

# Victorian Environmental Assessment Council Act 2001

Act No. 81/2001

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Victoria

No. 81 of 2001

# Victorian Environmental Assessment Council Act 2001<sup>†</sup>

[Assented to 4 December 2001]

**The Parliament of Victoria enacts as follows:**

## **PART 1—PRELIMINARY**

### **1. *Purpose and outline of Act***

- (1) The purpose of this Act is to establish the Victorian Environmental Assessment Council to conduct investigations and make recommendations relating to the protection and ecologically sustainable management of the environment and natural resources of public land.

*Victorian Environmental Assessment Council Act 2001*  
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(2) In outline this Act—

- establishes the Victorian Environmental Assessment Council with 5 members appointed by the Governor in Council;
- enables the appointment of additional members of the Council for particular investigations;
- provides for the Council to establish Committees and Community Reference Groups;
- requires the Council to report on its operations;
- sets out the process for requesting investigations to be carried out by the Council;
- sets out the considerations the Council is to have regard to in investigations and recommendations;
- sets out the process for public submissions;
- requires reports on investigations to be tabled in Parliament and made publicly available;
- requires a statement of the response of the Government to recommendations to be tabled in Parliament and made publicly available;
- requires the Government to implement recommendations to the extent that they are accepted by the Government;
- repeals the **Environment Conservation Act 1997**.

(3) Sub-section (2) is intended only as a guide to readers as to the general scheme and effect of this Act.

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## **2. Commencement**

- (1) Section 1 and this section come into operation on the day after the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in sub-section (2) does not come into operation before 31 December 2001, it comes into operation on that day.

## **3. Definitions**

In this Act—

**"additional member"** means a person appointed under section 8(4);

**"Council"** means the Victorian Environmental Assessment Council established under this Act;

**"investigation"** means an investigation requested by the Minister under section 15;

**"member"** means a person appointed under section 8(1) and includes the Chairperson of the Council;

**"public land"** means—

- (a) any unalienated land of the Crown, including land temporarily or permanently reserved under the **Crown Land (Reserves) Act 1978**;
  - (b) State forest within the meaning of the **Forests Act 1958**;
  - (c) park, within the meaning of the **National Parks Act 1975**;
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- (d) land under the ownership or control of Melbourne Parks and Waterways, established under the **Water Industry Act 1994**;
- (e) land vested in any public authority, other than—
  - (i) a municipal council; or
  - (ii) an Authority under the **Water Act 1989**, to the extent that the land vested in the Authority is within a sewerage district listed in column 3 of Schedule 12 of that Act.

**"request"** means a request for an investigation.

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**PART 2—VICTORIAN ENVIRONMENTAL ASSESSMENT  
COUNCIL**

**4. *Establishment of Council***

There is established a Council to be called the "Victorian Environmental Assessment Council".

**5. *Objectives of Council***

The objectives of the Council are to—

- (a) provide independent and strategic advice to the Government of Victoria on matters relating to the protection and ecologically sustainable management of the environment and natural resources of public land; and
- (b) ensure that it performs its functions in a manner that facilitates the objectives of this Act.

**6. *Functions***

The functions of the Council are to—

- (a) carry out investigations that are requested by the Minister on matters relating to the protection and ecologically sustainable management of the environment and natural resources of public land; and
- (b) carry out any other functions that are conferred on the Council by this or any other Act.

**7. *Powers***

- (1) Subject to this Act, the Council may do anything reasonably necessary or convenient to enable it to carry out its functions.

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- (2) Without limiting its other powers, the Council may—
- (a) appoint committees in accordance with section 12; and
  - (b) with the consent of the Minister administering the relevant Department, make use of the services of any person employed in the Department.

