the purposes of section 26(1)(a), has occurred; and
 - (ii) the person has been given a staged payment approval for the staged payment of the whole of the levy imposed under that section; or

- (b) the Secretary is satisfied that—
- (i) a levy event specified in item 1 in the Table in section 21 has occurred; and
 - (ii) the person has been given a staged payment approval for the staged payment of the whole of the levy imposed under that section; and
 - (iii) at the time of the application, the person has complied with the conditions of the approval relating to a plan of subdivision.

Note

Item 1 in the Table in section 21 relates to the issue of statements of compliance for plans of subdivision.

- (2) A certificate of staged payment approval must—
- (a) state the date of issue of the certificate; and
 - (b) describe the land in relation to which the levy was imposed; and
 - (c) describe the levy event in respect of which the levy was imposed; and
 - (d) state that the person has been given a staged payment approval for staged payment of the whole of the levy imposed in respect of the land; and
 - (e) if the Secretary is satisfied of the matters mentioned in subsection (1)(b), specify the plan of subdivision to which the conditions which have been complied with relate; and
 - (f) contain the person's name and contact details; and
 - (g) contain any other information that the Secretary considers appropriate.

105 Certificate of partial release

- (1) The Secretary must issue to a person a certificate (a *certificate of partial release*) if—
 - (a) the person has applied for that kind of certificate in accordance with section 102; and
 - (b) the Secretary is satisfied that the person—
 - (i) has been given a staged payment approval relating to a plan of subdivision for payment of the levy in stages; and
 - (ii) has paid the amount for any one of the stages in accordance with that approval.
- (2) A certificate of partial release must—
 - (a) state the date of issue of the certificate; and
 - (b) describe the land in relation to which the levy was imposed; and
 - (c) describe the levy event in respect of which the levy was imposed; and
 - (d) state that the person's liability to pay the levy has been partially discharged; and
 - (e) describe the land that relates to the stage in respect of which—
 - (i) payment has been made; and
 - (ii) liability has been partially discharged; and
 - (f) state the date on which the person's liability to pay the levy has been partially discharged; and

- (g) contain the person's name and contact details; and
- (h) contain any other information that the Secretary considers appropriate.

106 Certificate of no liability

- (1) The Secretary must issue to a person a certificate stating that there is, or there will be, no liability to pay the levy in respect of an event that has occurred or is to occur in relation to land wholly or partly within the levy area (a *certificate of no liability*) if—
 - (a) the person has applied for that kind of certificate in accordance with section 102; and
 - (b) the Secretary is satisfied that the event—
 - (i) is an excluded event; or
 - (ii) is not a levy event.
- (2) A certificate of no liability must—
 - (a) state the date of issue of the certificate; and
 - (b) describe—
 - (i) the land in relation to which the event occurred; and
 - (ii) the event; and
 - (c) state that the event is an excluded event or is not a levy event for the purposes of this Act, as the case requires; and
 - (d) contain the person's name and contact details; and
 - (e) contain any other information that the Secretary considers appropriate.

107 Levy liability certificate

- (1) The Secretary must issue a certificate in respect of land wholly or partly within the levy area (a *levy liability certificate*) to a person who has applied for that kind of certificate in accordance with section 102.
- (2) A levy liability certificate must—
 - (a) describe the land; and
 - (b) describe those parts of the land covered by any habitat area and state the amount of the area of coverage; and
 - (c) if there are any Scattered tree locations in the land, state the number of those locations; and
 - (d) specify whether the levy has been imposed in relation to any part of land; and
 - (e) specify—
 - (i) in the case where a staged payment approval has been given to the person—
 - (A) the amount of the levy that would be payable if a condition of the approval were not complied with in the financial year in which the certificate is issued; and
 - (B) the basis for the determination of that amount; and
 - (ii) in the case where the levy has not been imposed in respect of the whole of the land, the amount of the levy that would be payable in respect of a levy event if the event occurred in relation to land in

Note

See also section 34.

the financial year of the issue of the certificate; and

- (iii) in any other case, the amount of the levy that is due and unpaid in relation to the land and the relevant component levy amounts; and
 - (f) state whether a land transfer agreement has been entered into by the person liable to pay that levy to meet the whole or part of that liability; and
 - (g) state the date of issue of the certificate; and
 - (h) contain the person's name and contact details; and
 - (i) contain any other information that the Secretary considers appropriate.
- (3) The information contained in a levy liability certificate relates only to the following matters as at the date of the issue of the certificate—
- (a) matters affecting the land;
 - (b) matters that are relevant to the amount of the levy that may be imposed in respect of a levy event.

