Climate Change and Environment Protection Amendment Act 2012
No. 78 of 2012

TABLE OF PROVISIONS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PART 1—PRELIMINARY</strong></td>
<td>1</td>
</tr>
<tr>
<td>1 Purposes</td>
<td>1</td>
</tr>
<tr>
<td>2 Commencement</td>
<td>2</td>
</tr>
<tr>
<td>3 Principal Act</td>
<td>2</td>
</tr>
<tr>
<td><strong>PART 2—CLIMATE CHANGE ACT 2010</strong></td>
<td>3</td>
</tr>
<tr>
<td><strong>Division 1—Climate change</strong></td>
<td>3</td>
</tr>
<tr>
<td>4 Purposes, emissions target and policy objectives</td>
<td>3</td>
</tr>
<tr>
<td>5 New section 7 substituted</td>
<td>3</td>
</tr>
<tr>
<td>7 Ministerial regard to guiding principles</td>
<td>3</td>
</tr>
<tr>
<td>6 Climate Change Adaptation Plan</td>
<td>4</td>
</tr>
<tr>
<td>7 Reporting and review amendments</td>
<td>5</td>
</tr>
<tr>
<td><strong>Division 2—Forest carbon rights</strong></td>
<td>5</td>
</tr>
<tr>
<td>8 Definitions</td>
<td>5</td>
</tr>
<tr>
<td>9 New sections 3A to 3D inserted</td>
<td>5</td>
</tr>
<tr>
<td>3A What is a forest carbon right?</td>
<td>5</td>
</tr>
<tr>
<td>3B What is a carbon sequestration right?</td>
<td>6</td>
</tr>
<tr>
<td>3C What is a forestry right?</td>
<td>6</td>
</tr>
<tr>
<td>3D What is a soil carbon right?</td>
<td>6</td>
</tr>
<tr>
<td>10 Repeal of sections 21 to 25</td>
<td>6</td>
</tr>
<tr>
<td>11 Application of Part 5</td>
<td>6</td>
</tr>
<tr>
<td>12 Native title rights</td>
<td>7</td>
</tr>
<tr>
<td>13 Term of right under a Carbon Sequestration Agreement</td>
<td>7</td>
</tr>
<tr>
<td>14 New section 47A inserted</td>
<td>7</td>
</tr>
<tr>
<td>47A Grant of carbon sequestration right or soil carbon right</td>
<td>7</td>
</tr>
<tr>
<td>15 New section 54 substituted</td>
<td>8</td>
</tr>
<tr>
<td>54 Consent of Secretary required to transfer a Carbon Sequestration Agreement or assign rights under an agreement</td>
<td>8</td>
</tr>
<tr>
<td>16 Register of Carbon Sequestration Agreements</td>
<td>8</td>
</tr>
<tr>
<td>17 New section 56A inserted</td>
<td>9</td>
</tr>
<tr>
<td>56A Certificate of Secretary</td>
<td>9</td>
</tr>
<tr>
<td>Section</td>
<td>Page</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>Division 3—General</td>
<td>9</td>
</tr>
<tr>
<td>18 Regulation making powers</td>
<td>9</td>
</tr>
<tr>
<td>PART 3—ENVIRONMENT PROTECTION ACT 1970</td>
<td>10</td>
</tr>
<tr>
<td>Division 1—Amendments relating to climate change</td>
<td>10</td>
</tr>
<tr>
<td>19 Statutory policies and regulations</td>
<td>10</td>
</tr>
<tr>
<td>20 Climate Covenants</td>
<td>10</td>
</tr>
<tr>
<td>21 Renaming of Climate Communities Fund Account</td>
<td>10</td>
</tr>
<tr>
<td>22 New section 70F substituted</td>
<td>10</td>
</tr>
<tr>
<td>70F Sustainability Fund Account</td>
<td>10</td>
</tr>
<tr>
<td>Division 2—General amendments</td>
<td>11</td>
</tr>
<tr>
<td>23 Directions concerning noise abatement</td>
<td>11</td>
</tr>
<tr>
<td>24 Increasing penalties for certain litter infringements</td>
<td>12</td>
</tr>
<tr>
<td>25 Repealing service fees for notices relating to pollution</td>
<td>12</td>
</tr>
<tr>
<td>26 Correction of references</td>
<td>12</td>
</tr>
<tr>
<td>PART 4—TRANSFER OF LAND ACT 1958</td>
<td>13</td>
</tr>
<tr>
<td>27 Amendment of Transfer of Land Act 1958</td>
<td>13</td>
</tr>
<tr>
<td>PART 5—REPEAL OF AMENDING ACT</td>
<td>14</td>
</tr>
<tr>
<td>28 Repeal of this Act</td>
<td>14</td>
</tr>
<tr>
<td>ENDNOTES</td>
<td>15</td>
</tr>
</tbody>
</table>
Climate Change and Environment Protection Amendment Act 2012†

No. 78 of 2012

[Assented to 18 December 2012]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

(a) to amend the Climate Change Act 2010 and the Environment Protection Act 1970 to implement changes arising from a review of the Climate Change Act 2010 conducted after changes in national climate change policy;
Part 1—Preliminary

(b) to make other amendments to the Environment Protection Act 1970 relating to—

(i) extending residential noise abatement directions;

(ii) increasing the penalties for certain litter infringements;

(iii) repealing the service fees for abatement, pollution abatement and clean up notices;

(c) to make a consequential amendment to the Transfer of Land Act 1958.

