

**Version No. 075**  
**Planning and Environment Act 1987**  
**Act No. 45/1987**

Version incorporating amendments as at 15 December 2004

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**Version No. 075**  
**Planning and Environment Act 1987**  
**Act No. 45/1987**

Version incorporating amendments as at 15 December 2004

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

**PART 1—PRELIMINARY**

**1. Purpose**

The purpose of this Act is to establish a framework for planning the use, development and protection of land in Victoria in the present and long-term interests of all Victorians.

**2. Commencement**

- (1) Part 1 and section 204 come into operation on the day on which this Act receives the Royal Assent.
- (2) The rest of this Act comes into operation on a day or days to be proclaimed.

**3. Definitions**

- (1) In this Act—

S. 3(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1)  
(LA s. 39B(1)).

\* \* \* \* \*

S. 3(1) def. of  
"Administrative Appeals  
Tribunal"  
repealed by  
No. 52/1998  
s. 183(a).

**"amendment"** includes addition, deletion or substitution;

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*Act No. 45/1987*

Part 1—Preliminary

s. 3

Field Code Changed

**"area"** includes two or more areas of land that are not adjoining;

**"building"** includes—

- (a) a structure and part of a building or a structure; and
- (b) fences, walls, out-buildings, service installations and other appurtenances of a building; and
- (c) a boat or a pontoon which is permanently moored or fixed to land;

**"committee of management"** means a committee of management of Crown lands appointed under an Act;

**"conservation"** includes preservation, maintenance, sustainable use, and restoration of the natural and cultural environment;

**"construct"** includes reconstruct or make structural changes;

**"Crown land"** means land which is or is deemed to be unalienated land of the Crown and includes—

- (a) land of the Crown reserved permanently or temporarily by or under an Act; and
- (b) land of the Crown occupied by a person under a lease licence or other right;

**"Department"** means the Department of Infrastructure;

S. 3(1) def. of "committee of management" inserted by No. 86/1989 s. 4(1)(a).

S. 3(1) def. of "Crown land" inserted by No. 86/1989 s. 4(1)(b).

S. 3(1) def. of "Department" inserted by No. 35/1995 s. 11(1)(a), amended by No. 46/1998 s. 7(Sch. 1).

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Part 1—Preliminary

Field Code Changed  
s. 3

**"development"** includes—

- (a) the construction or exterior alteration or exterior decoration of a building; and
- (b) the demolition or removal of a building or works; and
- (c) the construction or carrying out of works; and
- (d) the subdivision or consolidation of land, including buildings or airspace; and
- (e) the placing or relocation of a building or works on land; and
- (f) the construction or putting up for display of signs or hoardings;

S. 3(1) def. of "development" amended by No. 53/1988 s. 45(Sch. 2 item 29) (as amended by No. 47/1989 s. 19(w)(i)(ii)).

**"land"** includes—

- (a) buildings and other structures permanently fixed to land; and
- (b) land covered with water; and
- (c) any estate, interest, easement, servitude, privilege or right in or over land;

\* \* \* \* \*

S. 3(1) def. of "municipal council" repealed by No. 12/1989 s. 4(1)(Sch. 2 item 90.1).

**"occupier"** includes a committee of management of Crown land;

S. 3(1) def. of "occupier" inserted by No. 86/1989 s. 4(1)(c).

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Part 1—Preliminary

s. 3

Field Code Changed

S. 3(1) def. of "owner" substituted by No. 86/1989 s. 4(1)(d), amended by No. 85/1998 s. 24(Sch. item 45.1(a)(b)).

"owner"—

- (a) in relation to land which has been alienated in fee by the Crown and is under the operation of the **Transfer of Land Act 1958** (other than land in an identified folio under that Act), means the person who is registered or entitled to be registered as proprietor, or the persons who are registered or entitled to be registered as proprietors, of an estate in fee simple in the land; and
- (b) in relation to land which has been alienated in fee by the Crown and is land in an identified folio under the **Transfer of Land Act 1958** or land not under the operation of the **Transfer of Land Act 1958**, means the person who is the owner, or the persons who are the owners, of the fee or equity of redemption; and
- (c) in relation to Crown land reserved under the **Crown Land (Reserves) Act 1978** and managed or controlled by a committee of management, means the Minister administering that Act; and
- (d) in relation to any other Crown land, means the Minister or public authority that manages or controls the land;

S. 3(1) def. of "Port of Melbourne Area" inserted by No. 77/2003 s. 3(1).

"Port of Melbourne Area" means—

- (a) the land shown red on plan numbered LEGL./02–023 and lodged in the Central Plan Office established under the **Survey Co-ordination Act 1958**; and

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Field Code Changed  
s. 3

(b) any area included in the Port of Melbourne Area under sub-section (3)—

but excludes any area excluded from the Port of Melbourne Area under sub-section (3);

**"principal registrar"** means principal registrar of the Tribunal;

S. 3(1) def. of "principal registrar" inserted by No. 52/1998 s. 183(b).

**"public authority"** means a body established for a public purpose by or under any Act but does not include a municipal council;

**"public purpose"** includes any purpose for which land may be compulsorily acquired under any Act to which the **Land Acquisition and Compensation Act 1986** applies;

**"registered restrictive covenant"** means a restriction within the meaning of the **Subdivision Act 1988**;

S. 3(1) def. of "registered restrictive covenant" inserted by No. 100/2000 s. 4.

**"road"** includes highway, street, lane, footway, square, court, alley or right of way, whether a thoroughfare or not and whether accessible to the public generally or not;

**"secretary"** in relation to a responsible authority or planning authority being—

S. 3(1) def. of "secretary" amended by Nos 125/1993 s. 20(10), 35/1995 s. 11(1)(b).

(a) a Minister, means the Department Head of the Minister's department; and

(b) a municipal council, means the Chief Executive Officer of the council; and



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s. 3

Field Code Changed

(c) any other responsible authority or planning authority, means the Chief Executive Officer of the authority—

and includes any person for the time being authorised by the authority to exercise the powers and perform the duties of that office;

S. 3(1) def. of "subdivision" amended by No. 53/1988 s. 45(Sch. 2 item 30).

"**subdivision**" means the division of land into two or more parts which can be disposed of separately;

S. 3(1) def. of "Tribunal" inserted by No. 52/1998 s. 183(b).

"**Tribunal**" means Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**;

"**use**" in relation to land includes use or proposed use for the purpose for which the land has been or is being or may be developed;

S. 3(1) def. of "Victoria Planning Provisions" inserted by No. 77/1996 s. 4.

"**Victoria Planning Provisions**" means the Victoria Planning Provisions approved under Part 1A as amended from time to time<sup>1</sup>;

"**works**" includes any change to the natural or existing condition or topography of land including the removal, destruction or lopping of trees and the removal of vegetation or topsoil.

S. 3(2) inserted by No. 46/1998 s. 7(Sch. 1).

- (2) If under the **Public Sector Management and Employment Act 1998** the name of the Department of Infrastructure is changed, the reference in the definition of "Department" in subsection (1) to that Department must, from the date when the name is changed, be treated as a reference to the Department by its new name.

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Field Code Changed  
s. 4

- (3) The Governor in Council may by order published in the Government Gazette—
- (a) include any area of land adjoining the Port of Melbourne Area in the Port of Melbourne Area; or
  - (b) exclude any area of land from the Port of Melbourne Area.

S. 3(3)  
inserted by  
No. 77/2003  
s. 3(2).

**4. Objectives**

- (1) The objectives of planning in Victoria are—
- (a) to provide for the fair, orderly, economic and sustainable use, and development of land;
  - (b) to provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity;
  - (c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;
  - (d) to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;
  - (e) to protect public utilities and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community;
  - (f) to facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e);
  - (g) to balance the present and future interests of all Victorians.

