

# When Climate Mainstreaming Is the Law: A Case Study of the Climate Change Act 2017 (Vic)

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## Abstract

Framework climate legislation has been introduced in many jurisdictions around the world, at the national and subnational scales, to govern climate change mitigation and adaptation activities by governments. The *Climate Change Act 2017* (Vic) is an example which embodies many of the typical features of framework climate laws: emissions reduction targets, mitigation strategies and adaptation plans. Yet the Victorian legislation also includes explicit provision for climate mainstreaming: a general legal duty to take account of climate change, where relevant, in government decisions, policies, programs and processes, and a more specific duty to have regard to climate change considerations in prescribed decisions. These mainstreaming provisions reflect a legislative intent to promote an integrated, whole-of-government approach to climate change. This recognises that a broad range of policy areas both contribute to climate change and are affected by climate change, and that effectively integrating climate change across government functions is critical to achieve mitigation and adaptation objectives. This article reports on an empirical study exploring the effect of the mainstreaming provisions on government practices in Victoria. Interviews with Victorian public servants from a wide range of policy and operational areas provide insights into the value, role and function of legislation in supporting climate mainstreaming, as well as lessons from practice in how to effectively operationalise legal mainstreaming duties.

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## I Introduction

Since the introduction of the first framework climate law in the United Kingdom in 2008,<sup>1</sup> many nation-states around the world have enacted similar legislation to underpin and propel their responses to climate change.<sup>2</sup> These laws typically create procedural architecture (a ‘framework’) designed to impel continuous policy and regulatory action towards achieving long-term emissions reduction (and sometimes climate change adaptation) targets. They do not provide for substantive climate policy measures such as emissions taxes or emissions trading schemes. Rather, they establish the impetus and the strategic planning processes for such measures to be developed and for their contribution to climate policy targets to be actively monitored and reported. Many of these laws align closely<sup>3</sup> with the international *Paris Agreement*, reflecting both its cycle of bottom-up emissions reduction commitments (Nationally Determined Contributions prepared every five years),<sup>4</sup> and its objective to reach net-zero emissions by 2050.<sup>5</sup>

The legislative model outlined above is not unique to the national jurisdiction but has also been implemented in some subnational jurisdictions. This includes several Australian states, which have led the development of climate law and policy during a long period of inaction and policy conflict at the national level in Australia.<sup>6</sup> The *Climate Change Act 2017* (Vic) (*‘Climate Change Act’*), enacted in the state jurisdiction of Victoria, is illustrative and represents one of the most comprehensive and established examples of framework climate legislation in Australia, and indeed around the world.<sup>7</sup>

One of the interesting features of the *Climate Change Act*, which is not common to other examples at a national or subnational scale, is its explicit provision for climate change mainstreaming.<sup>8</sup> The Act sets out a general legal duty for the

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<sup>1</sup> *Climate Change Act 2008* (UK).

<sup>2</sup> Matthias Duwe and Nicholas Evans, *Climate Laws in Europe: Good Practices in Net-Zero Management* (Report, European Climate Foundation, 2019); Thomas L Muinzer (ed), *National Climate Change Acts: The Emergence, Form and Nature of National Framework Climate Legislation* (Hart Publishing, 2020).

<sup>3</sup> Anita Foerster, Alice Bleby, Anne Kallies and Jonathan Church, ‘“Paris” at the Subnational Scale? An Exploration of the Role and Potential of Framework Climate Laws’ (2022) 45(3) *Melbourne University Law Review* 1045.

<sup>4</sup> *Paris Agreement under the United Nations Framework Convention on Climate Change*, opened for signature 22 April 2016, [2016] ATS 24 (entered into force 4 November 2016) arts 4(2), (3), (9).

<sup>5</sup> *Ibid* art 4(1).

<sup>6</sup> Peter Christoff and Robyn Eckersley, ‘Convergent Evolution: Framework Climate Legislation in Australia’ (2021) 21(9) *Climate Policy* 1190. Framework climate laws are in place in South Australia, Tasmania and the Australian Capital Territory (as well as Victoria), although these differ in their legal design and comprehensiveness: see *Climate Change and Greenhouse Gas Reduction Act 2010* (ACT); *Climate Change and Greenhouse Emissions Reduction Act 2007* (SA); *Climate Change (State Action) Act 2008* (Tas). Following a change of government in 2022, the national government is now implementing a comprehensive climate policy agenda, including new framework climate legislation (*Climate Change Act 2022* (Cth)).

<sup>7</sup> ClientEarth, *Navigating Net-Zero: Global Lessons in Climate Law-Making* (Report, August 2021).

<sup>8</sup> There are few other examples of framework climate laws with explicit mainstreaming provisions. Notable exceptions are the *Climate Change (Scotland) Act 2009* (Scot) pt 4 (*‘Climate Change (Scotland) Act’*) and *Climate Change Act 2021* (Fiji) pt 5 (*‘Fiji’s Climate Change Act’*).

Victorian government to take account of climate change, where relevant, in all government decisions, policies, programs and processes;<sup>9</sup> and a more specific duty to have regard to climate change considerations in prescribed decisions.<sup>10</sup> Along with the broader legal architecture of the Act, which spreads responsibilities and accountabilities across all sectoral ministers, these mainstreaming duties reflect a legislative intention to deliver an integrated, whole-of-government approach to climate change. Such an approach recognises that a broad range of policy areas both contribute to climate change and are affected by climate change, and that effectively integrating climate change across government functions is critical to achieve climate policy objectives.<sup>11</sup>

Although framework climate laws are in themselves relatively understudied, given they have only emerged in their present form since 2008, mainstreaming provisions such as those set out in the Act attract even less attention in the literature. They are unusual features of this type of legislation, and are addressed to a broader, less tangible and more nebulous agenda for action than the core policy mechanisms established by framework climate laws which directly target climate change mitigation and adaptation objectives. Mainstreaming as a concept is not new; it has been explored and developed in the context of a number of cross-cutting policy issues including gender equality, environmental policy integration, disaster risk reduction and human rights.<sup>12</sup> However, climate change mainstreaming is a relatively new focus for mainstreaming practice.<sup>13</sup> Further, its application in the context of legal duties for government to take account of climate change in decision-making is novel and unexplored in both literature and practice. This presents an

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<sup>9</sup> *Climate Change Act 2017* (Vic) s 20 ('*Climate Change Act*').

<sup>10</sup> *Ibid* s 17.

<sup>11</sup> Alannah Calabro, Stephanie Niall and Anna Skarbek, 'The Victorian Climate Change Act: A Model' (2018) 92(10) *Australian Law Journal* 814.

<sup>12</sup> See, eg, Charlotte Benson, John Twigg and Tiziana Rossetto, *Tools for Mainstreaming Disaster Risk Reduction: Guidance Notes for Development Organisations* (Report, January 2007) 5; Sylvia Walby, 'Gender Mainstreaming: Productive Tensions in Theory and Practice' (2005) 12(3) *Social Politics* 321, 327; Asa Persson, 'Environmental Policy Integration: An Introduction' (Background Paper, Stockholm Environment Institute, June 2004); Francis Seymour, Crescensia Maurer and Ricardo Quiroga, 'Environmental Mainstreaming: Applications in the Context of Modernization of the State, Social Development, Competitiveness, and Regional Integration' (Working Paper, Inter-American Development Bank, November 2005). Indeed, mainstreaming of human rights in government is institutionalised in Victoria through the *Charter of Human Rights and Responsibilities Act 2006* (Vic), which requires all public authorities and any people or organisations delivering services on behalf of the Victorian government to give proper consideration to human rights before making a decision and to act compatibly with human rights. For a general overview, see James Allan, 'The Victorian *Charter of Human Rights and Responsibilities*: Exegesis and Criticism' (2006) 30(3) *Melbourne University Law Review* 906; James B Kelly, 'A Difficult Dialogue: Statements of Compatibility and the Victorian *Charter of Human Rights and Responsibilities Act*' (2011) 46(2) *Australian Journal of Political Science* 257.

<sup>13</sup> The existing literature focuses largely on mainstreaming climate adaptation considerations, often in a sustainable development context: see, eg, Joyeeta Gupta, 'Mainstreaming Climate Change: A Theoretical Exploration' in Joyeeta Gupta and Nicolien van der Grijp (eds), *Mainstreaming Climate Change in Development Cooperation: Theory, Practice and Implications for the European Union* (Cambridge University Press, 2010) 67; Christine Wamsler and Stephan Pauleit, 'Making Headway in Climate Policy Mainstreaming and Ecosystem-Based Adaptation: Two Pioneering Countries, Different Pathways, One Goal' (2016) 137(1–2) *Climatic Change* 71.

opportunity, therefore, to examine the legal requirements for mainstreaming introduced by the Act to understand their nature, implications and impact in practice.

This article presents findings from an empirical study of climate mainstreaming undertaken from June 2021 to July 2022. The study was carried out in partnership with the Victorian Department of Environment, Land, Water and Planning ('DELWP')<sup>14</sup> which has primary responsibility for implementation of the *Climate Change Act*. The article examines the conceptualisation and practice of climate mainstreaming in the Victorian government. It draws on empirical evidence, gathered through research interviews, a survey and an interactive workshop, to analyse the impact of the mainstreaming provisions on governmental policy, decisions and operations. Although conducted early in the life of the Act, this study provides a snapshot of emerging mainstreaming practice: it draws on the experiences and insights shared by study participants to identify barriers to and enablers of climate mainstreaming, and to draw conclusions about best practice mainstreaming and the role of the Act. The article contends that although progress is uneven and there are opportunities to strengthen climate mainstreaming, explicit legislative duties are particularly valuable in supporting this important practice. This in turn suggests that mainstreaming provisions, drawing on the Victorian example, could be a useful addition to framework climate laws in other jurisdictions.

This article is in six Parts. Part II introduces the concept of mainstreaming, its application in the context of climate policy, and the explicit mainstreaming provisions of the *Climate Change Act*. Part III describes the research approach and methodology for the empirical study. Part IV reports on the findings, using the empirical data to develop insights into the scope, role and value of climate mainstreaming under the Act, to categorise mechanisms to further mainstreaming objectives, and to identify factors that hinder or enable effective climate mainstreaming in practice. Part V offers some critical reflection on mainstreaming practice in Victoria to date and discusses opportunities to further develop and deepen this practice; and Part VI concludes.