108 Certificate not to be taken as an assessment or reassessment

A certificate issued by the Secretary under this Division is not to be taken to be an assessment or reassessment for the purposes of Part 4.

Division 3—Authorised officers

109 Authorised officers

- (1) The Secretary may appoint as an authorised officer a person whom the Secretary considers is suitably qualified or trained to exercise the powers of an authorised officer under this Act.

- (2) An appointment under this section is for a term, and subject to the conditions, specified in the instrument of appointment.

110 Identity cards for authorised officers

An authorised officer must be issued with an identity card in a form approved by the Secretary—

- (a) containing the person's name and photograph; and
- (b) stating that the person is an authorised officer for the purposes of this Act.

Division 4—Information gathering powers relating to Crown land levy events

111 Power to require information and documents in relation to levy events on Crown land

- (1) This section applies if the Secretary—
- (a) receives a notice under section 43 or 44; or
 - (b) considers that a levy event has or may have occurred on Crown land.
- (2) The Secretary, by written notice, may require the liable person or the Crown land manager for the Crown land to give to the Secretary any one or more of the following—
- (a) the information or documents referred to in section 43 or 44;
 - (b) either orally or in writing, information relevant to the assessment or reassessment of liability for the levy that is described in the notice;
 - (c) a map, which meets the specifications set out in the notice, showing the location where the levy event occurred on the Crown land;

- (d) a document or thing relevant to the assessment or reassessment of liability for the levy in the liable person's or the Crown land manager's custody or control that is described in the notice.
- (3) The Secretary may require information or evidence that is not given orally to be given in the form of, or verified by, a statutory declaration.
- (4) The Secretary may require evidence that is given orally to be given on oath or affirmation and for that purpose the Secretary or an authorised officer may administer an oath or affirmation.
- (5) The Secretary or an authorised officer may make a recording, by such means as the Secretary or officer determines, of the evidence given orally by a person.
- (6) The person to whom the notice is given must comply with the notice within the period specified in the notice or any extended period allowed by the Secretary.

112 Building surveyors to give information to the Secretary in relation to certain building permit applications

- (1) This section applies if the Secretary—
 - (a) knows or considers that a relevant building surveyor has received an application for a building permit in relation to which there has been non-compliance with section 44; or
 - (b) after reviewing documents given to the Secretary under section 44, the Secretary wants more information for the purposes of performing functions under Part 4.
- (2) The Secretary, by written notice, may direct a relevant building surveyor to whom the application for the building permit was made to

give to the Secretary any one or more of the following—

- (a) the application for any building permit in relation to which there has been non-compliance with section 44;
 - (b) any building permit issued on an application mentioned in paragraph (a);
 - (c) information of the kind required to be given to the Secretary under section 44(1)(c) that is specified in the notice.
- (3) A relevant building surveyor must comply with a notice under subsection (2).

113 Powers of entry—Crown land in the levy area

- (1) An authorised officer may exercise powers under this section only for any of the following purposes—
- (a) to ascertain whether a levy event has occurred on Crown land within the levy area;
 - (b) to collect information to enable the Secretary to determine when a levy event occurred;
 - (c) to collect information to enable the Secretary to determine whether a person is liable to pay the environment mitigation levy in relation to the Crown land and, if so, the amount of the levy that is payable;
 - (d) to verify the accuracy of—
 - (i) the contents of a notice given to the Secretary under section 43 or 44; or
 - (ii) information and documents provided to the Secretary by a liable person or the Crown land manager for that Crown land in compliance or purported compliance with a notice under section 111.

- (2) Subject to this section, an authorised officer, with any assistants and equipment that the authorised officer considers necessary, may enter, at any reasonable time, the Crown land and any premises on that land and may do any one or more of the following—
- (a) search the land or premises and any thing found on the land or at the premises;
 - (b) inspect the land or premises or any thing on the land or at the premises;
 - (c) record images or make sketches of, or make records relating to, the land or premises or any thing on the land or at the premises;
 - (d) inspect, and make copies of, or take extracts from, any document kept on the land or at the premises.
- (3) An authorised officer must not exercise any powers under this section in relation to premises or a part of premises used for residential purposes if the authorised officer fails to produce, on request by the occupier of the premises, the officer's identity card for inspection.
- (4) The power of entry and search under this section is not exercisable in relation to premises or a part of premises used for residential purposes except with the written consent of the occupier.
- (5) An occupier who consents in writing to entry and search of the occupier's premises under this section must be given a copy of the signed consent immediately.
- (6) In this section—
- premises* includes land, a vehicle, a vessel and an aircraft.