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- (2) The objectives of the planning framework established by this Act are—
- (a) to ensure sound, strategic planning and co-ordinated action at State, regional and municipal levels;
  - (b) to establish a system of planning schemes based on municipal districts to be the principal way of setting out objectives, policies and controls for the use, development and protection of land;
  - (c) to enable land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels;
  - (d) to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land;
  - (e) to facilitate development which achieves the objectives of planning in Victoria and planning objectives set up in planning schemes;
  - (f) to provide for a single authority to issue permits for land use or development and related matters, and to co-ordinate the issue of permits with related approvals;
  - (g) to encourage the achievement of planning objectives through positive actions by responsible authorities and planning authorities;
  - (h) to establish a clear procedure for amending planning schemes, with appropriate public participation in decision making;
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- (i) to ensure that those affected by proposals for the use, development or protection of land or changes in planning policy or requirements receive appropriate notice;
  - (j) to provide an accessible process for just and timely review of decisions without unnecessary formality;
  - (k) to provide for effective enforcement procedures to achieve compliance with planning schemes, permits and agreements;
  - (l) to provide for compensation when land is set aside for public purposes and in other circumstances.
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*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 1A—Victoria Planning Provisions

s. 4A

Field Code Changed

Pt 1A  
(Heading and  
ss 4A–4J)  
inserted by  
No. 77/1996  
s. 5.

**PART 1A—VICTORIA PLANNING PROVISIONS<sup>ii</sup>**

S. 4A  
inserted by  
No. 77/1996  
s. 5.

**4A. Victoria Planning Provisions**

- (1) To assist in providing a consistent and co-ordinated framework for planning schemes in Victoria, the Minister may prepare and approve standard planning provisions to be called the Victoria Planning Provisions.
- (2) The Victoria Planning Provisions may contain any matter which may be included in a planning scheme under section 6.
- (3) The Minister must publish notice of the approval of the Victoria Planning Provisions in the Government Gazette.

S. 4B  
inserted by  
No. 77/1996  
s. 5.

**4B. Amendment of Victoria Planning Provisions**

- (1) The Minister may at any time prepare an amendment to the Victoria Planning Provisions.
- (2) The Minister may authorise any other Minister or any public authority or municipal council to prepare an amendment to the Victoria Planning Provisions.
- (3) Subject to sub-section (4), sections 17 to 34 and Part 8 apply to the preparation of an amendment to the Victoria Planning Provisions as if—
  - (a) the amendment were an amendment to a planning scheme prepared under Part 3; and
  - (b) the Minister or the authorised body or person were the planning authority.
- (4) Sections 21(3), 22(3), 23(3) and 25(3) do not apply to the preparation of an amendment to the Victoria Planning Provisions.

*Planning and Environment Act 1987*  
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Part 1A—Victoria Planning Provisions

Field Code Changed  
s. 4C

**4C. Approval of amendment**

- (1) The Minister may—
  - (a) approve an amendment or part of an amendment to the Victoria Planning Provisions prepared by the Minister or submitted to the Minister under section 4B—
    - (i) with or without changes; and
    - (ii) subject to any conditions the Minister wishes to impose; or
  - (b) refuse to approve the amendment or part of the amendment.
- (2) If the Minister approves only part of an amendment to the Victoria Planning Provisions that part becomes a separate amendment.
- (3) The Minister may approve further parts of an amendment to the Victoria Planning Provisions at any time.

S. 4C  
inserted by  
No. 77/1996  
s. 5.

**4D. Notice of approval**

The Minister must publish notice of the approval of an amendment to the Victoria Planning Provisions in the Government Gazette, specifying the place or places at which any person may inspect the amendment.

S. 4D  
inserted by  
No. 77/1996  
s. 5.

**4E. Commencement**

An amendment to the Victoria Planning Provisions comes into operation—

- (a) when the notice of approval of the amendment is published in the Government Gazette; or
- (b) on any later day or days specified in the notice.

S. 4E  
inserted by  
No. 77/1996  
s. 5.

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Part 1A—Victoria Planning Provisions

s. 4F

Field Code Changed

S. 4F  
inserted by  
No. 77/1996  
s. 5.

**4F. Application of planning scheme provisions to amendments to VPPs**

Sections 38 and 39 apply as if the amendment to the Victoria Planning Provisions were an amendment to a planning scheme.

S. 4G  
inserted by  
No. 77/1996  
s. 5.

**4G. Lodging of Victoria Planning Provisions and approved amendments**

- (1) The Minister must lodge the prescribed documents and a copy of the Victoria Planning Provisions and every approved amendment to the Victoria Planning Provisions with—
  - (a) each responsible authority; and
  - (b) each municipal council; and
  - (c) any other person or persons whom the Minister specifies.
- (2) An amendment must be lodged before notice of approval of the amendment is published in the Government Gazette.

S. 4H  
inserted by  
No. 77/1996  
s. 5.

**4H. Who must keep a copy of an approved amendment available for inspection?**

The Minister, each responsible authority and any person with whom a copy of an approved amendment is lodged under section 4G must make the copy and any documents lodged with it available at their respective offices during office hours for any person to inspect free of charge for two months after the amendment comes into operation and after that period on payment of the prescribed fee.

**4I. Who must keep up to date copy of Victoria Planning Provisions?**

S. 4I  
inserted by  
No. 77/1996  
s. 5.

The Minister, the responsible authority and any person with whom an amendment is lodged under section 4G must keep a copy of the Victoria Planning Provisions incorporating all amendments to them and of all documents lodged with those amendments available at their respective offices during office hours for any person to inspect free of charge.

**4J. Amendment of planning schemes by Victoria Planning Provisions**

S. 4J  
inserted by  
No. 77/1996  
s. 5.

- (1) An amendment to the Victoria Planning Provisions may also provide for an amendment to one or more specified planning schemes.
- (2) On the approval of an amendment to the Victoria Planning Provisions which provides for an amendment to a planning scheme, the amendment to the planning scheme is deemed to be approved under Part 3.
- (3) The notice of the approval of the amendment to the Victoria Planning Provisions given under section 4D is deemed also to be notice of the approval under Part 3 of each amendment of a planning scheme provided for in the amendment to the Victoria Planning Provisions.
- (4) An amendment to a planning scheme provided for in an amendment to the Victoria Planning Provisions comes into operation—
  - (a) when the amendment to the Victoria Planning Provisions comes into operation; or
  - (b) on any later day or days specified in the notice of approval of the amendment to the Victoria Planning Provisions given under section 4D.



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*Act No. 45/1987*

Part 1A—Victoria Planning Provisions

s. 4J

Field Code Changed

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- (5) Part 3 (except Divisions 1 and 2 and sections 29 to 37) applies to an amendment to a planning scheme provided for in an amendment to the Victoria Planning Provisions.
  - (6) Nothing in section 8 limits the power of a person authorised under section 4B to prepare an amendment to a planning scheme under this section.
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*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 2—Planning Schemes

Field Code Changed  
s. 5

**PART 2—PLANNING SCHEMES**

**5. What are the planning schemes to which this Act applies?**

S. 5  
amended by  
No. 86/1989  
s. 25(a).

This Act applies to any planning scheme approved under this Act as in force from time to time under this Act.