## II The Context for Climate Change Mainstreaming

### A What Is Climate Change Mainstreaming?

Mainstreaming is a public policy concept and practice intended to transform an issue of vital public importance from a peripheral, or add-on consideration, to a central and priority concern in policy and decision-making. Mainstreaming theory and practice have evolved over three decades or more in the context of gender equality, disaster risk reduction, environmental policy integration, human rights and other areas of public policy.<sup>15</sup> However, mainstreaming as applied to climate change is a relatively recent development, most often elaborated in the contexts of sustainable development and/or climate adaptation.<sup>16</sup>

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<sup>14</sup> DELWP was renamed the Department of Energy, Environment and Climate Action ('DEECA') on 1 January 2023, as a result of machinery-of-government changes.

<sup>15</sup> Benson, Twigg and Rossetto (n 12); Walby (n 12); Persson (n 12).

<sup>16</sup> Gupta (n 13); Wamsler and Gupta (n 13).

In a government context, climate change mainstreaming is generally understood as the integration of climate change considerations into policies, processes, decisions and other governmental activities across all sectors, to support overarching strategic objectives of reducing emissions and adapting to climate change.<sup>17</sup> This implies that the potential impacts of activities and decisions in all areas of government on climate policy objectives will be analysed, and that measures will be adopted to maximise alignment and minimise conflict with these objectives.<sup>18</sup>

Climate mainstreaming rests on a recognition that climate change is a cross-cutting issue that is relevant for all manner of government functions, and that climate policy objectives cannot be met by treating them as stand-alone goals.<sup>19</sup> As such, climate change should be embedded across government decisions and processes as a matter of good public policy and governance,<sup>20</sup> and particularly to reduce risks of maladaptation and counter-productive government activities<sup>21</sup> and maximise opportunities to generate co-benefits for multiple policy objectives.<sup>22</sup>

Climate mainstreaming is distinct from, but complementary to, direct substantive climate policy initiatives in mitigation or adaptation. Rather than targeted policy or regulatory interventions for addressing climate change (such as renewable energy incentives, emissions trading or adaptation planning), mainstreaming concerns the myriad decisions and actions that government takes in areas other than 'climate policy' which can contribute to reducing emissions and responding to climate change impacts. It also concerns those decisions and actions for which a failure to integrate climate change considerations can work against efficient and timely realisation of climate mitigation and adaptation goals.

Gupta and other scholars have conceptualised climate mainstreaming as 'more than integration'; rather, mainstreaming is the final step along a spectrum of activities or interventions that embed climate change to varying degrees.<sup>23</sup> This spectrum ranges from adding new climate-related considerations onto existing

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<sup>17</sup> Franz Berkhout, Laurens M Bouwer, Joanne Bayer, Maha Bouzid, Mar Cabeza, Susanne Hanger, Andries Hof, Paul Hunter, Laura Meller, Anthony Patt, Benjamin Pfluger, Tim Rayner, Kristin Reichardt and Astrid van Teeffelen, 'European Policy Responses to Climate Change: Progress on Mainstreaming Emissions Reduction and Adaptation' (2015) 15(6) *Regional Environmental Change* 949, 949; Seymour, Maurer and Quiroga (n 12); Mariya Aleksandrova, 'Principles and Considerations for Mainstreaming Climate Change Risk into National Social Protection Frameworks in Developing Countries' (2019) 12(6) *Climate and Development* 511, 513; Gill Allwood, 'Mainstreaming Gender and Climate Change to Achieve a Just Transition to a Climate-Neutral Europe' (2020) 58 (Annual Review) *Journal of Common Market Studies* 173, 175.

<sup>18</sup> Benson, Twigg and Rossetto (n 12) 5.

<sup>19</sup> Allwood (n 17) 177; Calabro, Niall and Skarbek (n 11) 819.

<sup>20</sup> Gupta (n 13) 71; Seymour, Maurer and Quiroga (n 12) 2.

<sup>21</sup> MTJ Kok and HC de Coninck, 'Widening the Scope of Policies to Address Climate Change: Directions for Mainstreaming' (2007) 10(7–8) *Environmental Science and Policy* 587, 588; Seymour, Maurer and Quiroga (n 12) 1; Persson (n 12) 1; Sarah La Trobe and Ian Davis, 'Mainstreaming Disaster Risk Reduction: A Tool for Development Organisations' (Paper, Tearfund, January 2005) 1.

<sup>22</sup> Seymour, Maurer and Quiroga (n 12) 1; Persson (n 12) 1; La Trobe and Davis (n 21) 1.

<sup>23</sup> Gupta (n 13) 85. See also Christine Wamsler, Christopher Luederitz and Ebba Brink, 'Local Levers for Change: Mainstreaming Ecosystem-Based Adaptation into Municipal Planning to Foster Sustainability Transitions' (2014) 29 (November) *Global Environmental Change* 189; Wamsler and Pauleit (n 13).

processes; more systematic identification of win–win opportunities to achieve climate policy goals alongside sectoral goals; subjecting government policies, programs and projects to comprehensive climate screening and climate proofing to maximise alignment to mitigation and adaptation goals; through to, finally, a fundamental reorganisation and redesign of government organisational culture where climate change becomes a core consideration.<sup>24</sup> Mainstreaming practice is considered to be mature when climate change has shifted from a marginal discourse to the centre of discussions, resulting in the redesign of responses to other issues.<sup>25</sup>

Scholars have also usefully categorised the activities, mechanisms and initiatives that may contribute to and foster mainstreaming in climate and other policy contexts. Common categories include the *normative* (eg, political leadership and policy commitments), *organisational* (institutional organisation and coordination, accountability mechanisms, allocation of resources) and *procedural* (rules of decision-making including impact assessment, and other procedures and tools to support decision-makers in different contexts).<sup>26</sup> Many scholars emphasise the governance and organisational aspects of climate mainstreaming, in particular the shifting and broadening of responsibility for climate change responses and associated capacities and capabilities from a single (generally environmental) ministry or agency to all sectors of government.<sup>27</sup> Wamsler and colleagues also distinguish between vertical and horizontal dimensions of mainstreaming strategies: *vertical* mainstreaming involves powerful governmental actors and top-down guidance and direction, often achieved through regulation; *horizontal* mainstreaming involves coordination and collaboration activities to build capacity, capability and impetus for integrating climate considerations.<sup>28</sup>

## **B Distinguishing Climate Mainstreaming from Climate Risk Management**

Mirroring developments in the private sector,<sup>29</sup> in the public sector context, climate change has been increasingly framed as a source of material risk for government business, services and operations.<sup>30</sup> Enterprise risk management approaches are increasingly used to guide climate risk identification, assessment and treatment within government organisations.<sup>31</sup> These approaches are an important part of

<sup>24</sup> Gupta (n 13) 84–5, table 3.5.

<sup>25</sup> Ibid 79.

<sup>26</sup> Ibid 86–7; Persson (n 12) 31–6.

<sup>27</sup> Tearfund and Institute of Development Studies, ‘Overcoming the Barriers: Mainstreaming Climate Change Adaptation in Developing Countries’ (Tearfund Climate Change Briefing Paper No 1, 2006); Wamsler and Pauleit (n 13); Wamsler, Luederitz and Brink (n 23). See also ClientEarth (n 7) 44–6.

<sup>28</sup> Wamsler, Luederitz and Brink (n 23).

<sup>29</sup> Task Force on Climate-Related Financial Disclosures, *Recommendations of the Task Force on Climate-Related Financial Disclosures* (Final Report, June 2017) (‘TCFD Recommendations’).

<sup>30</sup> See, eg, Arjuna Dibley, Sam Hurley and Joshua Sheppard, ‘Public Authority Directors’ Duties and Climate Change: Managing the Latent Financial and Governance Risks’ (Discussion Paper, Centre for Policy Development, 2019).

<sup>31</sup> Habib Mahama, Mohamed Elbashir, Steve Sutton and Vicky Arnold, ‘Enabling Enterprise Risk Management Maturity in Public Sector Organizations’ (2022) 42(6) *Public Money and Management* 403; Enrico Bracci, Tallaki Mouhcine, Tarek Rana and Danture Wickramasinghe, ‘Risk Management

climate mainstreaming. For example, risk-based approaches are commonly used to integrate consideration of the physical risks posed by climate change into government processes and decision-making in ways which can support adaptation goals (eg. asset maintenance, upgrade and replacement decisions).

However, risk management approaches are potentially narrower than, and distinct from, mature climate mainstreaming as conceptualised above. A risk management approach focuses on risks posed by climate change to government business, services and operations. In contrast, a broadly framed mainstreaming strategy focuses on how government decisions and actions can support and align with climate policy goals. Steps taken to manage climate-related risks to government business might be quite different from steps taken to align different sectoral policies and activities with climate change objectives. For example, a risk management approach does not necessarily encompass the full range of decisions, actions and operations that government is involved in which might contribute to or detract from reaching climate change objectives. A risk management approach does not necessarily involve and influence the wide range of governmental actors and stakeholders interacting with government whose decisions and actions can impact the achievement of climate policy objectives. Further, a risk management approach does not necessarily support policy ambition, but rather aims to avoid negative consequences, meaning that it might not help to optimise policy approaches and realise co-benefits for multiple policy objectives.

### C *Legal Obligations to Mainstream Climate Change*

The *Climate Change Act* addresses climate change mainstreaming in three ways: as an overarching statutory objective; through explicit duties on government; and via its allocation of roles, responsibilities and accountabilities for key statutory functions.

Mainstreaming objectives are included within the purposes of the Act, which include ‘to facilitate the consideration of climate change issues in specified areas of decision making of the Government of Victoria’<sup>32</sup> and ‘to set policy objectives and guiding principles to inform decision-making under this Act and the development of government policy in the State’.<sup>33</sup>

The Act then sets out two explicit legal duties to mainstream climate change into government decisions and activities. Section 17 provides:

A person making a decision or taking an action [that is listed in sch 1 of the Act] must have regard to: (a) the potential impacts of climate change relevant to the decision or action; and (b) the potential contribution to the State’s greenhouse gas emissions of the decision or action.

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and Management Accounting Control Systems in Public Sector Organizations: A Systematic Literature Review’ (2022) 42(6) *Public Money and Management* 395.

<sup>32</sup> *Climate Change Act* (n 9) s 1(c).

<sup>33</sup> *Ibid* s 1(d).