**8. *Constitution and membership of the Council***

- (1) The Council consists of 5 members appointed by the Governor in Council on the recommendation of the Minister.
- (2) In making a recommendation under sub-section (1), the Minister must have regard to the need for the Council to collectively have experience, skills and knowledge in the following areas—
  - (a) environment protection and conservation;
  - (b) natural resources management;
  - (c) tourism and recreation;
  - (d) economics and business management;
  - (e) rural and regional affairs;
  - (f) issues relating to indigenous peoples;
  - (g) local government;
  - (h) social and community affairs;
  - (i) community consultation and participation.
- (3) The Governor in Council must, on the recommendation of the Minister, appoint one of the members to be the Chairperson of the Council.

- (4) For the purposes of a particular investigation, the Governor in Council, on the recommendation of the Minister, may appoint one or more additional members of the Council.
- (5) In making a recommendation under sub-section (4), the Minister must have regard to the need for the Council to have experience, skills and knowledge in the areas most directly related to the particular investigation.
- (6) Before an appointment can be made under this section, the Minister must publish notice of the vacancy in newspapers circulating generally throughout Victoria.

**9. *Terms and conditions of office of members***

- (1) Subject to this section, a member holds office for a term not exceeding 3 years as is specified in the instrument of appointment.
  - (2) A member is eligible for re-appointment.
  - (3) An additional member holds office for the period of the investigation for which that member is appointed.
  - (4) The instrument of appointment of a member may specify terms and conditions of appointment not inconsistent with this Act.
  - (5) A member is not subject to the **Public Sector Management and Employment Act 1998** in respect of the office of member.
  - (6) A member who is not an employee in the public service is entitled to the remuneration and allowances (if any) fixed by the Minister.
  - (7) If a member is ill or absent, the Governor in Council, on the recommendation of the Minister, may appoint a person to act in the office of that member during the period of illness or absence.
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- (8) A member may resign in writing addressed to the Governor in Council.
  - (9) The office of a member becomes vacant if the member retires, resigns or dies.
  - (10) The Governor in Council, on the recommendation of the Minister, may remove a member from office if the member has—
    - (a) refused, neglected or failed to carry out his or her duties; or
    - (b) demonstrated inefficiency or misbehaviour in carrying out his or her duties.
  - (11) If a member is removed from office under sub-section (10), the Minister must cause to be laid before each House of the Parliament a full statement of the grounds of the removal within 7 sitting days of that House after the removal.
  - (12) If there is a vacancy in the office of a member under sub-section (9) or (10), the vacancy must be filled in accordance with section 8.
  - (13) In sub-sections (4) to (12) a reference to a member includes a reference to an additional member.

**10. *Proceedings of the Council***

- (1) The Chairperson is to preside at any meeting of the Council at which he or she is present.
- (2) If the Chairperson is absent from a meeting of the Council, the members present at the meeting must elect one of those present to preside at the meeting.
- (3) Subject to sub-section (2), meetings of the Council are to be held at such times and places as the Chairperson determines.

- (4) The Chairperson may at any time convene a meeting, but must do so when requested by a member.
- (5) A majority of the members and additional members for the time being constitutes a quorum of the Council.
- (6) A question arising at a meeting must be determined by a majority of votes of members and additional members present and voting on that question.
- (7) If the voting is equal, subject to sub-section (9), the person presiding has a casting vote as well as a deliberative vote.
- (8) An additional member is eligible to vote only in respect of a question directly relating to the investigation in respect of which he or she is appointed.
- (9) If the person presiding is an additional member, he or she does not have a casting vote or a deliberative vote in respect of any question not directly relating to the investigation in respect of which he or she is appointed.
- (10) The person presiding at a meeting must ensure that minutes of the meeting are kept.
- (11) Subject to this section, the Council may regulate its own proceedings.

#### **11. *Validity of decisions***

- (1) An act or decision of the Council is not invalid merely because of—
    - (a) a defect or irregularity in, or in connection with, the appointment of a member; or
    - (b) a vacancy in the membership of the Council, including a vacancy arising from the failure to appoint an original member.
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- (2) Anything done by or in relation to a person purporting to act as Chairperson or as a member is not invalid merely because—
  - (a) the occasion for the appointment had not risen; or
  - (b) there was a defect or irregularity in relation to the appointment; or
  - (c) the appointment had ceased to have effect.