Division 5—Evidentiary provisions

114 Presumption of regularity as to issue of documents

A document or a copy of a document bearing the written, printed or stamped signature or name of the Secretary or a person described in the document as a delegate of the Secretary—

- (a) is admissible as evidence in any proceeding; and
- (b) in the absence of evidence to the contrary, is proof that the document has been issued by the Secretary.

115 Evidence of assessment or reassessment

A levy assessment notice or a document signed by the Secretary purporting to be a copy of a levy assessment notice is admissible as evidence in any proceeding and, in the absence of evidence to the contrary, is proof of the following—

- (a) the making of an assessment or reassessment of the levy liability of the person named in the notice;
- (b) the person named in the notice is liable to pay the levy;
- (c) the amount of the levy stated in the notice is payable by the person named in the notice;
- (d) the date for payment of the levy by the person named in the notice;
- (e) all other particulars of the assessment or reassessment.

116 Certificate evidence

A certificate signed by the Secretary that states any one or more of the following matters is admissible in any proceeding and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate—

- (a) that an event described in the certificate is a levy event;
- (b) the date on which a levy event occurred;
- (c) that the person named in the certificate is liable to pay the levy;
- (d) that an assessment or reassessment of levy liability has been made in relation to circumstances specified in the certificate;
- (e) on a day specified in the certificate, the environment mitigation information system was used to determine the following things for the purposes of making an assessment or reassessment of levy liability—
 - (i) the location, area and boundaries of the levy land;
 - (ii) the part of the levy land that was covered by a habitat area;
 - (iii) Scattered tree locations on the levy land;
- (f) that the amount of the whole or a part of the levy or interest stated in the certificate is payable by the person named in the certificate or has been paid in whole or in part, by or on behalf of, the person so named;

- (g) that a document specified in the certificate was posted, delivered or given to, or served personally on, a person named in the certificate on a day specified in the certificate;
- (h) on a day specified in a certificate under paragraph (e), the environment mitigation information system—
 - (i) operated correctly; and
 - (ii) in its operation, met the prescribed standards (if any) and prescribed requirements (if any); and
 - (iii) had stored in it, the environment mitigation dataset;
- (i) that the land described in the certificate is or was levy land;
- (j) that the levy in relation to land described in the certificate has, or has not, been discharged, as the case requires;
- (k) that the location, area and boundaries of levy land, or land in relation to which the levy may be payable under a staged payment approval;
- (l) an area of levy land, or land in relation to which the levy may be payable under a staged payment approval, described in the certificate is covered by a habitat area and the size of the area of coverage;
- (m) a location on levy land, or land in relation to which the levy may be payable under a staged payment approval, described in the certificate is a Scattered tree location.

117 Copies of and extracts from certain documents

- (1) A document signed by the Secretary purporting to be a copy of, or an extract from, any document made, given, issued or served under this Act is admissible in any proceeding without production of the original.
- (2) This section does not limit section 156 of the **Evidence Act 2008**.

Division 6—Service

118 Definition

In this Division—

business day means a day other than a Saturday, a Sunday or a public holiday appointed under the **Public Holidays Act 1993**.

119 Service of documents on Secretary

A document authorised or required to be served on, given to or lodged with the Secretary for the purposes of this Act may be served, given or lodged—

- (a) by delivering it to the principal office of the Department; or
- (b) by post addressed to the Secretary at the principal office of the Department; or
- (c) by a means indicated by the Secretary as being an available means of service (such as by facsimile transmission or by delivering it, addressed to the Secretary, to the facilities of a document exchange); or
- (d) by leaving it with a person who has authority to accept documents on the Secretary's behalf.

