

# Commissioner for Sustainability and the Environment Appointment 2016 (No 2)

## Disallowable Instrument DI2016–34

made under the

**Commissioner for Sustainability and the Environment Act 1993, section 4  
(Commissioner for Sustainability and the Environment)**

## EXPLANATORY STATEMENT

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### Introduction

This explanatory statement relates to the *Commissioner for Sustainability and the Environment Appointment 2016 (No 2)* as made by the Minister and presented to the Legislative Assembly. It has been prepared in order to assist the reader of the instrument and to help inform debate on it. It does not form part of the instrument and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the instrument. It is not, and is not meant to be, a comprehensive description of the instrument. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

### Overview

Section 4 of the *Commissioner for Sustainability and the Environment Act 1993* (Act) requires the Minister to appoint a person as the Commissioner for Sustainability and the Environment (Commissioner). Section 5 of the Act states that the Commissioner must not be appointed for a term longer than 5 years.

The instrument appoints Professor Kate Auty for 5 years. Professor Auty has significant skills, expertise and qualifications in environmental science, law and public administration. Professor Auty was previously the Commissioner for Environmental Sustainability in Victoria.

The default position for ministers making appointments of this nature is that the instrument effecting the appointment is a disallowable instrument and the minister is required to consult with the relevant standing committee. There are exceptions to this in s227 of the *Legislation Act 2001*. In this case, none of these exceptions apply.

The Minister consulted the Standing Committee on Planning, Environment and Territory and Municipal Services by letter on 24 March 2016 and requested the

Standing Committee make a recommendation about the proposed appointment. The Standing Committee responded on 30 March 2016 advising that it had no recommendation in relation to the appointment.

The instrument is not likely to impose appreciable costs on the community, or part of the community and therefore a regulatory impact statement (RIS) is not required (Legislation Act, s34). Further, a RIS is unnecessary, in accordance with of the Legislation Act (s36(1)(b)), as the disallowable instrument does not operate to the disadvantage of anyone by adversely affecting the person's rights, or imposing liabilities on the person.

The instrument is consistent with the Legislative Assembly's Scrutiny of Bills Committee Terms of Reference. In particular, the instrument:

1. Is made under a ministerial power found in the Act.
2. Is in accord with the general objects of the Act under which it is made. The appointment of a Commissioner is integral to the operation and achieving the objects of the Act.
3. Does not unduly trespass on rights previously established by law. The appointment of a Commissioner does not affect anyone's rights.
4. Does not make right, liberties and/or obligations unduly depended upon non-reviewable decisions. The Commissioner's functions are to investigate complaints, conduct investigations as directed by the Minister or on its own initiative and include recommendations to government. Any decisions made by government as a result of a Commissioner's report would be subject to consideration of relevant human rights principles and regulatory impact analysis.

## **Outline of provisions**

### **Section 1 – Name of instrument**

This section names the instrument.

### **Section 2 – Commencement**

This section states that the instrument commences on 2 May 2016. The declaration of a specific commencement day rather than commencing on the day after notification is to ensure that the term of the current Commissioner does not expire prematurely.

### **Section 3 – Appointment of Commissioner for Sustainability and the Environment**

By this section, the Minister appoints Professor Kate Auty as Commissioner for Sustainability and the Environment.

This section provides that Professor Auty's term as Commissioner commences on 2 May 2016 and expires on 1 May 2021, which is not more than 5 years as provided by s 5 of the Act.

### **Section 4 – Remuneration, allowances and entitlements**

This section provides the conditions as to remuneration, allowances and entitlements for the Commissioner.