**6. What can a planning scheme provide for?**

- (1) A planning scheme for an area—
  - (a) must seek to further the objectives of planning in Victoria within the area covered by the scheme; and
  - (aa) must contain a municipal strategic statement, if the scheme applies to the whole or part of a municipal district<sup>iii</sup>; and
  - (b) may make any provision which relates to the use, development, protection or conservation of any land in the area.
- (2) Without limiting sub-section (1), a planning scheme may—
  - (a) set out policies and specific objectives;
  - (b) regulate or prohibit the use or development of any land;
  - (c) designate land as being reserved for public purposes;
  - (d) include strategic plans, policy statements, codes or guidelines relating to the use or development of land<sup>iv</sup>;

S. 6(1)(aa)  
inserted by  
No. 77/1996  
s. 6(1).

S. 6(2)(d)  
repealed by  
No. 35/1995  
s. 4(a),  
new s. 6(2)(d)  
inserted by  
No. 77/1996  
s. 6(2).

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Part 2—Planning Schemes

s. 6

Field Code Changed

S. 6(2)(g)  
amended by  
No. 53/1988  
s. 45(Sch. 2  
item 30A) (as  
amended by  
No. 47/1989  
s. 19(x)),  
substituted by  
No. 48/1991  
s. 59(a).

- (e) regulate or prohibit any use or development in hazardous areas or in areas which are likely to become hazardous areas;
- (f) set out requirements for the provision of public utility services to land;
- (g) subject to section 6A, regulate or provide for the creation, variation or removal of easements or restrictions under section 23 of the **Subdivision Act 1988**<sup>v</sup>;

S. 6(2)(ga)  
inserted by  
No. 48/1991  
s. 59(a).

- (ga) subject to section 6A, regulate or provide for the variation or removal of conditions in the nature of easements in Crown grants, under section 23 of the **Subdivision Act 1988**<sup>vi</sup>;

S. 6(2)(gb)  
inserted by  
No. 48/1991  
s. 59(a).

- (gb) subject to section 6A, regulate or provide for the creation or removal of easements or rights of way under section 36 of the **Subdivision Act 1988**<sup>vii</sup>;

S. 6(2)(h)  
amended by  
No. 86/1989  
s. 25(b).

- (h) require specified things to be done to the satisfaction of the responsible authority a Minister, public authority, municipal council or referral authority;

S. 6(2)(ha)  
inserted by  
No. 35/1995  
s. 3(1).

- (ha) require specified information to be provided with an application for a permit;

- (i) state the provisions of the planning scheme which would have applied to land reserved for a public purpose under the planning scheme if it had not been reserved for this purpose;

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Part 2—Planning Schemes

Field Code Changed

s. 6

- (j) apply, adopt or incorporate any document which relates to the use, development or protection of land;
- (k) provide that any use or development of land is conditional on an agreement being entered into with the responsible authority or a referral authority;
- (ka) set out classes of land, use or development exempted from section 96(1) or (2);
- (kb) make any provision in relation to any of the things listed in the Table in section 24A(1) of the **Subdivision Act 1988**;
- (kc) set out classes of applications for permits exempted wholly or in part from section 52(1) and set out notice requirements (if any) to apply in place of the requirements of that sub-section;
- (kd) set out classes of applications the decisions on which are exempted from the requirements of section 64(1), (2) and (3) and section 82(1);
- (ke) subject to sub-section (3), specify what effect (if any) the planning scheme will have on a use or development of land for which a permit or certificate of compliance has been issued;
- (l) provide for any other matter which this Act refers to as being included in a planning scheme.
- (3) Subject to sub-sections (4) and (4A), nothing in any planning scheme or amendment shall—
- (a) prevent the continuance of the use of any land upon which no buildings or works are erected for the purposes for which it was

S. 6(2)(k) amended by No. 53/1988 s. 45(Sch. 2 item 31).

S. 6(2)(ka) inserted by No. 86/1989 s. 5(1).

S. 6(2)(kb) inserted by No. 48/1991 s. 59(b).

S. 6(2)(kc) inserted by No. 128/1993 s. 4.

S. 6(2)(kd) inserted by No. 128/1993 s. 4.

S. 6(2)(ke) inserted by No. 128/1993 s. 4.

S. 6(3) amended by No. 86/1989 s. 6(1).

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- being lawfully used before the coming into operation of the scheme or amendment (as the case may be); or
- (b) prevent the use of any building which was erected before that coming into operation for any purpose for which it was lawfully being used immediately before that coming into operation; or
  - (c) prevent the use of any works constructed before that coming into operation for any purpose for which they were being lawfully used immediately before that coming into operation; or
  - (d) prevent the use of any building or work for any purpose for which it was being lawfully erected or carried out immediately before that coming into operation; or
  - (e) require the removal or alteration of any lawfully constructed building or works.
- (4) Sub-section (3) does not apply to a use of land—
- (a) which has stopped for a continuous period of two years; or
  - (b) which has stopped for two or more periods which together total two years in any period of three years; or
  - (c) in the case of a use which is seasonal in nature, if the use does not take place for two years in succession.
- (4A) A planning scheme may require a use to which sub-section (3) applies to comply with—

S. 6(4A)  
inserted by  
No. 86/1989  
s. 6(2).

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s. 6A

- (a) a Code of Practice which has been incorporated or adopted in accordance with section 39 of the **Conservation, Forests and Lands Act 1987**; or
- (b) a Code of Practice approved or ratified by Parliament under an Act.
- (5) A provision of a planning scheme may operate for a specified period.
- (6) A planning scheme may apply to—
  - (a) a municipal district; or
  - (b) a municipal district together with an area adjoining the municipal district which is not in any municipal district; or
  - (c) an area or areas which are not in any municipal district; or
  - (d) if the affected municipal councils consent, any part of a municipal district or any adjoining parts of two or more municipal districts.

S. 6(4A)(a)  
amended by  
No. 48/2004  
s. 137(a)(b).

**6A. Easements, restrictions etc.**

- (1) In this section and in section 6(2)(g) "**restriction**" has the same meaning as in the **Subdivision Act 1988**.
- (2) Subject to sub-section (3), a planning scheme may require a permit to be obtained before a person proceeds under section 23, 24A or 36 of the **Subdivision Act 1988**.
- (3) A planning scheme must not—
  - (a) prohibit or restrict—
    - (i) the creation, variation or removal of easements or restrictions by agreement, prescription, abandonment, or otherwise by operation of law; or

S. 6A  
inserted by  
No. 48/1991  
s. 60.

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 2—Planning Schemes

s. 7

Field Code Changed

S. 6A(3)(b)(i)  
amended by  
No. 93/1995  
s. 218(1)  
(Sch. 2  
item 7.1).

- (ii) the creation, variation or removal of easements or restrictions by or under an Act other than the **Subdivision Act 1988**; or
  - (iii) a person from proceeding under the **Subdivision Act 1988** in relation to the creation, variation or removal of an easement or restriction referred to in sub-paragraph (i) or (ii); or
- (b) regulate or provide for—
- (i) the variation or removal of a covenant under Division 2 of Part 4 of the **Heritage Act 1995** or section 3A of the **Victorian Conservation Trust Act 1972**; or
  - (ii) the variation or removal of an easement required to be created in favour of a public authority, Council, Minister or other person under an Act other than the **Subdivision Act 1988**, without the consent of that person; or
- (c) allow a person to proceed under section 23 of the **Subdivision Act 1988** to create, vary or remove an easement or restriction over land that the person does not own.
- (4) A provision included in a planning scheme under section 6(2)(ga) is in addition to section 362A of the **Land Act 1958**, and a person may choose whether to proceed under that section or the provision of the planning scheme.

S. 7  
substituted by  
No. 77/1996  
s. 7.

**7. Structure of planning schemes<sup>viii</sup>**

- (1) A planning scheme for an area must include and must specify separately—
  - (a) State standard provisions; and
  - (b) local provisions.