120 Service of documents by Secretary

- (1) A document authorised or required to be served on or given to a person by the Secretary for the purposes of this Act may be served on or given to the person—
- (a) personally; or
 - (b) by leaving it at the last address of the person known to the Secretary (including, in the case of a body corporate, the registered office or a business address of the body corporate); or
 - (c) by post addressed to the person at the last address of the person known to the Secretary (including, in the case of a body corporate, the registered office or a business address of the body corporate); or
 - (d) by a means indicated by the person as being an available means of service (such as by delivering it, addressed to the person, to the facilities of a document exchange); or
 - (e) if the person has given an electronic address as an available means of service, by electronic communication to that electronic address; or

Examples

The following are examples of an electronic address—

- an email address;
- a secure internet site that the person can access to obtain a document;
- a facsimile number;
- a mobile phone number.

- (f) by a prescribed means; or
 - (g) by any means provided for the service of the document by another Act or law.
- (2) To avoid doubt, this section applies to the service of any court process in a proceeding to recover any amount under this Act.
 - (3) If a person (the *agent*) has actual or apparent authority to accept service of a document on behalf of another, the Secretary may, for the purposes of this Act, serve the document on the agent as if the agent were that other person.
 - (4) Service of a document on a member of a partnership, or on a member of the committee of management of an unincorporated association or other body of persons, is taken, for the purposes of this Act, to constitute service of the document on each member of the partnership, or on each member of the association or other body of persons.

121 When service is effective

- (1) For the purposes of this Act, a document must be taken, unless the contrary is proved, to have been served on or given to a person by the Secretary—
 - (a) in the case of delivery in person—at the time the document is delivered; and
 - (b) in the case of posting—7 business days after the day on which the document was posted; and
 - (c) in the case where the Secretary makes a document available for access or retrieval by the person from or through an internet site of the Department—at the time the Secretary notifies the person by electronic communication that the document is available to be accessed or retrieved; and

- (d) in the case of any other form of electronic communication—at the time that communication is received; and

Example

An email or facsimile is taken to be served on a person at the time the email or facsimile is received by the person—see section 13A of the **Electronic Transactions (Victoria) Act 2000** in relation to the time of receipt of an electronic communication.

- (e) in the case of a prescribed means of service—at the prescribed time.
- (2) For the purposes of subsection (1)(c), notification is taken to have been given to a person by the Secretary at the time the electronic communication of the notification is received by the person.

Division 7—Delegations and other instruments

122 Delegation—Minister delegations

- (1) The Minister, by instrument, may delegate any function or power conferred on the Minister under this Act to—
- (a) the Secretary; or
 - (b) any other employee employed under Part 3 of the **Public Administration Act 2004** employed in the Department.
- (2) A delegation under subsection (1)(b) may be made to a particular person or class of person.

Note

See also section 42A of the **Interpretation of Legislation Act 1984**.

123 Delegation—Secretary delegations

- (1) The Secretary, by instrument, may delegate any function or power conferred on the Secretary under this Act to an employee employed under Part 3 of the **Public Administration Act 2004** employed in the Department.
- (2) A delegation under subsection (1) may be made to a particular person or class of person.

Note

See also section 42A of the **Interpretation of Legislation Act 1984**.

124 Excluded event certificate

- (1) A holder of an extractive industry work authority who has lodged an application for approval of a variation of a work plan under section 77H of the **Mineral Resources (Sustainable Development) Act 1990** may apply to the Secretary for a certificate for the purposes of section 6(d).
- (2) An application under subsection (1) must—
 - (a) be made in a manner and form approved by the Secretary; and
 - (b) be accompanied by—
 - (i) a copy of the extractive industry work authority, the work plan for the extractive industry and the application for approval of a variation of the work plan; and
 - (ii) any other information that the Secretary considers necessary to make a decision for the purposes of subsection (3).
- (3) On receiving an application under subsection (1), the Secretary may issue a certificate (an *excluded event certificate*) if the Secretary is satisfied that the extractive industry to which the application

relates will not, by the operation of section 43A of the EPBC Act, be subject to—

- (a) the 2010 Commonwealth approval; or
- (b) the 2013 Commonwealth approval; or
- (c) the 2014 Commonwealth approval.

Note

See also sections 6(d) and 25.

Division 8—Miscellaneous

125 Public accessibility of environment mitigation dataset

- (1) The Secretary must ensure that the environment mitigation dataset is publicly accessible from—
 - (a) the internet site with the internet address www.msa.vic.gov.au (the *initial internet site*); or
 - (b) another internet site of the Department or another public service body, or a public entity that is specified by the Secretary by notice published in the Government Gazette.
- (2) In this section, *public entity* and *public service body* have the same meaning as in the **Public Administration Act 2004**.