**12. *Committees of the Council***

- (1) For the purposes of this Act, the Council may appoint any committees that it considers necessary and may abolish any such committee.
- (2) The membership of a committee is not restricted to the membership of the Council.
- (3) The Council may determine the procedure of each committee.

**13. *Community Reference Groups***

- (1) The Council must establish a Community Reference Group in respect of each investigation for the purpose of providing advice to the Council.
- (2) The members of a Community Reference Group should include representatives who have an interest relevant to the investigation, including, but not limited to, representatives from the following—
  - (a) environment protection and conservation groups;
  - (b) industry;
  - (c) farmers;
  - (d) unions and employees;
  - (e) tourism industry;

- (f) lease holders of relevant public land;
  - (g) licence holders of relevant public land;
  - (h) recreational users of relevant public land;
  - (i) indigenous peoples;
  - (j) local government;
  - (k) other community interests.
- (3) The Council may determine the procedure of each Community Reference Group.

**14. *Report on operations***

- (1) The Council must submit a report on its operation to the Minister on or before 31 October in each year.
  - (2) A report under sub-section (1) must include—
    - (a) a report on each investigation completed, commenced or conducted during the preceding financial year;
    - (b) a statement of the resources used in carrying out each investigation.
  - (3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 7 sitting days of that House after the report has been submitted to the Minister.
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**PART 3—INVESTIGATIONS**

**15. Minister to request investigation**

- (1) The Minister may request the Council to carry out an investigation for the purposes of this Act.
- (2) The Minister may make a request to the Council under sub-section (1) after the Minister has—
  - (a) caused a notice of the investigation to be published in newspapers circulating generally throughout Victoria which specifies the proposed terms of reference for the investigation;
  - (b) complied with sub-section (3).
- (3) The Minister must allow 28 days for the notification period under sub-section (2).
- (4) A request—
  - (a) must be in writing;
  - (b) must specify the time within which the Council is to report on the completed investigation;
  - (c) must specify that the Council is to prepare a discussion paper and a draft proposals paper, unless sub-section (5) applies;
  - (d) may give the Council directions as to the number of public submission periods to be held and the length of time to be allowed for public submissions.
- (5) Despite sub-section (4)(c), the Minister may in respect of a particular investigation specify in the request any or all of the following—

- (a) that a discussion paper is not to be prepared;
  - (b) that a draft proposals paper is not to be prepared;
  - (c) that one or more other stages or processes as identified in the request are to be undertaken during the investigation.
- (6) The Minister may, at any time during the course of an investigation—
- (a) direct the Council on any matters it is to take into consideration;
  - (b) amend or withdraw the request.

**16. *Requests, amendments and withdrawals to be laid before the Parliament***

- (1) The Minister must cause a copy of a request, amendment or withdrawal—
- (a) to be laid before each House of the Parliament, within 7 sitting days of that House;
  - (b) to be published in the Government Gazette, within 7 days;
  - (c) to be published on the internet, within 7 days—
- after the request, amendment or withdrawal is made.
- (2) Within 7 sitting days of each House of the Parliament after the period specified in section 15(3), the Minister must cause to be laid before each House of the Parliament a statement specifying how any comments received on the proposed terms of reference have been dealt with.
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**17. Minister to approve resources for investigation**

- (1) The Council must, within the specified period after receiving a request from the Minister, submit a business plan and budget for the investigation to the Minister.
- (2) In sub-section (1), "**specified period**" means—
  - (a) 30 days; or
  - (b) any longer period specified in writing by the Minister.
- (3) A plan must include an estimate of the financial and other resources needed to carry out the investigation.
- (4) The Minister must—
  - (a) consult with the Council over the estimate of the resources;
  - (b) ensure that the Department Head of the Department of Natural Resources and Environment makes available those resources which the Minister considers are required to effectively carry out the investigation.