Schedule 1 of the Act currently lists 24 decisions and actions under seven different pieces of legislation.<sup>34</sup> For example, decisions relating to licences and permits including the review of operating licences for industrial facilities under the *Environment Protection Act 2017* (Vic) are listed and subject to the s 17 duty.<sup>35</sup>

Section 20 of the *Climate Change Act* provides:

The Government of Victoria will endeavour to ensure that any decision made by the Government and any policy, program or process developed or implemented by the Government appropriately takes account of climate change if it is relevant by having regard to the policy objectives and the guiding principles.

This broadly framed duty to take climate change into account is underpinned and strengthened by reference to the policy objectives of the Act which target clear substantive outcomes. For example, the policy objective in s 22(a) aims ‘to reduce the State’s greenhouse gas emissions consistently with the long-term emissions reduction target and interim emissions reduction targets’, and s 22(b) aims ‘to build the resilience of the State’s infrastructure, built environment and communities through effective adaptation and disaster preparedness action’. Although there is not an explicit requirement to ensure alignment with these objectives as there is in some other framework laws,<sup>36</sup> the s 20 duty can arguably be interpreted in this way given its broader statutory context. There is also provision for the development of ministerial guidelines to inform the discharge of both the s 17 and s 20 duties.<sup>37</sup> To date, no guidelines have been developed.

The architecture of the Act also underpins a whole-of-government approach to climate change governance.<sup>38</sup> Sectoral emissions reduction pledges are the core policy mechanism designed to support the achievement of interim and long-term emissions reduction targets under the Act;<sup>39</sup> and the Act provides that different ministers can be allocated responsibility for developing and implementing these pledges.<sup>40</sup> In the first round of strategic planning under the Act (2017–21), a diverse range of government ministers led the development of emissions reduction pledges for the transport, agriculture, energy, industrial processes and product use, waste, and land use and forestry sectors.<sup>41</sup> The primary policy mechanism to drive climate change adaptation under the Act is the adaptation action plan, developed at the

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<sup>34</sup> *Catchment and Land Protection Act 1994* (Vic); *Marine and Coastal Act 2018* (Vic); *Environment Protection Act 2017* (Vic) (*‘Environment Protection Act’*); *Flora and Fauna Guarantee Act 1988* (Vic); *Public Health and Wellbeing Act 2008* (Vic); *Water Act 1989* (Vic); *Circular Economy (Waste Reduction and Recycling) Act 2021* (Vic).

<sup>35</sup> *Climate Change Act* (n 9) sch 1.

<sup>36</sup> For example, the *Climate Change (Scotland) Act* (n 8) pt 4 includes a clear positive obligation for public bodies to act in the way best calculated to contribute to the delivery of emissions reduction targets and to help deliver any statutory climate change adaptation program.

<sup>37</sup> *Climate Change Act* (n 9) ss 18, 21.

<sup>38</sup> Calabro, Niall and Skarbek (n 11) 818.

<sup>39</sup> *Climate Change Act* (n 9) ss 43–5.

<sup>40</sup> *Ibid.*

<sup>41</sup> ‘Victorian Government Action on Climate Change’, *Department of Energy, Environment and Climate Action* (Web Page) <<https://www.climatechange.vic.gov.au/victorian-government-action-on-climate-change>>.



system scale (eg, built environment, natural environment, water cycle).<sup>42</sup> Here also, different ministers can be allocated responsibility for developing and implementing adaptation action plans for different systems, and this approach was followed in the first round of policy development under the Act.<sup>43</sup> This allocation of roles and responsibilities beyond the central ministry responsible for the implementation of the Act potentially helps to embed consideration of climate change across different policy and operational areas.<sup>44</sup>

Since the introduction of the Act in 2017, the Victorian government has also dedicated resources to centralised coordination, promotion and facilitation of mainstreaming activities and interventions, including through a central climate mainstreaming team located within the Climate Change Division ('CCD') of DELWP.<sup>45</sup>

### III Research Approach and Methodology

As a rare example of a jurisdiction with framework climate legislation incorporating mainstreaming duties, the experience of the Victorian government offers a rich source of information about how mainstreaming is conceptualised and implemented by governments, and the role of framework legislation in catalysing mainstreaming. Although the *Climate Change Act* had been in force less than five years at the time this study was conducted, there is already evidence of government investment in mainstreaming activities, and ongoing efforts to interpret and implement the mainstreaming duties laid out in the Act. An empirical study conducted at this early stage in the life of the Act is timely, as it provides an opportunity for the Victorian government and observers to reflect on initial progress in mainstreaming, informing future efforts, as well as providing a reference point for future evaluations of the impact of this law. The study also offers a means of sharing early insights from the Victorian experience with other jurisdictions and practitioners who might benefit from lessons learned in Victoria as they develop their own climate mainstreaming activities and the theory and practice of climate mainstreaming expands beyond the current limited range of examples.

#### A Research Approach

Building on a previous research relationship, the authors approached DELWP about further research into the implementation of the *Climate Change Act*. Given the pioneering nature of the Act and the efforts contemporaneously under way in government to deliver what it requires, the authors proposed to co-design a collaborative, targeted project aligned with government priorities for implementing the Act.

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<sup>42</sup> *Climate Change Act* (n 9) ss 34–40.

<sup>43</sup> *Ibid* ss 34, 38.

<sup>44</sup> Foerster et al (n 3) 1070–3.

<sup>45</sup> At the time of writing, the mainstreaming team was called the Government Risk and International Relations Team.

The aim of the study was to contribute practical insights to the ongoing development and delivery of mainstreaming interventions to support robust and appropriate consideration of climate change across the Victorian government in line with statutory duties. To ensure the project aligned with current governmental priorities and optimised the practical knowledge that has built up in the CCD since the Act was enacted, the research team committed to co-develop the project with the climate mainstreaming team. Regular discussions and feedback informed the creation of a project plan designed to develop a clear, contextualised and practical understanding of the mainstreaming provisions in the Act, and to generate recommendations for the development of ministerial guidance and other tools and resources to build capacity for climate mainstreaming across the Victorian government. The project focused particularly on the role of DELWP in progressing and supporting robust and appropriate consideration of climate change in government decisions and activities.

In addition to participating in interviews and focus groups as part of the empirical data collection (discussed below), the mainstreaming team (and occasionally other members of the CCD) received regular updates about the project, helped to identify participants for the empirical research, supported the engagement of the research team with participants across government, reviewed project outputs, and provided comment on the final report.

It should be noted, however, that the findings and opinions expressed in this and other academic articles and project outputs reflect the view of the authors, and do not express the views or position of the Victorian government.

## **B** *Methodology*

Conducted from June 2021 to July 2022, the study adopted a mixed-method, socio-legal research approach involving both desktop and empirical investigation. In addition to legal analysis of the *Climate Change Act* in the context of the emerging body of framework climate laws around the world, the desktop research involved both a review of academic literature on mainstreaming in different policy contexts, and an analysis of relevant examples of guidance materials and other tools used to support decision-makers to integrate climate change in different jurisdictions.

Empirical research techniques were used to gather data on current and emerging mainstreaming practice from a sample of Victorian government public servants from diverse policy and operational areas (see Table 1 below).<sup>46</sup> The sample included all members of the climate mainstreaming team and some members of the CCD. It also included public servants working in climate or environment-related policy and operational roles, or risk management roles, in a wide range of other departments, agencies and government entities, all of whom were members of the inter-governmental Climate Risk Community of Practice. Senior managers, as well as more junior roles, were well represented. The broadly framed s 20 duty was

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<sup>46</sup> Participant selection was purposive and achieved good coverage of relevant stakeholders: Michael Quinn Patton, *Qualitative Research and Evaluation Methods: Integrating Theory and Practice* (Sage, 4<sup>th</sup> ed, 2015) ch 5, module 30.

relevant for all participants in the sample, and the more targeted s 17 duty was relevant for a smaller subset of participants. It should be noted that the sample contained only government actors and that all participants worked on climate change, albeit across different policy and operational areas. While this was appropriate to the targeted research objectives and scope of the project, the sample did not include external viewpoints (either from non-government actors or from government actors not working on climate change) which may have provided different perspectives, particularly on the potential effect of mainstreaming activities undertaken by the Victorian government.

Interviews, focus groups and an online interactive workshop were used to ask participants broadly framed open-ended questions about mainstreaming practice, barriers to and enablers of climate mainstreaming in different policy and operational contexts, and opportunities to support further integration of climate change in decisions and operations.<sup>47</sup> An online survey complemented these activities, asking similarly framed questions of a wider range of participants.<sup>48</sup>

Table 1 sets out the sequence of empirical research activities, outlining how each was used to progressively build a rich understanding of climate mainstreaming practice across government. Reference to data collected through the empirical research activities throughout this article is indicated with a numerical reference to the consultation record.<sup>49</sup>

**Table 1:** Empirical research activities

Activity and timing	Participants	Focus of inquiry	Consultation record
Interviews Focus groups  July–October 2021	Climate mainstreaming team, DELWP  Climate Change Division, DELWP  (16 participants)	<ul style="list-style-type: none"> <li>• Interpretation of statutory duties and conceptual framing of climate mainstreaming</li> <li>• Activities and initiatives used by DELWP to foster and support climate mainstreaming</li> <li>• Effectiveness of mainstreaming interventions</li> <li>• Opportunities for new initiatives and activities</li> </ul>	Records 1–11

<sup>47</sup> Interviews (1 hour) and focus groups (1.5–2 hours) were conducted online by the authors. The interactive online workshop (2 hours) was conducted online using Zoom conferencing and break-out discussions, as well as Padlet discussion forums to gather data from participants. Audio recordings were transcribed for analysis.

<sup>48</sup> The survey was administered through Qualtrix. It included a mixture of multiple-choice and extended-answer questions designed to replicate and build on questions asked in initial interviews.

<sup>49</sup> This is in accordance with Monash University Ethics Approval (Project ID: 28928). Records include transcripts of the interviews, focus groups and workshop discussions and associated notes (including Padlets to which participants contributed during workshop discussions), as well as the survey results.