126 Means and time of payment of environment mitigation levy

- (1) The environment mitigation levy may be paid to the Secretary—
 - (a) by a cash payment made at, or a cheque drawn on account of an ADI or postal money order delivered to—

- (i) the principal office of the Department;
or
 - (ii) if the Secretary specifies another office of the Department and that office's address on the internet, that office; or
 - (b) by any other means approved by the Secretary.
- (2) An approval of the Secretary may be unconditional or subject to conditions.
- (3) If the Secretary approves payment by a personal cheque—
- (a) payment will be taken to be effected when the cheque is received by the Secretary provided that payment occurs when the Secretary first presents the cheque to the ADI for payment; or
 - (b) in any other case, payment will be taken to be effected when payment occurs under the cheque following presentation by the Secretary (however, the Secretary is under no obligation to present a cheque for payment more than once).
- (4) An approval of a means of payment (other than personal cheque) may include a stipulation as to when payment by that means will be taken to be effected and any such stipulation will have effect according to its terms.
- (5) The Secretary may vary or cancel an approval under this section.

127 Adjustments for fraction of a dollar

If an amount of the levy payable by a liable person is not a multiple of a dollar, the Secretary may decrease the amount but not lower than to the nearest dollar.

Division 9—Regulations

128 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations may—
 - (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstances;
 - (c) confer a discretionary authority or impose a duty on a specified person or body or class of persons or bodies;
 - (d) provide in a specified case or class of cases for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations—
 - (i) whether unconditionally or on specified conditions; and
 - (ii) either wholly or to any extent that is specified;
 - (e) apply, adopt or incorporate any matter contained in any document whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as in force at a particular time; or
 - (iii) as in force from time to time;
 - (f) impose a penalty not exceeding 20 penalty units for a contravention of the regulations.

- (3) Without limiting subsection (2)(e), the regulations may apply, adopt or incorporate, either wholly or in part and with or without any modification, any matter contained in—
- (a) the Building Code of Australia—
 - (i) as in force or as issued or published at a particular time; or
 - (ii) as in force or as issued or published from time to time; or
 - (b) a planning scheme—
 - (i) as in force at a particular time; or
 - (ii) as in force from time to time.
- (4) Section 32 of the **Interpretation of Legislation Act 1984** does not apply to the application, adoption or incorporation by the regulations of any matter contained in—
- (a) the Building Code of Australia; or
 - (b) a planning scheme.

Part 8—Transitional provisions

129 Definitions

In this Part—

applicable Commonwealth approval means—

- (a) the 2010 Commonwealth approval; or
- (b) the 2013 Commonwealth approval; or
- (c) the 2014 Commonwealth approval;

commencement day means the day on which Part 3 comes into operation;

deemed staged payment approval means a staged obligations agreement that by operation of section 131(2)(a) is taken to be a staged payment approval;

pre-scheme liable person means the person who is obliged under a staged obligations agreement to make payments to the State, in stages, for the purposes of satisfying the conditions of an applicable Commonwealth approval relating to land;

staged obligations agreement means an agreement entered into by or on behalf of the State and a person under which the person may make payments, in stages, for the purposes of satisfying the conditions of an applicable Commonwealth approval relating to land.

130 Payments made under applicable Commonwealth approvals

(1) This section applies if—

- (a) before the commencement day, a person has complied with conditions of an applicable Commonwealth approval in relation to land

by making a payment to the State (an *MSA payment*); and

(b) on the commencement day, that land is within the levy area.

(2) On the commencement day—

(a) the payment of an MSA payment is, despite this Act, taken to be a payment of the whole of the environment mitigation levy in relation to that land; and

(b) despite this Act, any levy liability in relation to that land is taken to be wholly discharged; and

(c) despite section 21, the levy cannot be imposed in relation to that land.

131 Staged obligations agreements under or in relation to applicable Commonwealth approvals

(1) This section applies to a staged obligations agreement in effect immediately before the commencement day that relates to land that is, on the commencement day, wholly or partly within the levy area (the *applicable land*).