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 2013, it comes into operation on that day.

3 Principal Act

In this Act, the Climate Change Act 2010 is called the Principal Act.
PART 2—CLIMATE CHANGE ACT 2010

Division 1—Climate change

4 Purposes, emissions target and policy objectives

(1) For section 1(a) of the Principal Act substitute—
"(a) to provide a framework for the Government of Victoria's roles and responsibilities in response to climate change in the context of national policy;".

(2) In section 1(d) of the Principal Act after "Plan" insert "and to set out guidance for the preparation of the plan".

(3) In the Heading to Part 2 of the Principal Act omit "EMISSIONS TARGET, POLICY OBJECTIVES AND".

(4) Divisions 1 and 2 of Part 2 of the Principal Act are repealed.

5 New section 7 substituted

For section 7 of the Principal Act substitute—

"7 Ministerial regard to guiding principles

(1) The Minister may have regard to incorporating any of the principles set out in this Division in making or issuing Ministerial guidelines under section 15 if the Minister considers the principle is relevant in the circumstances.

(2) The Minister must have regard to each of the principles set out in this Division in making a decision in the course of preparing a Climate Change Adaptation Plan under section 16.".
6 Climate Change Adaptation Plan

For section 16(1) of the Principal Act substitute—

"(1) The Minister must prepare a Climate Change Adaptation Plan that sets out—

(a) an assessment of the potential impacts and risks of climate change in Victoria including specific regional impacts; and

(b) the Government of Victoria's roles and responsibilities in managing risks related to the potential impacts of climate change in Victoria and, if applicable, the respective roles and responsibilities of other governments, persons or bodies in managing those risks; and

(c) the Government of Victoria's strategic priorities for the management of risks related to the potential impacts of climate change in Victoria; and

(d) the Government of Victoria's adaptation measures and responses to the potential impacts of climate change in Victoria; and

(e) data on observed changes in the climate of Victoria; and

(f) a synthesis of the best practically available climate change science relevant to Victoria; and

(g) any other information that the Minister considers appropriate.".
7 Reporting and review amendments

(1) In the heading to Division 3 of Part 3 of the Principal Act omit "Reporting and".

(2) Section 17 of the Principal Act is repealed.

(3) For section 18(3)(c) of the Principal Act substitute—
"(c) any plan prepared under section 16; and".

(4) Section 19 of the Principal Act is repealed.

Division 2—Forest carbon rights

8 Definitions

In section 3 of the Principal Act—

(a) in the definition of carbon sequestration right for "section 22" substitute "section 3B";

(b) in the definition of forest carbon right for "section 21" substitute "section 3A";

(c) in the definition of forestry right for "section 23" substitute "section 3C";

(d) in the definition of soil carbon right for "section 24" substitute "section 3D".

9 New sections 3A to 3D inserted

After section 3 of the Principal Act insert—

"3A What is a forest carbon right?

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

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

3B What is a carbon sequestration right?
In this Act carbon sequestration right means an exclusive right to the economic benefits associated with carbon sequestered by vegetation other than vegetation that has been harvested, lopped or felled.

3C What is a forestry right?
In this Act forestry right means an exclusive right to—
(a) plant, establish, manage and maintain vegetation on land; and
(b) take and deal with any vegetation that has been harvested, lopped or felled—and includes a right of entry to land for that purpose.

3D What is a soil carbon right?
In this Act soil carbon right means an exclusive right to the economic benefits of carbon sequestered underground, excluding carbon stored within plants.

10 Repeal of sections 21 to 25
Sections 21 to 24 and section 25 of the Principal Act are repealed.

11 Application of Part 5
After section 40(4) of the Principal Act insert—
"(5) This Part continues to apply to Crown land in relation to which a carbon sequestration right or soil carbon right has been granted under a Carbon Sequestration Agreement made under this Part.".
12 Native title rights
In section 41 of the Principal Act after "Rights" insert "and interests".

13 Term of right under a Carbon Sequestration Agreement
In section 47(1)(a) of the Principal Act for "a specified term" substitute "the term of the agreement".

14 New section 47A inserted
After section 47 of the Principal Act insert—

"47A Grant of carbon sequestration right or soil carbon right
(1) The Secretary must not enter into a Carbon Sequestration Agreement that grants a person a carbon sequestration right or soil carbon right in relation to Crown land unless that person is a party to the agreement.

(2) The Secretary must not grant a person a carbon sequestration right and a soil carbon right in relation to Crown land except under a separate Carbon Sequestration Agreement for each right.