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- (2) The State standard provisions must consist of provisions selected from the Victoria Planning Provisions.
- (3) The local provisions—
  - (a) must include—
    - (i) a municipal strategic statement, if the area of the planning scheme includes the whole or part of a municipal district; and
    - (ii) any other provision which the Minister directs to be included in the planning scheme; and
  - (b) may include any other provision which applies only to the area of the planning scheme.
- (3A) Sub-section (3)(a)(i) does not apply to any part of a municipal district that is within the Port of Melbourne Area.
- (4) If there appears to be an inconsistency between different provisions of a planning scheme—
  - (a) the scheme must, so far as practicable, be read so as to resolve the inconsistency; and
  - (b) subject to paragraph (a)—
    - (i) the State standard provisions prevail over the local provisions; and
    - (ii) a specific control over land prevails over a municipal strategic statement or any strategic plan, policy statement, code or guideline in the planning scheme.

S. 7(3A)  
inserted by  
No. 77/2003  
s. 5(1).



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s. 8

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- (5) The Minister may issue directions or guidelines as to the form and content of any planning scheme or planning schemes.
- (6) A planning authority must comply with a direction of the Minister under sub-section (5).

**8. Who can prepare planning schemes or amendments?<sup>ix</sup>**

- (1) The Minister may prepare—
  - (a) a planning scheme for any municipal district or other area of Victoria; and
  - (b) amendments to any provision of a planning scheme.
- (1A) Only the Minister may include in an amendment a provision setting out the classes of land, use or development exempted from section 96(1) or (2).

S. 8(1)(a)  
amended by  
No. 77/1996  
s. 8(1).

S. 8(1)(b)  
amended by  
No. 77/1996  
s. 8(2).

S. 8(1A)  
inserted by  
No. 86/1989  
s. 5(2).

S. 8(2)  
repealed by  
No. 35/1995  
s. 4(b).

S. 8(3)  
substituted by  
No. 77/1996  
s. 8(3).

S. 8(4)  
substituted by  
No. 77/1996  
s. 8(3),  
repealed by  
No. 89/1997  
s. 75(1),  
new s. 8(4)  
inserted by  
No. 77/2003  
s. 4.

\* \* \* \* \*

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Field Code Changed  
s. 9

- (5) A person whom the Minister authorises under section 11 may prepare amendments to any part of the State standard provisions and local provisions of a planning scheme which the Minister authorises under that section. **S. 8(5) substituted by No. 77/1996 s. 8(3).**
- (6) The power given under this section to prepare an amendment to the State standard provisions of a planning scheme extends only to the inclusion of a provision in or deletion of a provision from the State standard provisions of the planning scheme. **S. 8(6) substituted by No. 77/1996 s. 8(3).**
- (7) A person or body that is given power under this section to amend more than one planning scheme may prepare amendments to two or more of those schemes in the one instrument.
- (8) This Act applies to a planning scheme prepared by the Minister as if it were an amendment to a planning scheme. **S. 8(8) amended by No. 86/1989 s. 25(c).**

**9. Planning authorities**

Any person or body that is given power under section 8 to prepare a planning scheme or an amendment to a planning scheme is a planning authority under this Act.

\* \* \* \* \*

**S. 10 amended by Nos 59/1987 s. 38, 88/1991 s. 15, 16/1993 s. 20(d), 118/1994 ss 4(f), 9(f), 16/1995 s. 4(g), repealed by No. 35/1995 s. 4(c).**

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s. 11

Field Code Changed

**11. Who can be authorised to prepare an amendment to a planning scheme?**

The Minister may authorise—

- (a) any other Minister or public authority to prepare an amendment to a planning scheme; or
- (b) any municipal council to prepare an amendment to a planning scheme applying to an area adjoining its municipal district<sup>x</sup>.

S. 11(b)  
amended by  
No. 77/1996  
s. 9.

**12. What are the duties and powers of planning authorities?**

(1) A planning authority must—

- (a) implement the objectives of planning in Victoria;
- (b) provide sound, strategic and co-ordinated planning of the use and development of land in its area;
- (c) review regularly the provisions of the planning scheme for which it is a planning authority;
- (d) prepare amendments to a planning scheme for which it is a planning authority;
- (e) prepare an explanatory report in respect of any proposed amendment to a planning scheme.

(2) In preparing a planning scheme or amendment, a planning authority—

- (a) must have regard to the Minister's directions; and
- (aa) must have regard to the Victoria Planning Provisions<sup>xi</sup>; and

S. 12(2)(aa)  
inserted by  
No. 77/1996  
s. 10.

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s. 12A

- (ab) in the case of an amendment, must have regard to any municipal strategic statement, strategic plan, policy statement, code or guideline which forms part of the scheme<sup>xii</sup>; and
  - (b) must take into account any significant effects which it considers the scheme or amendment might have on the environment or which it considers the environment might have on any use or development envisaged in the scheme or amendment<sup>xiii</sup>; and
  - (c) may take into account its social effects and economic effects.
- (3) A planning authority may—
- (a) carry out studies and commission reports; and
  - (b) do all things necessary to encourage and promote the orderly and proper use, development and protection of land in the area for which it is a planning authority; and
  - (c) take any steps and consult with any other persons it considers necessary to ensure the co-ordination of the planning scheme with proposals by those other persons.

S. 12(2)(ab)  
inserted by  
No. 77/1996  
s. 10.

S. 12(2)(b)  
amended by  
No. 86/1989  
s. 25(d).

**12A. Municipal strategic statements<sup>xiv</sup>**

- (1) A planning authority which is a municipal council must prepare a municipal strategic statement for its municipal district.
- (2) A municipal strategic statement must further the objectives of planning in Victoria to the extent that they are applicable in the municipal district.

S. 12A  
inserted by  
No. 77/1996  
s. 11.

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s. 13

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- (3) A municipal strategic statement must contain—
  - (a) the strategic planning, land use and development objectives of the planning authority; and
  - (b) the strategies for achieving the objectives; and
  - (c) a general explanation of the relationship between those objectives and strategies and the controls on the use and development of land in the planning scheme; and
  - (d) any other provision or matter which the Minister directs to be included in the municipal strategic statement.
- (4) A municipal strategic statement must be consistent with the current corporate plan prepared under section 153A of the **Local Government Act 1989** for the municipal district.
- (5) A municipal council must review its municipal strategic statement at least once in every 3 years after it is prepared.
- (6) A municipal council must also review its municipal strategic statement at any other time that the Minister directs.
- (7) This section does not apply to any part of a municipal district that is within the Port of Melbourne Area.

S. 12A(7)  
inserted by  
No. 77/2003  
s. 5(2).

### **13. Responsible authority**

The person who is the responsible authority for the administration or enforcement of a planning scheme or a provision of a planning scheme under this Act is—

- (a) the municipal council if the planning scheme applies to land which is wholly or partly in

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its municipal district unless the planning scheme specifies any other person as the responsible authority; or

- (b) the Minister, if the planning scheme applies only to land outside a municipal district, unless the planning scheme specifies any other person as the responsible authority; or
- (c) any person whom the planning scheme specifies as a responsible authority for that purpose.

**14. What are the duties of a responsible authority?**

The duties of a responsible authority are—

- (a) to administer and enforce the planning scheme; and
- (aa) to enforce any enforcement order or interim enforcement order relating to land covered by a planning scheme for which it is the responsible authority; and
- (b) to implement the objectives of the planning scheme; and
- (c) to comply with this Act and the planning scheme; and
- (d) to provide information and reports as required by the regulations.

S. 14(aa)  
inserted by  
No. 86/1989  
s. 7(1).

**15. Changes in boundaries**

- (1) If any land in a municipal district becomes the whole or part of a new or different municipal district under the **Local Government Act 1989**—
  - (a) any planning scheme applying to that land immediately before the alteration in the municipal district; and

S. 15(1)  
amended by  
Nos 12/1989  
s. 4(1)(Sch. 2  
item 90.2),  
125/1993 s. 35.

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s. 16

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S. 15(2)  
amended by  
Nos 12/1989  
s. 4(1)(Sch. 2  
item 90.3),  
125/1993 s. 35.