**18. Matters to be taken into account in investigations and recommendations**

The Council must have regard to the following considerations in carrying out an investigation and in making recommendations to the Minister—

- (a) the principles of ecologically sustainable development;
- (b) the need to conserve and protect biological diversity;

- (c) the need to conserve and protect any areas which have ecological, natural, landscape or cultural interest or significance, recreational value or geological or geomorphological significance;
- (d) the need to provide for the creation and preservation of a comprehensive, adequate and representative system of parks and reserves within the State of Victoria;
- (e) the existence of any international treaty ratified by the Commonwealth of Australia which is relevant to the investigation;
- (f) any agreement at a national, inter-state or local government level into which the Government of Victoria has entered, or under which the Government of Victoria has undertaken any obligation in conjunction with the Commonwealth, a State, Territory or municipal council, which relates to the subject matter of the investigation;
- (g) the potential environmental, social and economic consequences of implementing the proposed recommendations;
- (h) any existing or proposed use of the environment or natural resources.

**19. *Role of Departments and public authorities***

- (1) The Council must confer with any Department or public authority which may be affected by the conduct or results of an investigation.
  - (2) Departments and public authorities must give practicable assistance to the Council in carrying out an investigation.
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**20. Notice of investigation**

- (1) The Council must cause notice of an investigation to be published.
  - (2) If, at any time during the course of an investigation, the Council proposes to receive further submissions on the investigation, the Council must cause notice that it is to receive further submissions on the investigation to be published.
  - (3) A notice under sub-section (1) or (2) must—
    - (a) be published—
      - (i) in a newspaper circulating generally throughout the State; and
      - (ii) on the internet;
    - (b) include a statement of the subject of the investigation;
    - (c) specify an address and the address of the internet site where a copy of the Minister's request may be obtained;
    - (d) state that submissions may be made;
    - (e) specify—
      - (i) the period of time; and
      - (ii) the form and the manner—  
in which submissions can be made.
  - (4) If an investigation is likely to affect the existing rights in the relevant public land of any lease holder, licence holder or recreational user, the Council must—
    - (a) make reasonable efforts to advise those persons and peak bodies representing those persons; and
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- (b) where practicable, cause notices to be placed on Department of Natural Resources and Environment notice boards in and around the relevant public land.

**21. *Notice of preparation of discussion paper and draft proposals paper***

- (1) After the Council has prepared a discussion paper on an investigation, the Council must cause notice of the preparation of the discussion paper to be published.
- (2) After the Council has prepared a draft proposals paper on an investigation, the Council must cause notice of the preparation of the draft proposals paper to be published.
- (3) A notice under sub-section (1) or (2) must—
  - (a) be published—
    - (i) in a newspaper circulating generally throughout the State; and
    - (ii) on the internet;
  - (b) include a statement of the subject of the investigation;
  - (c) specify an address and the address of the internet site where a copy of the paper may be obtained;
  - (d) state that submissions may be made;
  - (e) specify—
    - (i) the period of time; and
    - (ii) the form and the manner—  
in which submissions can be made.

## **22. Submissions**

- (1) Any person or body is entitled to make a submission to the Council on—
  - (a) an investigation;
  - (b) a discussion paper;
  - (c) a draft proposals paper.
- (2) A submission must be made within the specified time of the publication of a notice under section 20 or 21.
- (3) Despite anything to the contrary in section 20 or section 21 or this section, the Council may allow an extension of the specified time for a particular submission or class of submissions.
- (4) In this section, "**specified time**" means the period of time specified in the notice under section 20 or 21 being—
  - (a) the time, if any, specified by the Minister in the request; or
  - (b) if the Minister did not specify a time, within 60 days or a longer period determined by the Council.