(2) On the commencement day—

(a) the staged obligations agreement is taken to be a staged payment approval given to the pre-scheme liable person subject to the same conditions that applied to that agreement immediately before that day; and

(b) the environment mitigation levy is imposed in relation to that part of the applicable land within the levy area; and

(c) a payment under that agreement made to the State before that day is taken to be a staged payment made in accordance with that

- approval for the discharge of the levy liability relating to—
- (i) that part of the applicable land within the levy area to which that payment relates; and
 - (ii) that part of the environment mitigation levy imposed under paragraph (b) to which that payment relates; and
- (d) despite section 21, the levy cannot be imposed in relation to that part of the applicable land within the levy area in relation to which a staged payment mentioned in paragraph (c) has been made.
- (3) On and after the commencement day, land mentioned in subsection (2)(b) is to be treated as levy land for the purposes of Parts 4 and 7.
- (4) The Secretary must give the person a notice under section 28 that relates to the deemed staged payment approval within 14 days after the commencement day.
- (5) A notice mentioned in subsection (4)—
- (a) must state that the staged payment approval is a deemed staged payment approval; and
 - (b) is not required to include a description of any levy event.

132 Transfer of deemed staged payment approvals

- (1) This section applies if a pre-scheme liable person given a deemed staged payment approval (the *original holder*) is, on the commencement day, not the owner of the land in relation to which the deemed staged payment approval relates.
- (2) The original holder may request, in writing, the Secretary to transfer the deemed staged payment approval to the owner of the land.

- (3) The Secretary must not transfer the deemed staged payment approval to the owner of the land without the written agreement of the owner.
- (4) If Secretary decides to transfer the deemed staged payment approval to the owner of the land, the Secretary must give the original holder and owner written notice of the transfer.
- (5) A notice under subsection (4) must specify the transfer date.
- (6) On the transfer date—
 - (a) the liability to pay the levy is imposed on the owner of the land; and
 - (b) the liability of the original holder to pay the levy is extinguished; and
 - (c) the owner of the land is taken to have been given the deemed staged payment approval for the staged payment of the levy that the owner is liable to pay under paragraph (a); and
 - (d) the conditions to which the deemed staged payment approval is taken to have been given under paragraph (c) continue to apply.

Note

The original holder is also eligible for the issue of a certificate of release to them—see section 103.

- (7) To avoid doubt, the deemed staged payment approval continues in effect despite the transfer.
- (8) The Secretary, on the application of the owner of the land, must give the owner a written notice that—

- (a) states that—
 - (i) the deemed staged payment approval has been transferred, under subsection (6), to the owner on the transfer date; and
 - (ii) on that transfer date—
 - (A) the deemed staged payment approval is taken to have been given to the owner; and
 - (B) the owner is a liable person; and
- (b) describes the whole of the land in respect of which the levy is imposed; and
- (c) contains the name and contact details of the owner; and
- (d) sets out the conditions to which the staged payment approval is subject; and
- (e) contains any other information that the Secretary considers appropriate.

Pt 9
(Headings
and
ss 133–147)
repealed by
No. 1/2020
s. 147.

* * * * *

Schedule 1—Tabling and additional publication requirements for levy area declarations

Section 18(2)

1 Levy area declarations and related documents to be laid before Parliament

- (1) On or before the 6th sitting day after notice of making of a levy area declaration is published in the Government Gazette under section 13, a copy of the declaration must be laid before each House of the Parliament.
- (2) A copy of each levy area declaration laid under subclause (1) must, as soon as possible after being so laid, be posted or delivered to each member of Parliament who has requested a copy of that declaration.

2 Levy area declaration to be sent to Scrutiny of Acts and Regulations Committee

- (1) When a levy area declaration is made, the Minister must ensure that a copy of the declaration is given to the Scrutiny of Acts and Regulations Committee.
- (2) A levy area declaration must be given to the Scrutiny of Acts and Regulations Committee no later than 10 working days after the making of the declaration.
- (3) A failure to comply with subclause (1) or (2) does not affect the operation or effect of the levy area declaration.

3 Secretary to ensure consolidated version of levy area declaration is available

- (1) This clause applies if a levy area declaration (an *amending declaration*) amends an existing levy area declaration.

- (2) The Secretary must ensure that an up-to-date consolidated version of the levy area declaration being amended by the amending declaration is prepared incorporating those amendments as soon as practicable after a notice of making for the amending declaration is published in the Government Gazette under section 13.
- (3) The Secretary must cause the up-to-date consolidated version of the levy area declaration prepared under subclause (2) to be—
 - (a) available for inspection, free of charge, by any person during office hours at the principal office of the Department; and
 - (b) published on the internet.
- (4) A failure to comply with this clause does not affect the operation or effect of the amending declaration.