- (b) all things done under that scheme—  
continue to have the same operation and effect as they would have had if the alteration had not been made except that the responsible authority for the subsequent administration and enforcement of the planning scheme is the council of the new or different municipal district unless the planning scheme specifies a person other than a municipal council as the responsible authority.
- (2) If any land which is not in a municipal district becomes the whole or part of a municipal district under the **Local Government Act 1989**—
- (a) any planning scheme applying to the land immediately before the land becomes a municipal district; and
- (b) all things done under that scheme—  
continue to have the same operation and effect as they would have had if the alteration had not been made except that the responsible authority for the subsequent administration and enforcement of the planning scheme is the council of the municipal district unless the planning scheme specifies a person other than a municipal council as the responsible authority.

**16. Application of planning scheme**

A planning scheme is binding on every Minister, government department, public authority and municipal council except to the extent that the Governor in Council, on the recommendation of the Minister, directs by Order published in the Government Gazette.

**PART 3—AMENDMENT OF PLANNING SCHEMES**

**Division 1—Exhibition and Notice of Amendment**

**17. Copies of amendment to be given to certain persons**

(1) A planning authority must give copies of any amendment it prepares to a planning scheme together with the explanatory report and any document applied, adopted or incorporated in the amendment—

(a) to a municipal council, if the amendment applies to its municipal district; and

\* \* \* \* \*

S. 17(1)(b)  
repealed by  
No. 35/1995  
s. 4(d).

(c) to the Minister; and

(d) to any other person whom the Minister specifies.

(2) A planning authority must also give a copy of any agreement entered into under section 173 to any person to whom it gives a copy of the amendment if the agreement or part of the agreement will not come into operation fully unless the amendment comes into operation.

**18. Availability of amendment**

The planning authority that prepared an amendment and any person who is given a copy of an amendment under section 17(1)(a) or (c) must make the amendment, the explanatory report, any document applied, adopted or incorporated in the amendment and any accompanying agreement available at their respective offices during office hours for any

S. 18  
amended by  
No. 35/1995  
s. 4(e).



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person to inspect free of charge until the amendment is approved or lapses.

**19. What notice of an amendment must a planning authority give?**

- (1) A planning authority must give notice of its preparation of an amendment to a planning scheme—
- (a) to every Minister, public authority and municipal council that it believes may be materially affected by the amendment; and
  - (b) to the owners (except persons entitled to be registered under the **Transfer of Land Act 1958** as proprietor of an estate in fee simple) and occupiers of land that it believes may be materially affected by the amendment; and
  - (c) to any Minister, public authority, municipal council or person prescribed; and
  - (ca) to owners (except persons entitled to be registered under the **Transfer of Land Act 1958** as proprietor of an estate in fee simple) and occupiers of land benefited by a registered restrictive covenant, if the amendment provides for the removal or variation of the covenant; and
  - (d) to the Minister administering the **Land Act 1958** if the amendment provides for the closure of a road wholly or partly on Crown land.
- (1A) Subject to sub-section (1C), the planning authority is not required to give notice of an amendment under sub-section (1)(b) if it considers the number of owners and occupiers affected makes it impractical to notify them all individually about the amendment.

S. 19(1)(b)  
amended by  
No. 86/1989  
s. 4(2)(a).

S. 19(1)(ca)  
inserted by  
No. 100/2000  
s. 5(1).

S. 19(1A)  
inserted by  
No. 128/1993  
s. 5.

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- (1B) A planning authority which does not give notice under sub-section (1)(b) for the reasons set out in sub-section (1A) must take reasonable steps to ensure that—
- (a) public notice of the proposed amendment is given in the area affected by the amendment; and
  - (b) that notice states that owners and occupiers of land referred to in sub-section (1)(b) are entitled to make submissions in accordance with sections 21 and 21A.
- (1C) Sub-section (1A) does not apply in relation to the giving of notice to an owner of land of an amendment which provides for—
- (a) the reservation of that land for public purposes; or
  - (b) the closure of a road which provides access to that land.
- (2) A planning authority must publish a notice of any amendment it prepares in a newspaper generally circulating in the area to which the amendment applies.
- (2A) A planning authority must cause notice of an amendment providing for the removal or variation of a registered restrictive covenant to be given by placing a sign on the land which is the subject of the amendment.
- (3) On the same day as it gives the last of the notices required under sub-sections (1), (2) and (2A) or after all other notices have been given under this section, the planning authority must publish a notice of the preparation of the amendment in the Government Gazette<sup>xv</sup>.
- (4) Any notice must—

S. 19(1B)  
inserted by  
No. 128/1993  
s. 5.

S. 19(1C)  
inserted by  
No. 128/1993  
s. 5.

S. 19(2A)  
inserted by  
No. 100/2000  
s. 5(2).

S. 19(3)  
amended by  
Nos 86/1989  
s. 25(e),  
100/2000  
s. 5(3).

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S. 19(4)(b)  
amended by  
No. 48/1991  
s. 66(1).

- (a) be given in accordance with the regulations;  
and
  - (b) set a date for submissions to the planning authority which, if notice of the preparation of the amendment is given in the Government Gazette, must be not less than one month after the date that the notice is given in the Government Gazette.
- (5) The failure of a planning authority to give a notice under sub-section (1) does not prevent the adoption of the amendment by the planning authority or its submission to or approval by the Minister.
- (6) Sub-section (5) does not apply to a failure to notify an owner of land about the preparation of an amendment which provides for—
- (a) the reservation of that land for public purposes; or
  - (b) the closure of a road which provides access to that land.
- (7) A planning authority may take any other steps it thinks necessary to tell anyone who may be affected by the amendment about its preparation.

**20. Exemption from giving notice**

S. 20(2)  
amended by  
No. 128/1993  
s. 6(1)(a)(i)(ii).

- (1) A planning authority may apply to the Minister to exempt it from any of the requirements of section 19 or the regulations in respect of an amendment.
- (2) If the Minister considers that compliance with any of those requirements is not warranted, or that the interests of Victoria or any part of Victoria make

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such an exemption appropriate, the Minister may—

- (a) exempt a planning authority from any of those requirements; and
  - (b) impose conditions on that exemption, including a condition which requires the planning authority to give notice of the amendment in any specified manner.
- (3) The Minister cannot exempt a planning authority from the requirement to give notice—
- (a) to the owner of any land, of an amendment which provides for—
    - (i) the reservation of that land for public purposes; or
    - (ii) the closure of a road which provides access to that land; or
  - (b) to any Minister prescribed under section 19(1)(c); or
  - (ba) under section 19(2) or (3), if the amendment proposes a change to provisions relating to land set aside or reserved as public open space; or
  - (c) to the Minister administering the **Land Act 1958** under section 19(1)(d).
- (4) The Minister may exempt himself or herself from any of the requirements of sections 17, 18 and 19 and the regulations in respect of an amendment which the Minister prepares, if the Minister considers that compliance with any of those requirements is not warranted or that the interests of Victoria or any part of Victoria make such an exemption appropriate.

S. 20(3)(ba) inserted by No. 53/1988 s. 45(Sch. 2 item 32).

S. 20(4) amended by No. 128/1993 s. 6(1)(b)(i)(ii).

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S. 20(5)  
substituted by  
No. 128/1993  
s. 6(2).

- (5) The Minister may consult with the responsible authority or any other person before exercising the powers under sub-section (2) or (4).

**Division 2—Public Submissions about an Amendment**

S. 21  
amended by  
Nos 86/1989  
s. 25(f),  
128/1993  
s. 7(a).

**21. Who may make a submission?**<sup>xvi, xvii</sup>

- (1) Any person may make a submission to the planning authority about an amendment of which notice has been given under section 19 or in accordance with a condition imposed under section 20(2)(b).
- (2) The planning authority must make a copy of every submission available at its office for any person to inspect during office hours free of charge until the end of two months after the amendment comes into operation or lapses.
- (3) A person is not entitled to make a submission which requests a change to the terms of any State standard provision to be included in a planning scheme by the amendment.
- (4) Despite sub-section (3), a person is entitled to make a submission which requests that a State standard provision be included in or deleted from the scheme.