Activity and timing	Participants	Focus of inquiry	Consultation record
Online survey  October– November 2021	Victorian public servants in diverse policy and operational roles from a wide range of government departments, agencies and entities  (40 participants)	<ul style="list-style-type: none"> <li>• Relevance of climate change to different work areas</li> <li>• Awareness and interpretation of statutory duties</li> <li>• Current approaches to climate mainstreaming in different work areas</li> <li>• Challenges arising in the consideration of climate change in work area</li> <li>• Opportunities to support further integration of climate change in different work areas</li> </ul>	Record 12
Interactive online workshop  December 2021	Victorian public servants in diverse policy and operational roles from a wide range of government departments, agencies and entities  (35 participants)	<ul style="list-style-type: none"> <li>• Current approaches to climate mainstreaming in different work areas</li> <li>• Challenges arising in the consideration of climate change in work area</li> <li>• Examples of effective climate mainstreaming</li> <li>• Priorities for mainstreaming interventions in different work areas</li> <li>• Types of interventions needed (eg, guidance, tools, resources and other activities)</li> </ul>	Records 13–22
Supplementary interviews  December 2021 – February 2022	Select participants from across the Victorian public service, representing more mature mainstreaming practice  (12 participants)	<ul style="list-style-type: none"> <li>• Examples of more mature mainstreaming practice across the Victorian government</li> <li>• Key enablers of and opportunities to support further integration of climate change considerations in different government contexts</li> </ul>	Records 23–29

Qualitative content and thematic analysis approaches were employed to analyse the empirical data. Themes and questions for analysis were developed from the initial desktop research and were informed by the project objective to contribute

to the climate mainstreaming work program of DELWP.<sup>50</sup> Table 2 sets out the analytical framework used by the authors to guide manual coding of data.

**Table 2:** Analytical framework

Themes	Questions for analysis
Scope and role of climate mainstreaming	<ul style="list-style-type: none"> <li>• How is climate mainstreaming framed and understood by different government stakeholders?</li> <li>• Why is mainstreaming important?</li> <li>• How does mainstreaming interact with and underpin explicit climate policy initiatives?</li> <li>• Would mainstreaming happen without explicit statutory duties and targeted activities and initiatives?</li> </ul>
Scope and interpretation of statutory duties	<ul style="list-style-type: none"> <li>• Which decisions, policies, programs and processes need to consider climate change?</li> <li>• Which decision-makers and other government officers are bound by the statutory duties?</li> <li>• What amounts to robust consideration of climate change in line with statutory duties?</li> </ul>
Current mainstreaming practices	<ul style="list-style-type: none"> <li>• What are the types of decisions and other government activities for which climate change is considered relevant and material?</li> <li>• How is climate change integrated into decision-making and operations, if at all?</li> <li>• What resources, tools and other approaches are used?</li> <li>• What is the outcome of integrating climate change in decision-making and operations?</li> </ul>
Enablers of climate mainstreaming	<ul style="list-style-type: none"> <li>• What are the factors and conditions which drive and enable climate mainstreaming?</li> <li>• Which areas of government are successfully mainstreaming climate change? Why?</li> </ul>
Barriers to climate mainstreaming	<ul style="list-style-type: none"> <li>• What challenges are encountered in integrating climate change in government decisions and operations?</li> <li>• What are the factors and conditions that hinder climate mainstreaming?</li> <li>• Which areas of government are less advanced in mainstreaming climate change? Why?</li> </ul>
Opportunities to foster mature climate mainstreaming	<ul style="list-style-type: none"> <li>• What are the opportunities in government processes and systems to embed consideration of climate change?</li> <li>• What types of initiatives and activities help build capacity and capability to integrate climate change?</li> <li>• What inputs, tools and resources are needed to support decision-makers across government?</li> </ul>

<sup>50</sup> See generally Lisa Webley, 'Qualitative Approaches to Empirical Legal Research' in Peter Cane and Herbert M Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press, 2010) 927, 933–5; Svend Brinkmann, 'Unstructured and Semi-Structured Interviewing' in Patricia Leavy (ed), *The Oxford Handbook of Qualitative Research* (Oxford University Press, 2014) 277, 277–99.

## IV Findings from the Empirical Study

This Part outlines the key findings of the empirical study. Informed by theories of mainstreaming proposed in the literature,<sup>51</sup> the discussion initially explores the scope, role and value of mainstreaming under the *Climate Change Act*. Empirical data is then used to delineate a range of factors that enable or hinder the realisation of mainstreaming objectives in practice and to group these into three main categories: regulatory, institutional and capacity/capability.<sup>52</sup> Discussion and categorisation of these factors is informed by taxonomies of mainstreaming activities set out in the literature,<sup>53</sup> as well as the diverse range of mainstreaming activities under way in the Victorian government, which provide evidence of progress to date as well as rich insights into how mainstreaming objectives can be achieved.

### A Scope, Role and Value of Mainstreaming

Project participants were asked to discuss their interpretation and conceptualisation of climate mainstreaming generally and in the context of the statutory duties set out in the *Climate Change Act*. The responses are useful for discerning a narrative and underpinning objective(s) for climate mainstreaming.

Most participants conceived of mainstreaming in ways that focused on *integrating* climate change considerations into decisions and activities, and *normalising* consideration of climate change across government.<sup>54</sup> For example, participants defined mainstreaming as ‘putting a climate change lens on everything you do’<sup>55</sup> or ‘embedding climate change considerations into everyday basic policies, programs and processes’.<sup>56</sup> One participant explained that they ‘consider whether climate change will affect the implementation of the policy ... [and] whether the policy [we’re] thinking about implementing will itself exacerbate or help to adapt to climate change’.<sup>57</sup> Participants also emphasised that mainstreaming implies normalisation, so that ‘people in their everyday business-as-usual roles ... have an understanding of climate risk that applies to them and ... factor it into their everyday work’<sup>58</sup> and ‘climate change is no longer viewed as an add-on’.<sup>59</sup>

In addition to themes of integration and normalisation, participants referenced the broadening of climate-related capabilities across government, particularly in relation to the use of climate change science to inform decision-

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<sup>51</sup> This literature is summarised briefly in Part II(A) above.

<sup>52</sup> The three categories of mainstreaming practice are further developed in a conceptual model for mature mainstreaming in Alice Bleby and Anita Foerster, ‘A Conceptual Model for Climate Change Mainstreaming in Government’ (2023) 12(3) *Transnational Environmental Law* 623.

<sup>53</sup> This literature is summarised briefly in Part II(A) above.

<sup>54</sup> Records 1, 3–11, 23, 26–9.

<sup>55</sup> Record 4.

<sup>56</sup> Record 1.

<sup>57</sup> Record 8.

<sup>58</sup> Record 3.

<sup>59</sup> Record 18. See also record 11.

making and operations.<sup>60</sup> For example, one participant explained that mainstreaming means that ‘practices that once occurred in various specialist settings ... things that used to be done by the climate experts somewhere [are] now generally done by more generalist workers’.<sup>61</sup> Another noted that mainstreaming does not necessarily require decision-makers to have all the relevant knowledge and expertise themselves, but they must know how to access relevant inputs for decision-making.<sup>62</sup> Many participants emphasised that good mainstreaming entails broad recognition that considering and responding to climate change is not only an environmental issue or responsibility of the environment or climate change department, but it is ‘owned’ by everyone and is part of everyone’s responsibility across government.<sup>63</sup> Others emphasised that climate-related capabilities must extend to everyone in an organisation, so all government staff are equipped to understand and act on climate change.<sup>64</sup>

Several participants also argued that mainstreaming means more than a change in process — it involves normative and cultural change, a change in attitude across government regarding the significance of climate change to government decisions and activities,<sup>65</sup> or a change of paradigm.<sup>66</sup> They suggested that mainstreaming should encompass both formal and informal decision-making with consideration of climate change becoming an integral part of organisational culture.<sup>67</sup>

When asked to consider what the outcomes of mainstreaming are or should be, participants noted that effective mainstreaming means that climate change is explicitly factored into decisions and, as a result, those decisions change to be better aligned with climate policy objectives.<sup>68</sup> Some suggested that mainstreaming is more than integrating another consideration into decision-making; rather, it involves some level of prioritisation. For example, one participant noted, ‘I’m not sure it counts as good mainstreaming if it can get lost among other competing considerations’<sup>69</sup> and another distinguished mainstreaming as ‘more than [integration] ... how do you actually transition to new processes that really ... [address] the impact that we have on the planet?’<sup>70</sup>

In the context of the Act, many participants noted that climate mainstreaming is not only supported by the explicit statutory duties, but also by the general architecture of the Act, with the allocation of responsibilities for emissions reduction pledges and adaptation plans already resulting in a gradual building of awareness and capacity to address climate change across government.<sup>71</sup> They saw the core

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<sup>60</sup> Records 1–2, 14–16, 20, 26–7.

<sup>61</sup> Record 28. See also records 2, 27.

<sup>62</sup> Records 3, 9.

<sup>63</sup> Records 1–2, 4–6, 9–11, 15, 17, 26–9.

<sup>64</sup> Records 5, 19.

<sup>65</sup> Records 9, 11, 29.

<sup>66</sup> Record 4.

<sup>67</sup> Records 9, 19.

<sup>68</sup> Record 7. See also records 12–13, 21, 24–5, 27–8.

<sup>69</sup> Record 20.

<sup>70</sup> Record 27.

<sup>71</sup> See also Foerster et al (n 3) 1070–3.

climate policy initiatives and the mainstreaming duties as interdependent. Where climate change is well integrated into decision-making in particular sectors or systems, a strategic policy such as an emissions reduction pledge or adaptation plan will address climate change issues in a more comprehensive, robust and ambitious way. On the flipside, core climate policy mechanisms such as pledges and adaptation plans also drive more effective mainstreaming, as the work done developing and implementing the strategic policy informs and is infused into other decisions and activities.<sup>72</sup>

Nevertheless, participants conceptualised climate mainstreaming as distinct from the core climate policy measures in the Act. They discussed embedding climate considerations into centralised government decision-making processes (eg, Cabinet submissions, asset management frameworks) and developing and facilitating the use of tools to enhance consideration of climate change across government, including carbon valuation, climate-related financial risk disclosures, and guidance and training on the use of climate impact scenarios in various policy and operational settings.<sup>73</sup> Although some participants suggested that an explicit focus on mainstreaming will not be needed once consideration of climate change becomes better integrated and normalised across the Victorian government (including via the rollout of emissions reduction pledges and adaptation action plans under the Act),<sup>74</sup> others noted that ongoing engagement and investment of resources is required to sustain mature mainstreaming, as knowledge, best practices and government and community priorities evolve.<sup>75</sup>

As such, participants generally explained and framed climate mainstreaming under the Act as ambitious and transformative. This aligns well with the conceptualisation of mainstreaming by scholars such as Gupta as ‘more than integration’<sup>76</sup> and as a spectrum of activities and initiatives that embed climate change into government decisions and actions to varying degrees with the end point being ‘mature’ mainstreaming, illustrated in Figure 1 below (adapted from Gupta).<sup>77</sup>

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<sup>72</sup> Records 7, 10–11, 27.