(3) A carbon sequestration right or soil carbon right granted in relation to Crown land under a Carbon Sequestration Agreement is extinguished on the date the agreement ends."
15 New section 54 substituted

For section 54 of the Principal Act substitute—

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

(1) A person cannot transfer a Carbon Sequestration Agreement or assign any rights under a Carbon Sequestration Agreement without the written consent of the Secretary.

(2) The Secretary must not consent to the transfer of a Carbon Sequestration Agreement to a person unless the carbon sequestration right or soil carbon right granted by the agreement is assigned to that person for the remainder of the term of the agreement."

16 Register of Carbon Sequestration Agreements

(1) After section 56(2)(a) of the Principal Act insert—

"(ab) the carbon sequestration rights and soil carbon rights that are granted under Carbon Sequestration Agreements; and"

(2) After section 56(2)(b) of the Principal Act insert—

"(ba) the transfer of Carbon Sequestration Agreements and the assignment of carbon sequestration rights and soil carbon rights that are granted under Carbon Sequestration Agreements; and"
17 New section 56A inserted

After section 56 of the Principal Act insert—

"56A Certificate of Secretary

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

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

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

Division 3—General

18 Regulation making powers

For section 64(1) of the Principal Act substitute—

"(1) The Governor in Council may make regulations generally in relation to any matter required or permitted to be prescribed by this Act or necessary to be prescribed to give effect to this Act.".
PART 3—ENVIRONMENT PROTECTION ACT 1970

Division 1—Amendments relating to climate change

19 Statutory policies and regulations

Section 13(1)(ga)(i) of the Environment Protection Act 1970 is repealed.

20 Climate Covenants

Division 2 of Part IX of the Environment Protection Act 1970 is repealed.

21 Renaming of Climate Communities Fund Account

In section 70E(b) and (f) of the Environment Protection Act 1970 for "Climate Communities Fund Account" substitute "Sustainability Fund Account".

22 New section 70F substituted

For section 70F of the Environment Protection Act 1970 substitute—

"70F Sustainability Fund Account

(1) The fund established within the Environment Protection Fund with money referred to in section 70(3)(aba) renamed and known as the Climate Communities Fund Account by amendments made by section 71 of the Climate Change Act 2010 is to be renamed and known as the Sustainability Fund Account."
Part 3—Environment Protection Act 1970

(2) The money standing to the credit of the Climate Communities Fund Account on the commencement of section 22 of the Climate Change and Environment Protection Amendment Act 2012 is taken to be money standing to the credit of the Sustainability Fund Account referred to in subsection (1).

(3) For the purposes of the management of the Sustainability Fund Account referred to in subsection (1), sections 70(6B)(b) and (c), 70A, 70B, 70C, 70D and 70E and this section continue to apply to and in respect of Sustainability Victoria.

(4) A reference in an Act or subordinate instrument or any other document after 1 July 2011 and before the commencement of section 22 of the Climate Change and Environment Protection Amendment Act 2012 to the Climate Communities Fund Account referred to in subsection (1) is taken, on and from that commencement, to be a reference to the Sustainability Fund Account referred to in subsection (1).

Division 2—General amendments

23 Directions concerning noise abatement

For section 48A(7) of the Environment Protection Act 1970 substitute—

"(7) A direction given under subsection (6) remains in force for the period specified by the direction not exceeding 72 hours after the direction is given.".
24 Increasing penalties for certain litter infringements

In Schedule A to the Environment Protection Act 1970—

(a) for the penalty of "2 penalty units" relating to any offence under section 45E involving litter that is burning when it is deposited (including a cigarette butt) substitute "4 penalty units";

(b) for the penalty of "1 penalty unit" relating to any offence under section 45E involving an extinguished cigarette butt, a ring pull or any other small item substitute "2 penalty units".

25 Repealing service fees for notices relating to pollution

Section 60C of the Environment Protection Act 1970 is repealed.

26 Correction of references

In Schedule A to the Environment Protection Act 1970—

(a) for "section 19A(7)" substitute "section 19A(8)";

(b) for "section 45X(2) or 45Y(2)" substitute "section 45X(3) or 45Y(3)".
PART 4—TRANSFER OF LAND ACT 1958

27 Amendment of Transfer of Land Act 1958

In section 4(1) of the Transfer of Land Act 1958, for the definition of land substitute—

"land includes any estate or interest in land but does not include—

(a) an interest in land arising under the Mineral Resources (Sustainable Development) Act 1990; or

(b) a carbon sequestration right or soil carbon right granted in relation to Crown land under a Carbon Sequestration Agreement within the meaning of the Climate Change Act 2010;".

PART 5—REPEAL OF AMENDING ACT

28 Repeal of this Act

This Act is repealed on 1 July 2014.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the Interpretation of Legislation Act 1984).
ENDNOTES

† Minister's second reading speech—
Legislative Assembly: 10 October 2012
Legislative Council: 11 December 2012

The long title for the Bill for this Act was "A Bill for an Act to amend the Climate Change Act 2010 and the Environment Protection Act 1970 to implement changes arising from a review of the Climate Change Act 2010, to make other amendments to the Environment Protection Act 1970, to amend the Transfer of Land Act 1958 and for other purposes."