Schedule 2—Indexation of rates for component levy amounts

Sections 22, 23 and 92

Part 1—Preliminary

1 Definitions

In this Schedule—

consumer price index means the all groups consumer price index for Melbourne in original terms published by the Australian Bureau of Statistics;

wage price index means the index titled "All-Industries Total Hourly Rates of Pay Excluding Bonuses for the Private and Public Sectors in Victoria" in original terms published by the Australian Bureau of Statistics.

Part 2—Indexation of rates for component levy amounts for 2021/2022 to 2024/2025 financial years

2 Indexation of rates

For the purposes of section 22(2)(a), (b), (c), (d), (e), (f) and (g) and the definition of *applicable rate* in section 22(5), the rate (in dollars) for each of the 2021/2022, 2022/2023, 2023/2024 and 2024/2025 financial years is to be determined in accordance with the following formula—

$$A = B \times AF \times \left[\left(\text{CPI} \times \frac{1}{3} \right) + \left(\text{WPI} \times \frac{2}{3} \right) \right]$$

where—

A is the rate (in dollars) for the relevant financial year;

AF is—

- (a) for a component levy amount described in section 22(2)(a), 1·264;
- (b) for a component levy amount described in section 22(2)(b), 1·042;
- (c) for a component levy amount described in section 22(2)(c), 1·014;
- (d) for a component levy amount described in section 22(2)(d), 1·193;
- (e) for a component levy amount described in section 22(2)(e), 1·193;
- (f) for a component levy amount described in section 22(2)(f), 1·031;
- (g) for a component levy amount described in section 22(2)(g), 1·074;

B is—

- (a) for the 2021/2022 financial year, the rate specified in section 22(1)(a), (b), (c), (d), (e), (f) or (g), as the case requires;
- (b) for each of the 2022/2023, 2023/2024 and 2024/2025 financial years, the rate (in dollars) determined in accordance with this formula for the preceding financial year;

CPI is the figure determined in accordance with clause 3;

WPI is the figure determined in accordance with clause 4.

3 CPI formula

For the purposes of the formula under clause 2, the variable "CPI" is to be determined in accordance with the following formula—

$$\text{CPI} = \frac{\text{C}}{\text{D}}$$

where—

C is the consumer price index number for the reference period ending on the last day of the calendar year falling within—

- (a) in the case of the 2021/2022 financial year, the 2020/2021 financial year;
- (b) in the case of each of the 2022/2023, 2023/2024 and 2024/2025 financial years, the financial year preceding the relevant financial year in respect of which the amount is being determined in accordance with the formula under clause 2;

D is the consumer price index number for the reference period ending on the last day of the calendar year falling within—

- (a) in the case of the 2021/2022 financial year, the 2019/2020 financial year;
- (b) in the case of the 2022/2023 financial year, the 2020/2021 financial year;
- (c) in the case of each of the 2023/2024 and 2024/2025 financial years, the financial year 2 years earlier than the financial year in respect of which the amount is being determined in accordance with the formula under clause 2.

4 WPI formula

For the purposes of the formula under clause 2, the variable "WPI" is to be determined in accordance with the following formula—

$$\text{WPI} = \frac{\text{E}}{\text{F}}$$

where—

E is the wage price index number for the reference period ending on the last day of the calendar year falling within—

- (a) in the case of the 2021/2022 financial year, the 2020/2021 financial year;
- (b) in the case of each of the 2022/2023, 2023/2024 and 2024/2025 financial years, the financial year preceding the relevant financial year in respect of which the amount is being determined in accordance with the formula under clause 2;

F is the wage price index number for the reference period ending on the last day of the calendar year falling within—

- (a) in the case of the 2021/2022 financial year, the 2019/2020 financial year;
- (b) in the case of the 2022/2023 financial year, the 2020/2021 financial year;
- (c) in the case of each of the 2023/2024 and 2024/2025 financial years, the financial year 2 years earlier than the financial year in respect of which the amount is being determined in accordance with the formula under clause 2.