<sup>73</sup> Records 10–11.

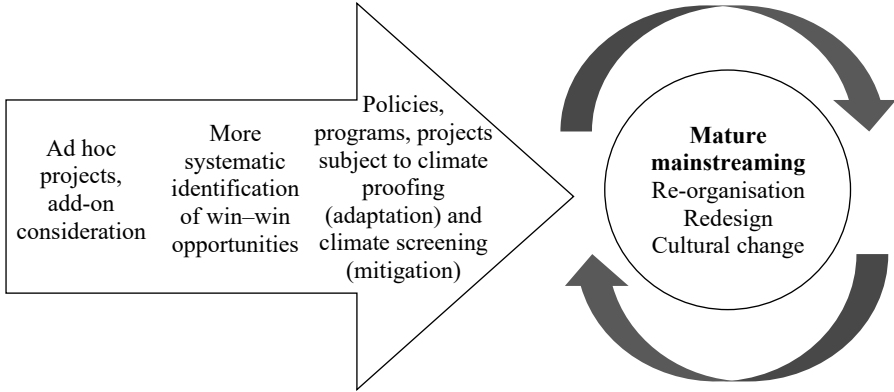
<sup>74</sup> Records 5–6.

<sup>75</sup> Record 23.

<sup>76</sup> Gupta (n 13) 75.

<sup>77</sup> Ibid 85.



**Figure 1:** Towards mature mainstreaming

## **B** *Mechanisms, Barriers and Enablers for Climate Mainstreaming*

Project participants were asked to comment on their interpretation of statutory mainstreaming duties under the *Climate Change Act* and, in particular, what activities, mechanisms and practices they associated with climate mainstreaming and the discharge of statutory mainstreaming duties. They were also asked open-ended questions about the factors which enabled or hindered robust integration of climate change in their work areas. To illustrate the diversity of measures and influencing factors involved in mainstreaming, and to create a full and navigable picture of climate mainstreaming in Victoria, the research team organised the empirical data into three categories of mechanisms (regulatory, institutional and capacity/capability) with associated barriers and enablers.

### *1 Regulatory Mechanisms, Barriers and Enablers*

Many participants identified formal rules and obligations to consider and address climate change in decision-making and processes, and requirements to report on climate risk management activities, as important regulatory drivers of climate mainstreaming. Such obligations can be provided through legislation, but also through authoritative guidelines, or other formal instruments such as government procedures and standards. When discussing these obligations, participants also referenced a range of complementary initiatives, activities and interventions that were used to clarify and provide authoritative guidance on meeting legal obligations. Examples of regulatory mainstreaming mechanisms discussed by study participants are set out in Table 3 below, with the explicit mainstreaming duties of the *Climate Change Act* also included.

**Table 3:** Regulatory mechanisms

Type of mechanism	Examples
Statutory duties and requirements (direct references to climate change)	<ul style="list-style-type: none"> <li>• <i>Climate Change Act</i>: Section 17 sets out a clearly defined duty to consider climate change in scheduled decisions and activities; s 20 sets out a broadly framed duty for the Victorian government to take climate change into account, where relevant, in decisions, policies, programs and processes.</li> <li>• <i>Local Government Act 2020</i> (Vic): Section 9 sets out the overarching governance principles for local government including that the ‘economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted’.</li> <li>• <i>Marine and Coastal Act 2018</i> (Vic): Section 7 sets out the statutory objectives including ‘to promote the resilience of marine and coastal ecosystems, communities and assets to climate change’ and ‘to respect natural processes in planning for and managing current and future risks to people and assets from coastal hazards and climate change’. Guiding principles for the planning and management of the marine and coastal environment also reference climate change (eg, s 9).</li> <li>• Victoria Planning Provisions, developed under the <i>Planning and Environment Act 1987</i> (Vic): For example, VPP 13 <i>Environmental Risks and Amenity</i> includes planning directions on preparing for and responding to climate risks and hazards for strategic and statutory planning functions.</li> <li>• <i>Infrastructure Victoria Act 2015</i> (Vic): Section 8 sets out the functions of Infrastructure Victoria which include to undertake and publish research on matters relating to infrastructure including ‘infrastructure policy issues arising from climate change, such as the measurement of greenhouse gas emissions produced from infrastructure’.</li> </ul>
Statutory duties and requirements (indirect application to climate risks)	<ul style="list-style-type: none"> <li>• <i>Public Administration Act 2004</i> (Vic): Directors and boards of public entities are required to identify and address major risks as part of directors’ duties of due care and diligence (s 79). They must inform the responsible minister of known major risks to the operation of the entity and the systems in place to address these risks (s 81).</li> <li>• <i>Financial Management Act 1994</i> (Vic): Departments and other public bodies covered by this legislation must develop, implement and keep under review a risk management strategy (s 44B) and apply the Victorian Government Risk Management Framework (‘VGRMF’) (Standing Direction 3.7.1). The VGRMF requires consideration of material risks in agency planning and decision-making, as well as contribution to the management of state-significant risks. ‘Climate change impacts’ is identified as a priority state-significant risk, and ‘adverse outcomes from the transition to a low-carbon economy’ is also a state-significant risk.</li> </ul>

Type of mechanism	Examples
Guidelines for decision-makers (developed and endorsed by government)	<ul style="list-style-type: none"> <li>• <i>Managing Climate Change Risk: Guidance for Board Members and Executives of Water Corporations and Catchment Management Authorities</i> (2019): This guidance was prepared to assist board members to understand the scope of their responsibilities in relation to climate change, including under the <i>Public Administration Act</i> and the <i>Financial Management Act</i>.</li> <li>• <i>Local Government Climate Change Adaptation Roles and Responsibilities under Victorian Legislation: Guidance for Local Government Decision-Makers</i> (2020): This guidance was prepared to assist local government decision-makers to understand the scope of, and deliver on their roles and responsibilities for adaptation under, current Victorian legislation including the <i>Climate Change Act</i>, the <i>Local Government Act</i> and the <i>Planning and Environment Act</i>.</li> <li>• <i>Tackling Climate Change and Its Impact on Health through Municipal Public Health and Wellbeing Planning: Guidance for Local Government</i> (2020): This guidance was developed to assist councils in meeting their legislative obligations to consider climate change when preparing a municipal health and wellbeing plan under the <i>Public Health and Wellbeing Act 2008</i> (Vic), as required under s 17 and sch 1 of the <i>Climate Change Act</i>.</li> <li>• <i>Climate Change Risk Management Guide</i>, under the VGRMF (2021): This guide by the Victorian Managed Insurance Authority ('VMIA') is targeted to risk professionals, managers, executives and board members and provides general information on climate change risks relevant to Victoria, time horizons for risk assessments, and an example of risk management approaches adopted by an emergency services organisation.</li> </ul>
Standards and procedures	<ul style="list-style-type: none"> <li>• <i>Social Procurement Framework: Detailed Guidance for Implementation of Climate Change Policy Objectives</i>: This framework includes project-specific requirements to minimise greenhouse gas emissions and build resilience to climate impacts for government procurement activities valued at or above \$20 million.<sup>78</sup></li> </ul>

<sup>78</sup> See 'Detailed Guidance for Implementation of Climate Change Policy Objectives', *Buying for Victoria* (Web Page, July 2023) <<https://www.buyingfor.vic.gov.au/detailed-guidance-implementation-climate-change-policy-objectives>>.

Type of mechanism	Examples
Reporting obligations	<ul style="list-style-type: none"> <li>• FRD 24 <i>Reporting of Environmental Data by Government Entities</i> (June 2022): This financial reporting directive requires government entities to disclose aspects of energy and resource consumption and environmental performance in their annual reports, with disclosure requirements differing according to the size, environmental impact and capability of entities. More extensive reporting is required from scheduled tier 1 entities which must disclose climate-related risks and responses, relevant targets, and the entity’s environmental management system.<sup>79</sup></li> </ul>

Participants noted the value of the *Climate Change Act* itself as an important regulatory enabler of climate mainstreaming, explaining how the legislation has contributed to greater awareness of, and concern about, climate change across government, particularly in work areas involved with developing emissions reduction pledges and adaptation plans, but also in central government agencies.<sup>80</sup> One participant noted, ‘what the Act itself did is give us a much stronger platform to pursue those issues because we now had this statutory responsibility to consider things’.<sup>81</sup>

The mainstreaming duties were described as a valuable foundation (a ‘hook’ or justification) for activities to embed climate change in decision-making.<sup>82</sup> Another participant suggested that a legal obligation such as s 20 can ‘clear the air ... about whether it’s relevant and who says it’s important’.<sup>83</sup> However, while the explicit mainstreaming duties were certainly seen as important enablers with broad potential reach into different policy areas, some participants argued that incorporating statutory obligations to consider and integrate climate change directly into sectoral legislation would better support mainstreaming.<sup>84</sup>

Participants also indicated that significant regulatory barriers to the effective consideration and integration of climate change in government decisions and operations in Victoria remain. One common theme was legal uncertainty concerning the interpretation of the broadly framed s 20 duty in the Act, including in relation to what it means to ‘appropriately take account’ of climate change,<sup>85</sup> who is responsible for discharging the duty given its very broad application to the Victorian government,<sup>86</sup> how to demonstrate that climate change has been taken into account

<sup>79</sup> See ‘Financial Reporting Directions and Guidance’, *Department of Treasury and Finance* (Web Page, 2022) <<https://www.dtf.vic.gov.au/financial-reporting-policy/financial-reporting-directions-and-guidance>>.

<sup>80</sup> Records 7–9, 12, 17, 23, 28–9.

<sup>81</sup> Record 28.

<sup>82</sup> Record 5–6, 28.

<sup>83</sup> Record 23.

<sup>84</sup> Records 5, 11, 29.

<sup>85</sup> Records 6, 23, 26.