## **23. Report on the investigation**

- (1) The Council must submit a written report on the results of its investigation to the Minister within the time specified by the Minister in the request.
  - (2) The report must specify—
    - (a) any recommendations resulting from the investigation;
    - (b) a detailed rationale for each of the recommendations;
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- (c) the main proposals made in submissions to the Council and the reasons why the Council accepted, rejected or modified those proposals.
- (3) The report must be accompanied by a copy of each submission received in relation to the investigation.
- (4) The Council must provide the Minister with copies of the report to be made publicly available.
- (5) The Minister must cause a copy of the report—
  - (a) to be laid before each House of the Parliament, within 7 sitting days of that House;
  - (b) to be available for public perusal, within 7 days;
  - (c) to be published on the internet, within 7 days—after the report has been presented to the Minister.

**24. *Extension of time***

- (1) The Council may apply for an extension of time to complete an investigation.
  - (2) An application must—
    - (a) be made not later than 30 days before the date on which the Council is required to submit the report;
    - (b) be in writing addressed to the Minister;
    - (c) explain the reasons why an extension of time is necessary.
  - (3) The Minister must either grant or refuse the application.
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- (4) The Minister must—
- (a) advise the Council in writing of his or her decision; and
  - (b) if the application is granted, must specify a new time within which the Council is to report on the investigation.

**25. *Government response***

- (1) The Minister must, not later than the first sitting day after the period of 6 months since the sitting day on which the report of the Council was laid before each House of the Parliament, cause a statement of the response of the Government to the report to be laid before each House specifying the action (if any) proposed to be taken by the Government with respect to each recommendation of the Council.
- (2) Within 7 days after the statement of the response of the Government has been laid before each House of the Parliament, the Minister must ensure that a copy of the statement is published—
  - (a) in the Government Gazette;
  - (b) on the internet.

**26. *Implementation***

If the statement of the response of the Government specifies that the Government wholly or partly accepts a recommendation of the Council, the Government must ensure that appropriate actions are taken to implement the recommendation to the extent that it has been accepted.

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**PART 4—MISCELLANEOUS AND TRANSITIONAL**

**27. *Repeal of Environment Conservation Council Act 1997***

The **Environment Conservation Council Act 1997** is repealed.

**28. *Saving of recommendations***

- (1) The repeal of the **Environment Conservation Council Act 1997** does not affect the continuing operation of—
    - (a) any recommendation made under the **Environment Conservation Council Act 1997**;
    - (b) any act, matter or thing done to give effect to a recommendation referred to in paragraph (a);
    - (c) any recommendation made under the **Land Conservation Act 1970** (whether or not notice had been given of that recommendation under section 10(3) of that Act); and
    - (d) any act, matter or thing done to give effect to a recommendation referred to in paragraph (c).
  - (2) Any recommendation to which sub-section (1)(c) applies may be amended or revoked by the Governor in Council on the recommendation of the Minister.
  - (3) Any recommendation to which sub-section (1)(a) applies is deemed to be a recommendation of the Council and this Act applies accordingly.
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**29. Amendment of Land Conservation (Vehicle Control) Act 1972**

For section 2 of the **Land Conservation (Vehicle Control) Act 1972** substitute—

**'2. Definition**

In this Act—

**"public land"** means—

- (a) any unalienated land of the Crown, including land temporarily or permanently reserved under the **Crown Land (Reserves) Act 1978**;
- (b) State forest within the meaning of the **Forests Act 1958**;
- (c) park, within the meaning of the **National Parks Act 1975**;
- (d) land under the ownership or control of Melbourne Parks and Waterways, established under the **Water Industry Act 1994**;
- (e) land vested in any public authority, other than—
  - (i) a municipal council; or
  - (ii) an Authority under the **Water Act 1989**, to the extent that the land vested in the Authority is within a sewerage district listed in column 3 of Schedule 12 of that Act.'

**ENDNOTES**

† *Minister's second reading speech—*

*Legislative Assembly: 2 November 2000*

*Legislative Council: 20 March 2001*

The long title for the Bill for this Act was "to establish the Victorian Environmental Assessment Council, to repeal the **Environment Conservation Council Act 1997** and for other purposes."