S. 21(2)  
inserted by  
No. 128/1993  
s. 7(b).

S. 21(3)  
inserted by  
No. 77/1996  
s. 12(1).

S. 21(4)  
inserted by  
No. 77/1996  
s. 12(1).

S. 21A  
inserted by  
No. 86/1989  
s. 8.

**21A. Joint submissions**<sup>xviii</sup>

- (1) Two or more persons may make one submission to a planning authority under section 21 or the Minister under section 34.
- (2) If a number of persons make one submission, they may give the planning authority or Minister (as the case requires)—

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- (a) the name and address of the person to whom the planning authority or Minister must give any notice required by this Act to be given to the maker of a submission; and
  - (b) the name and address of any person who is to represent them at any panel hearing.
- (3) If a number of persons make one submission, it is sufficient compliance with—
- (a) any requirement of this Act to give notice to the maker of a submission if the planning authority or Minister (as the case requires) gives the notice—
    - (i) to the person named under sub-section (2)(a); or
    - (ii) if no name and address is given under sub-section (2)(a), to one of the persons who made the submission; and
  - (b) any requirement of this Act to give an opportunity to be heard to the maker of a submission if an opportunity to be heard is given—
    - (i) to the person named under sub-section (2)(b); or
    - (ii) if no name and address is given under sub-section (2)(b), to one of the persons who made the submission.
- (4) If the planning authority or Minister gives notice under sub-section (3)(a)(ii), the planning authority or Minister must also publish a copy of the notice in a newspaper generally circulating in the area to which the amendment applies.

**22. Planning authority to consider submissions<sup>xix</sup>**

- (1) A planning authority must consider all submissions made on or before the date set out

S. 22  
amended by  
No. 86/1989  
s. 25(g).

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in the notice.

- (2) The planning authority may consider a late submission and must consider one if the Minister directs.

S. 22(3)  
inserted by  
No. 77/1996  
s. 12(2).

- (3) A planning authority must not consider a submission which requests a change to the terms of any State standard provision to be included in the planning scheme by the amendment.

S. 22(4)  
inserted by  
No. 77/1996  
s. 12(2).

- (4) Despite sub-section (3), a planning authority may consider a submission which requests that a State standard provision be included in or deleted from the scheme.

S. 23  
amended by  
No. 86/1989  
s. 25(h)(i).

**23. Decisions about submissions<sup>xx, xxi</sup>**

- (1) After considering a submission which requests a change to the amendment, the planning authority must—
- (a) change the amendment in the manner requested; or
  - (b) refer the submission to a panel appointed under Part 8; or
  - (c) abandon the amendment or part of the amendment.

S. 23(2)  
inserted by  
No. 86/1989  
s. 25(h)(ii).

- (2) A planning authority may refer to the panel submissions which do not require a change to the amendment.

S. 23(3)  
inserted by  
No. 77/1996  
s. 12(3).

- (3) Sub-section (1) does not apply to a submission which requests a change to the terms of any State standard provision to be included in the planning scheme by the amendment.

S. 23(4)  
inserted by  
No. 77/1996  
s. 12(3).

- (4) Despite sub-section (3), sub-section (1) does apply to a submission which requests that a State standard provision be included in or deleted from the scheme.

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**24. Hearing by panel**

The panel must consider all submissions referred to it and give a reasonable opportunity to be heard to—

- (a) any person who has made a submission referred to it;
- (b) the planning authority;
- (c) any responsible authority or municipal council concerned;

\* \* \* \* \*

S. 24(d)  
repealed by  
No. 35/1995  
s. 4(f).

- (e) any person whom the Minister or the planning authority directs the panel to hear.

**25. Report by panel<sup>xxii</sup>**

- (1) The panel must report its findings to the planning authority.
- (2) In its report, the panel may make any recommendation it thinks fit.
- (3) A panel must not make a recommendation that an amendment be adopted with changes to the terms of any State standard provision to be included in the planning scheme.
- (4) Despite sub-section (3), a panel may make a recommendation that an amendment provide for a State standard provision to be included in or deleted from the planning scheme.

S. 25(3)  
inserted by  
No. 77/1996  
s. 12(4).

S. 25(4)  
inserted by  
No. 77/1996  
s. 12(4).



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S. 25A  
inserted by  
No. 77/1996  
s. 13.

**25A. Recommendation by panel to Minister<sup>xxiii</sup>**

- (1) The panel may recommend to the Minister that an amendment be prepared to the Victoria Planning Provisions.
- (2) Sub-section (1) does not apply if the Minister is the planning authority.

S. 26  
substituted by  
No. 5/1988  
s. 4.

**26. Reports to be made public**

- (1) The planning authority may make the panel's report available at its office during office hours for any person to inspect free of charge at any time after the planning authority receives the report and must make it so available forthwith if—
  - (a) the planning authority has decided whether or not to adopt the amendment; or
  - (b) 28 days have elapsed since it received the panel's report.
- (2) A report made available for inspection under sub-section (1) must be kept available for inspection until the end of two months after the amendment comes into operation or lapses.

S. 27  
amended by  
No. 86/1989  
s. 9(a).

**27. Planning authority to consider panel's report**

- (1) The planning authority must consider the panel's report before deciding whether or not to adopt the amendment.
- (2) A planning authority may apply to the Minister to exempt it from sub-section (1) if the planning authority has not received the panel's report at the end of—
  - (a) 6 months from the panel's appointment; or
  - (b) 3 months from the date on which the panel completed its hearing—whichever is earlier.

S. 27(2)  
inserted by  
No. 86/1989  
s. 9(b).

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- (3) The Minister may exempt a planning authority from sub-section (1) if the Minister considers that delay in considering whether or not to adopt the amendment would adversely affect the planning of the area, and may impose conditions to which the exemption is subject.

S. 27(3)  
inserted by  
No. 86/1989  
s. 9(b).

**28. Abandonment of amendment**

The planning authority must tell the Minister in writing if it decides to abandon an amendment or part of an amendment.

**Division 3—Adoption and Approval of Amendment**

**29. Adoption of amendment**

- (1) After complying with Divisions 1 and 2 in respect of an amendment or any part of it, the planning authority may adopt the amendment or that part with or without changes.
- (2) If a planning authority adopts a part of an amendment that part becomes a separate amendment.

**30. When does an amendment lapse?**

- (1) An amendment or part of an amendment lapses—
- (a) at the end of two years after the date of publication of the notice in the Government Gazette under section 19(3) unless—
- (i) the planning authority adopts it within that period; or
- (ii) the Minister allows a longer period for the adoption of the amendment; or
- (b) at the end of any period which the Minister allows unless the planning authority adopts it within that period; or

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(c) when the planning authority notifies the Minister in writing that it has abandoned the amendment or part; or

(d) when the Minister refuses to approve it under this Act.

S. 30(1)(d)  
amended by  
No. 43/2003  
s. 4(1).

Note to  
s. 30(1)  
inserted by  
No. 43/2003  
s. 4(2).

Note: An amendment may also lapse under Part 3AA.

- (2) When an amendment has lapsed under sub-section (1)(b), (c) or (d), the Minister must publish a notice in the Government Gazette setting out the date on which the amendment or part lapsed.
- (3) The publication of the notice under sub-section (2) is conclusive proof of the date that the amendment lapsed.
- (4) If any person asks the Minister or a planning authority a question as to whether an amendment or part of an amendment has lapsed under sub-section (1)(a), the Minister or planning authority must, without delay—
- (a) tell the person—
    - (i) whether or not the amendment or part has lapsed; and
    - (ii) if relevant, of any longer period allowed under sub-section (1)(a)(ii); and
  - (b) confirm the information in writing if so requested.