<sup>86</sup> Record 28.

in a decision<sup>87</sup> and how duty-holders should balance competing considerations in considering climate change.<sup>88</sup>

When discussing these uncertainties, many participants drew attention to the lack of authoritative guidance available for decision-makers on how to address and consider climate change, including in relation to the s 17 and s 20 duties, and noted that guidelines have not yet been issued despite statutory provision for this.<sup>89</sup> They acknowledged, however, that there is no one-size-fits-all approach to responding to climate change, which means guidance on meeting legal obligations must also be tailored to a range of different circumstances.<sup>90</sup>

Further, s 20 was sometimes described as a weak obligation that would be more effective if expressed in stronger, more conclusive language.<sup>91</sup> Those participants who discussed the s 17 duty typically framed it as a stronger duty than s 20, with less uncertainty surrounding its interpretation.<sup>92</sup> However, concerns were expressed about the narrow application of this duty. With such a small number of decisions and actions currently prescribed under sch 1 of the Act, the practical effect of the provision is greatly constrained.<sup>93</sup>

Participants did note that awareness of and attention to the discharge of the mainstreaming duties had increased across the government recently as a result of litigation seeking to enforce these duties.<sup>94</sup> For example, in 2022, civil society groups brought a case in the Supreme Court of Victoria which argued, *inter alia*, that there had been a failure by the Victorian Environment Protection Authority ('EPA') to consider climate change, as required by the s 17 duty, in decisions to renew the operating permits for coal-fired power stations in the Latrobe Valley.<sup>95</sup> At the time

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<sup>87</sup> Records 23–5.

<sup>88</sup> Records 4, 6–7, 12–13, 17, 19, 26.

<sup>89</sup> Records 12, 23, 29.

<sup>90</sup> Record 1.

<sup>91</sup> Records 13, 26.

<sup>92</sup> Record 12.

<sup>93</sup> Records 10–11.

<sup>94</sup> Records 7, 11–12, 19, 21, 24–5, 29.

<sup>95</sup> *Environment Victoria Inc v AGL Loy Yang Pty Ltd* [2022] VSC 814 ('*Loy Yang*'). Gorton J confirmed that when imposing amended or new conditions on licensees, the EPA was clearly required to consider climate change in line with s 17 of the *Climate Change Act* (n 9). However, the Judge did not find that there had been a failure to do so. In his reasoning, Gorton J referred to the EPA's statement of reasons for the decision which indicated that the EPA had imposed new conditions requiring improved risk management and monitoring programs and that the EPA considered that such conditions would contribute to lowering Victoria's greenhouse gas emissions by driving efficiency improvements. Similarly, by reducing some of the discharge limits for other air pollutants covered by the licences, the EPA argued that the facilities would be effectively restricted from increasing their production or burning more coal, thereby capping greenhouse gas emissions at current levels. Gorton J found this to amount to a sufficient and appropriate consideration of climate change and emphasised that the exercise of statutory power at issue was the decision of the authority to impose amended conditions on existing licences following the review of licences. It was not a decision to regulate (or not to regulate) the emissions of greenhouse gas through these licences, and the Judge indicated that such a decision was not required to be taken by the EPA under the *Environment Protection Act* (n 34) (under which the licences had been issued and under which the review was undertaken). Gorton J stated: '[The Authority] was required to consider the potential impacts on climate change of the increased restrictions it placed on the emission of pollutants in

of the empirical study, this case had not yet been decided. It would be interesting to revisit these findings, given the case was ultimately unsuccessful with the Court finding that the EPA had sufficiently discharged its duty to consider climate change, despite not including conditions to regulate greenhouse gas emissions in the revised operating permits. The decision in this case underscored the relatively broad discretion embodied in s 17 concerning the consideration of climate change.<sup>96</sup> It is, however, worth noting that at the time the licence review was undertaken by the EPA, interim emissions reduction targets and the first round of emissions reduction pledges under the Act had not yet been finalised. As such, the EPA would not have been able to point to concrete factors such as interim targets when reviewing and revisiting licence conditions; nor was the government policy position on reducing emissions in the energy sector clearly set out. A judicial review of a similar decision in the future would have more to draw on in adjudicating whether the s 17 duty had been sufficiently discharged.

Beyond legislation, participants also discussed a wide range of regulatory instruments including authoritative guidance documents; statements of obligation for public authorities;<sup>97</sup> requirements to consider and account for climate change in central government processes such as Cabinet submissions, budget processes and procurement;<sup>98</sup> financial and other reporting by government entities, such as financial reporting directives;<sup>99</sup> risk registers and associated processes;<sup>100</sup> and other departmental strategies and plans.<sup>101</sup> While there are some examples of these instruments explicitly referencing climate change (see Table 3 above), many opportunities remain to embed climate change effectively into these types of sectoral instruments which guide and constrain government decisions and operations across the Victorian government.<sup>102</sup>

## 2 *Institutional Mechanisms, Barriers and Enablers*

When discussing climate mainstreaming activities and initiatives, governance arrangements which facilitate and support robust and appropriate consideration and

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circumstances where there was, and could be, no suggestion that the changes to the restrictions that the Authority made on the emission of pollutants would add to climate change': at [64]. The Judge emphasised that it was enough for the authority to consider climate change, and 'the weight given to such considerations was a matter for the Authority': at [65].

<sup>96</sup> *Climate Change Act* (n 9) s 17 frames climate change as an additional, albeit mandatory, consideration, with no indication of the weight to be attributed to climate change compared to other mandatory considerations that may be set out in relevant sectoral legislation scheduled under the Act. Unlike comparable provisions in other example framework laws, neither s 17 nor s 20 clearly requires decisions to be made in a way that best supports the achievement of emissions reduction targets and adaptation objectives of the Act. See, eg, *Climate Change (Scotland) Act* (n 8) pt 4, which includes a clear positive obligation for public bodies to act in the way best calculated to contribute to the delivery of emissions reduction targets and in the way best calculated to help deliver any statutory climate change adaptation program. See also *Fiji's Climate Change Act* (n 8) pt 5, s 18.

<sup>97</sup> Records 5–6, 10–11, 13, 15, 26–7.

<sup>98</sup> Records 4, 12, 17.

<sup>99</sup> Records 5, 12, 14, 17, 19.

<sup>100</sup> Records 6, 11–13, 17, 19, 20, 23, 27, 29.

<sup>101</sup> Records 12, 17, 23, 28.

<sup>102</sup> Records 12, 26.

integration of climate change emerged as a strong theme for many participants. As noted above, since the passage of the *Climate Change Act*, government resources have been allocated to a central climate mainstreaming team within the CCD. This team sees itself as ‘centrally coordinating ... capability building ... providing people with the tools and information they need in order to do it themselves ... enablers, capacity builders ... for other areas of government’.<sup>103</sup> The team has facilitated the delivery of several mainstreaming initiatives, including in partnership with central government agencies (the Department of Treasury and Finance and the Department of Premier and Cabinet). Raising awareness and building engagement at executive levels and within central government agencies with significant influence across government has been a strong focus for these activities.

Alongside this work, networks and ‘community of practice’ approaches have been introduced to facilitate collaboration, peer learning, and resource sharing. Several ad hoc partnerships between the climate policy and mainstreaming teams and other parts of government are also emerging to support the integration of climate consideration in different policy and operational settings. Some departments and agencies have also established climate-related roles in their leadership and institutional frameworks, thereby helping to broaden and decentralise climate change governance. Examples of institutional mainstreaming currently under way across the Victorian government are outlined in Table 4.

**Table 4:** Institutional mechanisms

Type of mechanism	Examples
Authorising environment for mainstreaming	<ul style="list-style-type: none"> <li>• High-level cross-government committees have played a role in overseeing a range of mainstreaming initiatives led by the CCD. The Victorian Secretaries’ Board comprises the Secretaries of each department, the Chief Commissioner of Police and the Victorian Public Sector Commissioner. The State Significant Risk Interdepartmental Committee is comprised of Deputy Secretaries and senior executives from government departments and agencies and is chaired by the Department of Treasury and Finance.</li> <li>• Some government departments (eg, the Department of Jobs, Precincts and Regions) have established dedicated climate change units tasked with developing department-wide work programs for climate mainstreaming in line with the statutory duties of the <i>Climate Change Act</i>.</li> </ul>
Central agency engagement	<ul style="list-style-type: none"> <li>• In 2022, the CCD worked with the Department of Treasury and Finance to issue the first whole-of-government climate risk statement following recommendations of the Task Force on Climate-Related Financial Disclosures.<sup>104</sup> The statement outlines the government’s actions to understand, manage and monitor climate-related risks and opportunities for Victoria as well as for the government’s own operations.</li> </ul>

<sup>103</sup> Record 11.

<sup>104</sup> *TFCD Recommendations* (n 29).

Type of mechanism	Examples
Partnerships for the delivery of mainstreaming initiatives	<ul style="list-style-type: none"> <li>• The CCD worked with the VMIA to develop the <i>Climate Change Risk Management Guide</i> and associated training (see Table 3). It has also worked with Ambulance Victoria to develop responses to the risks of increased frequency and severity of heatwave for ambulance services.</li> </ul>
Peer networks for knowledge exchange and capacity building	<ul style="list-style-type: none"> <li>• The CCD hosts a Climate Risk Community of Practice comprising Victorian public servants from a wide range of departments and agencies, including senior managers and sectoral policy and operational experts. The aim is to facilitate peer learning, knowledge exchange, coordination and cooperation between departments and agencies on climate change and climate risks.</li> </ul>

Participants identified different features of the institutional context as important enablers of climate mainstreaming including dedicated climate change teams or roles within organisations,<sup>105</sup> and effective collaboration between different policy areas and the central climate policy team including on pilot projects.<sup>106</sup> Several participants from across government recognised the value of centralised climate policy and mainstreaming support, noting that the CCD and mainstreaming teams have played an important role in coordination,<sup>107</sup> advocacy on climate change within government,<sup>108</sup> and offering consistent, centralised advice to different areas of government on climate change issues.<sup>109</sup> Opportunities for peer learning and sharing experiences of mainstreaming across government through the Climate Risk Community of Practice were highly valued.<sup>110</sup>

Many participants noted the critical importance of support and buy-in from senior decision-makers, who provide a mandate and a strong authorising environment for mainstreaming.<sup>111</sup> Low levels of awareness of climate change and its implications for government at senior and executive levels can hinder progress on mainstreaming.<sup>112</sup> Similarly, participants noted the importance of engagement from central agencies in creating an authorising environment for climate change work across government.<sup>113</sup> However, the value of individual ‘champions’ of mainstreaming at all levels within departments was also noted.<sup>114</sup>

In terms of institutional architecture, participants discussed a lack of integration and coordination across government, and a risk of operating in ‘silos’ and failing to consider the interrelationships between systems (or sectors), risks and

<sup>105</sup> Records 23, 26.

<sup>106</sup> Record 27. See also records 2, 10–11, 28.

<sup>107</sup> Records 10, 29.

<sup>108</sup> Record 11.

<sup>109</sup> Records 4, 27.

<sup>110</sup> Records 2, 12, 29.