Part 3—Indexation of rates for component levy amounts for financial years starting with 2025/2026 financial year

5 Indexation of rates

For the purposes of section 22(2)(a), (b), (c), (d), (e), (f) and (g) and the definition of *applicable rate* in section 22(5), the rate (in dollars) for the 2025/2026 financial year and every financial year after that year is to be determined in accordance with the following formula—

$$A = B \times \left[\left(\text{CPI} \times \frac{1}{3} \right) + \left(\text{WPI} \times \frac{2}{3} \right) \right]$$

where—

A is the rate (in dollars) for the relevant financial year;

B is—

- (a) for the 2025/2026 financial year, the rate (in dollars) determined for the 2024/2025 financial year determined in accordance with clause 2;
- (b) for each financial year after the 2025/2026 financial year, the rate (in dollars) determined in accordance with this formula for the preceding financial year;

CPI is the figure determined in accordance with clause 6;

WPI is the figure determined in accordance with clause 7.

6 CPI formula

For the purposes of the formula under clause 5, the variable "CPI" is to be determined in accordance with the following formula—

$$\text{CPI} = \frac{\text{C}}{\text{D}}$$

where—

C is the consumer price index number for the reference period ending on the last day of the calendar year falling within—

- (a) in the case of the 2025/2026 financial year, the 2024/2025 financial year;
- (b) in the case of each financial year after the 2025/2026 financial year, the financial year preceding the relevant financial year in respect of which the amount is being determined in accordance with the formula under clause 5;

D is the consumer price index number for the reference period ending on the last day of the calendar year falling within—

- (a) in the case of the 2025/2026 financial year, the 2023/2024 financial year;
- (b) in the case of the 2026/2027 financial year, the 2024/2025 financial year;
- (c) in the case of each financial year after the 2026/2027 financial year, the financial year 2 years earlier than the financial year in respect of which the amount is being determined in accordance with the formula under clause 5.

7 WPI formula

For the purposes of the formula under clause 5, the variable "WPI" is to be determined in accordance with the following formula—

$$\text{WPI} = \frac{\text{E}}{\text{F}}$$

where—

E is the wage price index number for the reference period ending on the last day of the calendar year falling within—

- (a) in the case of the 2025/2026 financial year, the 2024/2025 financial year;
- (b) in the case of each financial year after the 2025/2026 financial year, the financial year preceding the relevant financial year in respect of which the amount is being determined in accordance with the formula under clause 5;

F is the wage price index number for the reference period ending on the last day of the calendar year falling within—

- (a) in the case of the 2025/2026 financial year, the 2023/2024 financial year;
- (b) in the case of the 2026/2027 financial year, the 2024/2025 financial year;
- (c) in the case of each financial year after the 2026/2027 financial year, the financial year 2 years earlier than the financial year in respect of which the amount is being determined in accordance with the formula under clause 5.

Part 4—Miscellaneous

8 Rounding of indexed component levy rates

A rate determined under clause 2 or 5 is to be rounded up or down to the nearest dollar.

9 Rounding of "CPI" and "WPI" variable numbers

A figure determined for the variable "CPI" under clauses 3 and 6, and the variable "WPI" under clauses 4 and 7, is to be rounded to 2 decimal places.

Endnotes

1 General information

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

Minister's second reading speech—

Legislative Assembly: 16 October 2019

Legislative Council: 31 October 2019

The long title for the Bill for this Act was "A Bill for an Act to impose a levy to fund measures to mitigate impacts on the environment caused by the development of land in Melbourne's growth corridors and to consequentially amend other Acts and for other purposes."

The **Melbourne Strategic Assessment (Environment Mitigation Levy) Act 2020** was assented to on 11 February 2020 and came into operation on 1 July 2020: section 2(2).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Melbourne Strategic Assessment (Environment Mitigation Levy) Act 2020** by Acts and subordinate instruments.

Melbourne Strategic Assessment (Environment Mitigation Levy) Act 2020, No. 1/2020

<i>Assent Date:</i>	11.2.20
<i>Commencement Date:</i>	S. 147 on 1.7.20: s. 2(2)
<i>Note:</i>	S. 147 repealed Pt 9 (ss 133–147) on 1.7.21
<i>Current State:</i>	This information relates only to the provision/s amending the Melbourne Strategic Assessment (Environment Mitigation Levy) Act 2020

Local Government Act 2020, No. 9/2020

<i>Assent Date:</i>	24.3.20
<i>Commencement Date:</i>	S. 390(Sch. 1 item 70A) on 6.4.20: Special Gazette (No. 150) 24.3.20 p. 1
<i>Current State:</i>	This information relates only to the provision/s amending the Melbourne Strategic Assessment (Environment Mitigation Levy) Act 2020

3 Amendments Not in Operation

This version does not contain amendments that are not yet in operation.

4 Explanatory details

No entries at date of publication.