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**31. Planning authority to submit amendment to Minister**

- (1) A planning authority other than the Minister must submit an adopted amendment to the Minister together with the prescribed information.
- (2) If a planning authority did not give notice of the amendment under section 19(1)(b) for the reasons set out in section 19(1A), the planning authority must inform the Minister of this when submitting the adopted amendment under subsection (1) and give the Minister details of the steps taken under section 19(1B) in respect of the amendment.

S. 31  
amended by  
No. 128/1993  
s. 8(a).

S. 31(2)  
inserted by  
No. 128/1993  
s. 8(b).

**32. More notice**

- (1) The Minister may direct the planning authority to give more notice of the amendment if the Minister thinks that the notice which the planning authority gave was inadequate, even if the planning authority has complied with section 19.
- (2) The planning authority must give the notice of the amendment required by the Minister and comply again with sections 21 to 31 in relation to all matters after the giving of notice.

**33. Notice of changes**

- (1) The Minister may direct the planning authority to give notice of any changes to the amendment which—
  - (a) the planning authority has made under section 29; or
  - (b) the Minister proposes to make.
- (2) The direction may specify the manner and form in which the notice is to be given.

**34. Submissions**

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- (1) The Minister may allow any person affected by a change to an amendment to make a submission to the Minister on the change.
- (2) The Minister may refer any submissions to a panel appointed under Part 8.
- (3) The panel must consider the submissions and give any person who made a submission referred to it a reasonable opportunity to be heard.
- (4) The panel may give any other person affected a reasonable opportunity to be heard.
- (5) The panel must report its findings to the Minister setting out the panel's recommendations on the changes.

**35. Approval of amendment**

- (1) The Minister may—
  - (a) approve an amendment or a part of an amendment prepared by the Minister or submitted to the Minister under section 31—
    - (i) with or without changes; and
    - (ii) subject to any conditions the Minister wishes to impose; or
  - (b) refuse to approve the amendment or part of the amendment.
- (2) If the Minister approves only a part of an amendment that part becomes a separate amendment.
- (3) The Minister may approve further parts of an amendment at any time.
- (4) The Minister must not approve an amendment or part without the consent of—

S. 35(1)(b)  
amended by  
No. 128/1993  
s. 9.

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- (a) a Minister prescribed under section 19, if that Minister so requires for a prescribed reason; or
- (b) the Minister administering the **Road Management Act 2004**, if the amendment or part provides for the closure of a freeway or an arterial road within the meaning of that Act.

S. 35(4)(b)  
amended by  
No. 12/2004  
s. 166(a)(b).

**36. Notice of approval**

- (1) The Minister must publish a notice of the approval of an amendment in the Government Gazette, specifying the place or places at which any person may inspect the amendment.
- (2) The planning authority must give notice of the approval of the amendment in a manner satisfactory to the Minister.

**37. Commencement of amendment**

An amendment comes into operation—

- (a) when the notice of approval of the amendment is published in the Government Gazette; or
- (b) on any later day or days specified in the notice.

**38. Parliament may revoke an amendment**

- (1) The Minister must cause a notice in the prescribed form of the approval of every amendment to be laid before each House of the Parliament within 10 sitting days after it is approved.
- (1A) A notice under sub-section (1) must state whether the Minister has exempted the planning authority or himself or herself from any of the

S. 38(1A)  
inserted by  
No. 128/1993  
s. 10.

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S. 38(1B)  
inserted by  
No. 128/1993  
s. 10.

- requirements of section 17, 18 or 19 or the regulations.
- (1B) If an exemption has been given, the notice must—
- (a) state the nature of the exemption; and
  - (b) state the notice, if any, given of the amendment; and
  - (c) state whether the Minister consulted the responsible authority before giving the exemption; and
  - (d) if the responsible authority was consulted, include a summary of the authority's recommendations (if any) in relation to the exemption.
- (2) An amendment may be revoked wholly or in part by a resolution passed by either House of the Parliament within 10 sitting days after the notice of approval of the amendment is laid before that House.
- (3) If an amendment is revoked—
- (a) any provision of a planning scheme that had been revoked by the amendment comes back into operation from the beginning of the day on which the amendment was revoked; and
  - (b) any provision of a planning scheme that had been directly amended by the amendment takes effect without that direct amendment from the beginning of the day on which the amendment was revoked as if the revoked amendment had not been made.
- (4) The Minister must publish a notice of the revocation of an amendment or part of an amendment in the Government Gazette.

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s. 39

- (5) The planning authority must give notice of the revocation of an amendment or part of an amendment in a manner satisfactory to the Minister.

**39. Defects in procedure**

S. 39 substituted by No. 86/1989 s. 10.

- (1) A person who is substantially or materially affected by a failure of the Minister, a planning authority or a panel to comply with Division 1 or 2 or this Division or Part 8 in relation to an amendment which has not been approved may, not later than one month after becoming aware of the failure refer the matter to the Tribunal for its determination.

S. 39(1) amended by No. 52/1998 s. 191(2)(a)(i).

- (2) In addition to any other party to the proceeding the parties to a proceeding before the Tribunal under this section are—

S. 39(2) amended by No. 52/1998 s. 191(2)(a)(i)(ii).

- (a) the person who referred the matter to the Tribunal; and  
(b) the Minister; and  
(c) the planning authority.

- (3) If a matter referred to the Tribunal under this section involves a failure by a panel to comply with Division 2 or this Division or Part 8 the panel (or a member of the panel authorised by the panel to act on its behalf) is entitled to make a written or oral submission to the Tribunal before the Tribunal completes the hearing of the matter.

- (4) The Tribunal may determine a matter referred to it under this section and may do any one or more of the following—

S. 39(4) amended by No. 52/1998 s. 191(2)(a)(i).

- (a) make any declaration that it considers appropriate;



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(b) direct that—

- (i) the planning authority must not adopt the amendment or a specified part of the amendment; or
- (ii) the Minister must not approve the amendment or a specified part of the amendment—

unless the Minister, planning authority or a panel takes action specified by the Tribunal.

- (5) In exercising its jurisdiction under this section the Tribunal cannot vary a decision made in relation to a matter referred to it or set aside that decision and make a decision in substitution for the decision so set aside.

S. 39(6)  
repealed by  
No. 52/1998  
s. 191(2)(a)(iii).

\* \* \* \* \*

- (7) An amendment which has been approved is not made invalid by any failure to comply with Division 1 or 2 or this Division or Part 8.
- (8) Except for an application under this section, a person cannot bring an action in respect of a failure to comply with Division 1 or 2 or this Division or Part 8 in relation to an amendment which has not been approved.

**Division 4—Availability of Approved Amendments and Schemes**

**40. Lodging of approved amendment**

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s. 40

(1) The Minister or, if the Minister directs, the planning authority, must lodge the prescribed documents and a copy of every approved amendment to a planning scheme with—

S. 40(1)  
amended by  
No. 86/1989  
s. 25(i)(i)(ii).

(a) the responsible authority; and

S. 40(1)(a)  
substituted by  
No. 128/1993  
s. 11(1).

(aa) the municipal council if the planning scheme applies to its municipal district and it is not the responsible authority; and

S. 40(1)(aa)  
inserted by  
No. 128/1993  
s. 11(1).

\* \* \* \* \*

S. 40(1)(b)  
repealed by  
No. 35/1995  
s. 4(g).

(c) any other person or persons whom the Minister specifies generally for that planning scheme or for a particular amendment.

(2) The amendment must be lodged before notice of approval of the amendment is published in the Government Gazette.