<sup>111</sup> Records 4, 6, 8, 10, 12, 17, 19, 28–9.

<sup>112</sup> Records 1, 3–4, 6, 9, 27, 29.

<sup>113</sup> Records 6, 9.

<sup>114</sup> Records 6, 10, 23, 26–7.



decision-makers, leading to inconsistent approaches and frustration.<sup>115</sup> They referred to a persistent framing of climate mainstreaming as an ‘environmental’ issue and therefore the responsibility of a climate change or sustainability team.<sup>116</sup>

Integrating climate change considerations into well-established processes was seen as more difficult than integrating it into a new process or project;<sup>117</sup> and while it might be possible to address climate change in high-level strategic documents, sufficient resources and capacity to implement these strategies in practice was often wanting.<sup>118</sup>

### 3 *Capacity and Capability Mechanisms, Barriers and Enablers*

Capacity and capability to consider and integrate climate change vary widely across the Victorian government. Developing targeted information, resources and user-friendly decision-support tools to address this unevenness has been a strong focus of the CCD. Early emphasis on providing accessible information on climate change impacts has expanded, with a more recent focus on embedding the use and application of this information in different decision- and policy-making contexts. In addition to resources and tools, participants discussed a range of associated activities which support decision-makers to apply climate change information to their own work context and to use decision-support tools, as well as pilot projects which demonstrate good climate risk management and can be adapted and replicated in different contexts. Examples of mainstreaming initiatives addressing capacity and capability are set out in Table 5 below.

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<sup>115</sup> Records 2, 6, 27.

<sup>116</sup> Records 5, 11, 14, 19, 27.

<sup>117</sup> Records 12, 15, 26.

<sup>118</sup> Record 26.

**Table 5:** Mechanisms to build capacity and capability

Type of mechanism	Examples
Information resources (climate science, climate impacts)	<ul style="list-style-type: none"> <li>• <i>Victorian Climate Projections 2019</i> (developed in partnership with CSIRO): The projections translate high-resolution climate modelling into an updated set of climate projections for use in impact/risk assessment. Data sets, guidance material, technical reports, regional reports and fact sheets are also provided.<sup>119</sup></li> </ul>
Decision-making tools / decision-support frameworks	<ul style="list-style-type: none"> <li>• Victoria's Future Climate Tool (developed in partnership with CSIRO): This interactive mapping tool provides access to locally scaled climate projection data to the 2090s. Climate information (including temperature, rainfall and heatwaves) can be viewed as maps and charts at different spatial scales and across different time periods and can be exported for use in different spatial tools.<sup>120</sup> Regional summaries have been developed.</li> <li>• <i>Victoria's Future Climate Tool: User Guide</i>: This guidance supports users of the tool.</li> </ul>
Training and support for use of tools/application of climate science	<ul style="list-style-type: none"> <li>• <i>Climate Change Risk Foundations</i>: This workshop developed by the VMIA is designed for risk professionals, governance professionals and environmental specialists. The training aims to build awareness of government expectations concerning climate risks, advise government organisations on these risks and likely impacts on government operations and services, and support the integration of these risks into relevant government risk management processes.<sup>121</sup></li> <li>• <i>Your Council and Climate Change: Understanding the Risks and Learning to Adapt</i> (April–June 2021): This online, interactive training course for local government councillors and executives on climate change risk and adaptation covered business risks and responses, local government roles and responsibilities, legal duties of due care and diligence, climate change impacts on councils, embedding climate change across council, and a range of local government case studies.</li> </ul>
Pilot projects and case studies	<ul style="list-style-type: none"> <li>• <i>Stress Testing for the Potential Impact of Heatwave on Ambulance Victoria</i>: This case study explores the use and application of the Victoria's Future Climate Tool to develop responses to the risks of increased frequency and severity of heatwaves for ambulance services.<sup>122</sup></li> </ul>

<sup>119</sup> See 'Victorian Climate Projections 2019', *Climate Change in Australia* (Web Page, 2019) <<https://www.climatechangeinaustralia.gov.au/en/projects/victorian-climate-projections-2019>>.

<sup>120</sup> See *Victoria's Future Climate Tool* (Web Page, 2019) <<https://vicfutureclimatetool.indraweb.io>>.

<sup>121</sup> See 'Climate Change Risk Foundations', *VMIA* (Web Page) <<https://www.vmia.vic.gov.au/training/our-offerings/climate-change-risk-foundations>>.

<sup>122</sup> See VMIA, Ambulance Victoria and DELWP, *Victoria's Future Climate Tool: Case Study — Stress Testing for the Potential Impact of Heatwave on Ambulance Victoria* ('*Victoria's Future Case Study*').

Awareness and experience of climate change risks and appreciation of the relevance of climate change is uneven across the Victorian government.<sup>123</sup> Climate change may be integrated on paper into strategies and plans, yet in practice there are often inadequate resources available to support full implementation and capacity building.<sup>124</sup> This unevenness can also be observed within a single agency: for example, climate change may be well integrated into strategic, large-scale or highly visible decisions, but less well considered in smaller or operational decisions.<sup>125</sup>

Participants indicated that climate mainstreaming is more mature in areas of government where there are existing climate science modelling capabilities or where staff have the skills to interpret and apply that information (eg, water, marine and coastal and bushfire policy areas).<sup>126</sup> Similarly, those areas of government where there is lived experience of responding to climate change impacts have developed more advanced practice (eg, water supply management following extensive recent droughts including from 1999 to 2009 and bushfire risk reduction and emergency management following catastrophic events in 2009 and 2019).<sup>127</sup>

Participants had reasonably good awareness of available information resources, tools and decision supports, set out in Table 5 above, such as the Victoria's Future Climate Tool.<sup>128</sup> Targeted and authoritative guidance for mainstreaming was considered by many to be vitally important, and practical case studies exemplifying the integration of climate change in different decision-making and operational contexts were highly valued.<sup>129</sup> Participants consistently argued for more centralised support for mainstreaming, either through the development of more decision-support tools and guidance, or through greater centralised capacity to advise and support different areas of government on climate change issues.<sup>130</sup> A particular focus of discussions was the need to build capability to better quantify climate change considerations in the development and appraisal of policies, projects and programs.<sup>131</sup> Participants also noted gaps in technical expertise to apply climate change science and climate scenarios to stress test policy and integrate climate science into risk assessments and operational matters (even with targeted decision-support tools such as the Victoria's Future Climate Tool), noting that further targeted support in using such tools was needed.<sup>132</sup>

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<sup>123</sup> Records 6, 11, 12, 28.

<sup>124</sup> Records 12, 13, 26.

<sup>125</sup> Record 26.

<sup>126</sup> Records 1, 10, 27.

<sup>127</sup> Records 3, 5, 6, 11, 13, 14, 26, 28.

<sup>128</sup> Records 2, 3, 10, 11, 12, 27, 30. Participants also noted and discussed a range of other guidance materials and tools set out in Table 3 including the VMIA Climate Risk Guidance (records 2, 11, 27), guidance on directors' duties for water boards (record 6); water supply guidance (records 15, 26), guidance for local government to consider climate change in municipal health and wellbeing plans (records 6, 29), guidance on local government roles and responsibilities for adaptation (record 6); and climate risk-ready training and guidance developed by the NSW government (record 27).

<sup>129</sup> Records 12, 15, 21, 24.

<sup>130</sup> Records 1, 4, 10, 11, 27, 29.

<sup>131</sup> Records 8, 9, 12.

<sup>132</sup> Records 1, 13, 15, 27.

## V Reflections on Mainstreaming under the *Climate Change Act 2017 (Vic)*

The findings of the empirical study outlined in Part IV above illustrate that the enactment of statutory mainstreaming obligations has catalysed a range of activities across the Victorian government intended to change the way climate change is considered in government decisions, policies and processes. Bearing in mind that mature mainstreaming requires continuous effort along a spectrum of ambition, this Part reflects on progress towards this goal to date and considers opportunities to strengthen mainstreaming in the context of the *Climate Change Act*.

The mere inclusion of statutory duties for mainstreaming in legislation represents a significant step towards mainstreaming climate change in government operations. As one participant noted, mainstreaming becomes an expected practice ‘because it’s the law’.<sup>133</sup> Articulating legal obligations draws attention to the nature and importance of mainstreaming climate change, catalyses action from agents and areas of government concerned to demonstrate compliance with the law,<sup>134</sup> and potentially provides legal recourse for stakeholders if governments do not fulfil their obligations. Yet as the outcome of the first legal challenge to decision-making involving the mainstreaming duties under the Act highlights,<sup>135</sup> stronger, clearer wording of the statutory duties would heighten their potential enforceability and their impact on decision-making.

Beyond the mainstreaming obligations themselves, there is, however, broader evidence of progress in climate change mainstreaming in Victoria. Whether catalysed by, or complementary to, the mainstreaming obligations in the Act, several pieces of legislation now contain explicit requirements to consider climate change, including the *Local Government Act 2020 (Vic)* and the *Marine and Coastal Act 2018 (Vic)*.<sup>136</sup> There are also a range of examples of government agencies adopting requirements to consider climate change in their internal documents, and in a range of regulatory processes. Further, consideration of climate change is demonstrated in a range of government policies, such as Infrastructure Victoria’s 30-year strategy published in 2021<sup>137</sup> and the Active Victoria strategy.<sup>138</sup> Other notable achievements in mainstreaming to date include successful pilot projects testing out ways to integrate climate change into government operations, such as Ambulance Victoria’s collaboration with DELWP to apply climate change projections to planning for heat risk,<sup>139</sup> and the establishment of the Climate Risk Community of Practice which facilitates information sharing and skill building to support climate mainstreaming across government.

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<sup>133</sup> Record 28.

<sup>134</sup> Record 23.

<sup>135</sup> *Loy Yang* (n 95). See discussion accompanying n 95.

<sup>136</sup> See Table 3 above.

<sup>137</sup> Infrastructure Victoria, *Victoria’s Infrastructure Strategy 2021–2051* (2021).

<sup>138</sup> Sport and Recreation Victoria, *Active Victoria 2022–2026: A Strategic Framework for Sport and Active Recreation in Victoria* (July 2022).

<sup>139</sup> *Victoria’s Future Case Study* (n 122).

Despite these achievements, discussions with study participants suggested that there are a range of opportunities to strengthen mainstreaming efforts and, in doing so, bolster the government's capacity to achieve its climate mitigation and adaptation objectives.

First, there are clear opportunities to clarify the nature and content of the statutory mainstreaming duties. This would strengthen the government's commitment to climate change mainstreaming and make it easier for different actors across government to implement their mainstreaming obligations. An immediate priority should be the development of ministerial guidance to support the implementation of ss 20 and 17, which is explicitly provided for in the *Climate Change Act*.<sup>140</sup> Appropriately drafted guidance could clarify the scope and application of the duties and build best practice expectations.

This would also assist in opening up pathways to enforce the duties. For example, guidance on s 20 could include a 'presumption of relevance' that clarifies that climate change is considered relevant to a decision or action unless it can be established to be otherwise. Guidance should also clarify that procedural requirements to consider climate change must be discharged with reference to substantive outcomes set out in the policy objectives of the Act.<sup>141</sup> For example, in relation to the climate change mitigation objectives,<sup>142</sup> guidance might provide that decision-makers must understand and consider the (direct and indirect) emissions associated with an activity; investigate options to mitigate associated emissions; and give priority to options which support, or which do not substantially detract from, achieving long-term and interim emissions-reduction targets. In relation to s 17, targeted sectoral guidance will be needed. Further, the schedule to which the s 17 duty applies should be reviewed and expanded to broaden the application of this more concrete duty.<sup>143</sup>

Creating a clear authorising environment for the oversight of mainstreaming under the Act would also engender stronger cross-government commitments to achieving mainstreaming objectives. The initial work program of DELWP's mainstreaming team was endorsed and overseen by the Victorian Secretaries' Board and an interdepartmental committee (see Table 4 above) — these bodies could adopt an ongoing mandate to ensure climate change mainstreaming is a priority across government. In addition, the fulfilment of the duties in ss 20 and 17 of the Act could be further encouraged and strengthened by creating requirements for government agencies to regularly report on their compliance with these provisions of the Act. Reporting obligations are used to complement and strengthen gender mainstreaming obligations under the *Gender Equality Act 2020* (Vic);<sup>144</sup> they are also recommended

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<sup>140</sup> *Climate Change Act* (n 9) ss 18, 21

<sup>141</sup> *Ibid* s 22.

<sup>142</sup> *Ibid* s 22(a).

<sup>143</sup> An independent review committee appointed to review the predecessor legislation to the 2017 Act also made this recommendation: see Martijn Wilder, Anna Skarbeck and Rosemary Lyster, *Independent Review of the Climate Change Act 2010* (Report, 2015) 75–8.

<sup>144</sup> Under this legislation, defined entities with obligations to promote workplace gender equality and consider gender equality in their policies, programs and services must conduct a Gender Impact

in guidance provided to public entities by the Scottish government under the *Climate Change (Scotland) Act 2009*.<sup>145</sup> These requirements could be introduced in such a way as to minimise the reporting burden: for example, as part of annual reporting processes.

In order to strengthen institutional arrangements and mandates for mainstreaming, and build capacity and capabilities, many participants discussed the value of centralised climate change information and policy advice. In Victoria, this could be enhanced either by expanding the remit and resourcing of the CCD in DELWP, or by establishing an Office of Climate Change in a central agency — or even as an independent body at arm's length from government, modelled on the independent Climate Change Committee established under the *Climate Change Act 2008* (UK).<sup>146</sup>

Climate change mainstreaming benefits substantially from dedicated staff capacity. Climate change roles and/or teams situated in different government entities can proactively encourage staff to understand and effectively discharge their duty to consider climate change in decision-making and operations. They can also develop consistent policies and operational approaches to climate change mainstreaming suitable for the department or agency; provide resources and support to build capacity in a tailored way; and monitor, evaluate and develop strategic improvements for mainstreaming. Departments or agencies without dedicated climate change teams or roles should establish them; and those that already exist in departments should have their mandates and resourcing affirmed and strengthened.

Finally, it is also important to acknowledge and address the need for climate literacy across the government workforce. Introductory training (covering climate risks and impacts for Victoria, an introduction to the legal duties to consider and integrate climate change, available tools and resources) could be rolled out to all Victorian Public Service officers, potentially as part of induction processes.<sup>147</sup> The individual responsibility of staff to develop and apply mainstreaming capability could be strengthened by incorporating climate change into the *Code of Conduct for*

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Assessment when developing or reviewing any policy, program or service provided by the entity that has a direct and significant impact on the public. Every two years they must also report all impact assessments undertaken. Guidance (including assessment and reporting templates) has been developed to provide support for reporting and ensuring compliance.

<sup>145</sup> In Scotland, public bodies have statutory duties under the *Climate Change (Scotland) Act* (n 8) to act in the way best calculated to contribute to the delivery of emissions reduction targets and any statutory climate change adaptation programs. Statutory guidance developed to assist public bodies to fulfil these duties includes recommendations to report on their discharge of these duties, through new or existing reporting mechanisms. This reporting is framed as an opportunity for public entities to monitor and evaluate the effectiveness of their climate change actions taken to discharge the public bodies' duties: Scottish Government, *Public Bodies Climate Change Duties: Putting Them into Practice* (Report, 2011) 46–52.

<sup>146</sup> The United Kingdom's Climate Change Committee is established under *Climate Change Act 2008* (UK) pt 2. The recently reformed framework climate legislation in New Zealand also establishes an independent expert body with a similar role advising government on climate policy settings, monitoring progress towards targets and facilitating public dialogue: see *Climate Change Response Act 2002* (NZ), as amended by *Climate Change Response (Zero Carbon) Amendment Act 2019* (NZ) pt 1A.

<sup>147</sup> Record 27.

*Victorian Public Sector Employees*,<sup>148</sup> via an amendment analogous to the existing requirement for public officials to ‘respect and promote the human rights set out in the *Charter of Human Rights and Responsibilities*’.<sup>149</sup> The s 20 duty applies to public service employees at all levels, and integrating consideration of climate change into the Code of Conduct would send a strong message reinforcing the significance of the duty.

The examples outlined here describe some of the possibilities for strengthening climate change mainstreaming under the Act — ultimately, the options are limited only by imagination, institutional and individual capacity, and the will of government. The Act creates a powerful, overarching legislative framework for climate change mainstreaming, which has had a catalytic effect in the Victorian government. Elaborating these duties, however, is only the first step — to fully realise the potential of statutory mainstreaming obligations, governments need to actively and ambitiously pursue a suite of mainstreaming activities that effectively engage with regulatory, institutional and capacity/capability enablers towards mature mainstreaming.

## VI Conclusion

This study of emerging climate mainstreaming practice in Victoria provides important insights into the role and value of statutory mainstreaming duties and the range of mechanisms that can support and operationalise these duties and foster climate mainstreaming in practice. As well as contributing to the literature exploring the impact of framework climate change laws around the world,<sup>150</sup> this study adds to and validates existing conceptualisations of policy mainstreaming.<sup>151</sup> It expands upon previous modelling of policy mainstreaming activities<sup>152</sup> using three simple categories of mechanisms (with associated enablers and barriers) that resonate strongly with practitioners: regulatory, institutional and capacity/capability.<sup>153</sup>

Articulating a narrative and clarifying objectives for mainstreaming is an important starting point for framing and understanding this emerging area of climate policy practice. Participants in this study framed climate mainstreaming as an important complement to, and underpinning foundation for, substantive climate policy measures. They shared an ambitious and transformative objective for climate mainstreaming that was more than integration and broader than climate risk management. They conceived of mainstreaming as a wholesale shift in government operations and culture, so that climate change becomes central to all government decisions and activities. While substantive climate policy measures set out in framework climate laws (targets, mitigation and adaptation strategies) are part of

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<sup>148</sup> Victorian Public Sector Commission, *Code of Conduct for Victorian Public Sector Employees* (2015) 26–7. The Code of Conduct is made under *Public Administration Act 2004* (Vic) s 61.

<sup>149</sup> This requires: ‘(i) making decisions and providing advice consistent with human rights; and (ii) actively implementing, promoting, and supporting human rights’.

<sup>150</sup> See above n 2.

<sup>151</sup> See above n 23.

<sup>152</sup> See above nn 26–8.

<sup>153</sup> These three categories are further developed in Bleby and Foerster (n 52).

achieving this shift, this study suggests that other tools and approaches are also needed to underpin and hasten progress towards mature climate mainstreaming. Plotting mainstreaming activities and mechanisms along a spectrum towards mature mainstreaming can provide a frame for developing and deepening mainstreaming practice progressively over time and monitoring and evaluating progress towards mature practice.

The Victorian experience illustrates the wide range of mechanisms which can support and foster mainstreaming. Regulatory drivers emerge as particularly important, in the form of clearly worded, explicit legal obligations to take account of climate change in government policy and operational decision-making accompanied by authoritative guidance on how to do so. In Victoria, the mainstreaming duties in the *Climate Change Act* play an important role but could be strengthened with clearer, stronger wording (particularly in the case of s 20, but also in s 17), broader application (in the case of s 17), and the development of ministerial guidance to support their discharge. However, other regulatory mechanisms including obligations in sectoral legislation, reporting requirements, and references to climate change in other types of formal regulatory instruments appear to be equally important.

To complement these regulatory mechanisms, there are a range of measures that can help address institutional and capacity/capability barriers to robust and effective integration of climate change in government decision-making and processes. In Victoria, the Act spreads responsibilities for developing climate change policy across government and this has been observed to engage senior decision-makers and help embed consideration of climate change in different policy areas.<sup>154</sup> Central agencies are increasingly engaged on climate change, and climate leadership teams are beginning to emerge in some departments and policy areas. However, awareness of climate risks and climate-related capabilities remains uneven across government. In Victoria, a centralised mainstreaming team has played a catalytic role in facilitating climate mainstreaming activities across government and particularly in the development and rollout of decision-support tools and pilot programs and the establishment of networks to facilitate collaboration, peer learning and resource sharing. Ongoing support for explicit mainstreaming activities and increased resources to continue this work are still required and likely to be valuable ongoing investments alongside substantive climate policy measures.

Empirical investigation of climate change mainstreaming under the *Climate Change Act* provides a rich illustration of climate change mainstreaming in practice, elucidates opportunities to strengthen mainstreaming efforts, and offers evidence of the contribution that legislative mainstreaming provisions can make to overarching objectives of reducing emissions and adapting to climate change in a government context. It is hoped that these insights not only inform the Victorian government's mainstreaming agenda and climate law scholarship, but also provide points of reference and reflection for other jurisdictions enacting, implementing and evaluating mainstreaming obligations in law.

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<sup>154</sup> Foerster et al (n 3) 1070–3.