**41. Who must keep a copy of an approved amendment for inspection?**

S. 41  
amended by  
No. 128/1993  
s. 11(2).

The planning authority, the Minister, the responsible authority and any person with whom a copy of an approved amendment is lodged under section 40 must make the copy and any documents lodged with it available at their respective offices during office hours for any person to inspect free of charge for two months after the amendment comes into operation and after that period on payment of the prescribed fee.

**42. Who must keep an up to date copy of a planning scheme?**

S. 42  
amended by  
No. 128/1993  
s. 11(3)(a)(b).

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s. 44

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The Minister, the responsible authority and any person with whom an amendment to a planning scheme must be lodged under section 40(1)(aa) or (b) must keep a copy of the planning scheme incorporating all amendments to it and of all documents lodged with those amendments under section 40 available at their respective offices for any person to inspect during office hours free of charge.

**Division 5—Special Provisions**

**43. Roads on Crown land**

- (1) Any unalienated Crown land forming the whole or part of a road which is closed by an amendment to a planning scheme vests in the Minister administering the **Land Act 1958** upon the publication of the notice of approval of the amendment in the Government Gazette if it is not already vested in that Minister.
- (2) The Minister administering the **Land Act 1958** may alienate any land vested in the Minister under sub-section (1) by public auction, private agreement or otherwise and subject to any terms and conditions the Minister thinks fit.

**44. Roads on land other than Crown land**

- (1) Any land in a road which is closed by an amendment to a planning scheme vests in—
  - (a) the municipal council in whose municipal district the land is situated; or
  - (b) the Minister, if the land is not in a municipal district; or
  - (c) the Minister administering the **Road Management Act 2004** despite anything to the contrary in paragraph (a) or (b), if the road was—

S. 44(1)(c)  
amended by  
No. 12/2004  
s. 166(a).

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3—Amendment of Planning Schemes

Field Code Changed

- (i) a freeway or an arterial road within the meaning of that Act; or
- (ii) vested in the Roads Corporation—
- upon the publication of the notice of approval of the amendment in the Government Gazette unless the land is Crown land.
- (2) The publication of the notice brings the land under the operation of the **Transfer of Land Act 1958** if it is not already under that Act.
- (3) Any person in whom land is vested under sub-section (1) may lease, sell or otherwise dispose of the land by public auction, private agreement or otherwise, subject to any terms and conditions the person thinks fit.
- (4) If—
- (a) a Minister or a council transfers land to any other person under sub-section (3); and
- (b) the instrument of transfer is lodged with the Registrar of Titles together with a copy from the Government Gazette of the notice of approval of the amendment to the planning scheme—
- the Registrar of Titles must make any recordings in the Register that are necessary to give effect to the transfer, without the production of any other document.
- (5) If a Minister or a council decides to keep the land in the road for any purpose, section 54 of the

S. 44(1)(c)(i)  
amended by  
No. 12/2004  
s. 166(b).

S. 44(1)(c)(ii)  
amended by  
No. 44/1989  
s. 41(Sch. 2  
item 31).

S. 44(4)  
amended by  
No. 18/1989  
s. 13(Sch. 2  
item 63(a)).

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3—Amendment of Planning Schemes

s. 46

Field Code Changed

**Transfer of Land Act 1958** applies as if the Minister or the council had acquired the land compulsorily.

**45. Effect on easements for public utilities**

Unless the planning scheme provides otherwise, any right, power or interest which a municipal council or a public authority had in the road in connection with any drains, pipes, wires or cables laid or erected in, on or over the road—

- (a) is not affected by the closure of the road by an amendment to a planning scheme; and
- (b) continues in the land after it vests in any person or is sold under this Division; and
- (c) may be noted by the Registrar of Titles as an encumbrance on every certificate of title issued as a result of this Division.

**46. Planning schemes may apply to reserved land**

- (1) Without limiting the operation of section 6, a planning scheme may regulate or prohibit the use or development of land which is permanently or temporarily reserved for any purpose under the **Crown Land (Reserves) Act 1978**.
- (2) If a provision of a planning scheme is expressed or purports to deal with land that has been permanently reserved for any purpose under the **Crown Land (Reserves) Act 1978** or any part of that land in a manner which is inconsistent with the purpose of the reservation, the provision does not take effect until the reservation of that land or part is revoked by or pursuant to an Act of Parliament.

S. 46  
substituted by  
No. 8/1995  
s. 43.

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3AA—MetroPolitan Green Wedge Protection

s. 46AA

Field Code Changed

**PART 3AA—METROPOLITAN GREEN WEDGE  
PROTECTION**

**Division 1—Introductory**

**46AA. What is a metropolitan fringe planning scheme?**

For the purposes of this Part, a metropolitan fringe planning scheme is a planning scheme applying to the municipal district of any of the following municipal councils—

- (a) Brimbank City Council;
- (b) Cardinia Shire Council;
- (c) Casey City Council;
- (d) Frankston City Council;
- (e) Greater Dandenong City Council;
- (f) Hobsons Bay City Council;
- (g) Hume City Council;
- (h) Kingston City Council;
- (i) Knox City Council;
- (j) Manningham City Council;
- (k) Maroondah City Council;
- (l) Melton Shire Council;
- (m) Mornington Peninsula Shire Council;
- (n) Nillumbik Shire Council;
- (o) Whittlesea City Council;
- (p) Wyndham City Council;
- (q) Yarra Ranges Shire Council.

Pt 3AA  
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ss 46AA–  
46AM  
inserted by  
No. 43/2003  
s. 3.

S. 46AA  
inserted by  
No. 43/2003  
s. 3.

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3AA—MetroPolitan Green Wedge Protection

s. 46AB

Field Code Changed

S. 46AB  
inserted by  
No. 43/2003  
s. 3.

**46AB. What is an urban growth boundary?**

For the purposes of this Part, an urban growth boundary is a boundary that is specified or is to be specified as an urban growth boundary in a metropolitan fringe planning scheme.

S. 46AC  
inserted by  
No. 43/2003  
s. 3.

**46AC. What is green wedge land?**

For the purposes of this Part, green wedge land is land that is described in a metropolitan fringe planning scheme as being outside an urban growth boundary.

**Division 2—Ministerial Authorisation to Prepare Amendments to Planning Schemes**

S. 46AD  
inserted by  
No. 43/2003  
s. 3.

**46AD. To which amendments does this Division apply?**

- (1) This Division applies to an amendment to a metropolitan fringe planning scheme—
  - (a) to amend or insert an urban growth boundary; or
  - (b) to amend or insert a provision that relates to or affects any green wedge land.
- (2) This Division does not apply to an amendment to a metropolitan fringe planning scheme if notice of the amendment was given under section 19 before the commencement of the **Planning and Environment (Metropolitan Green Wedge Protection) Act 2003**.

S. 46AE  
inserted by  
No. 43/2003  
s. 3.

**46AE. Planning authority must obtain authorisation from Minister to prepare amendment**

- (1) Despite section 8, a planning authority, other than the Minister, must not prepare an amendment to which this Division applies unless the Minister has authorised the preparation of the amendment.

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3AA—MetroPolitan Green Wedge Protection

Field Code Changed  
s. 46AF

- (2) A planning authority may apply to the Minister for an authorisation under this section.
- (3) The Minister may—
  - (a) authorise the preparation of the amendment subject to any conditions the Minister wishes to impose; or
  - (b) refuse to authorise the preparation of the amendment.

**Division 3—Ratification by Parliament for Amendments to Planning Schemes**

**46AF. To which amendments does this Division apply?**

S. 46AF  
inserted by  
No. 43/2003  
s. 3.

- (1) This Division applies to an amendment to a metropolitan fringe planning scheme that has been approved by the Minister under section 35 and—
  - (a) that amends or inserts an urban growth boundary; or
  - (b) that has the effect of altering or removing any controls over the subdivision of any green wedge land to allow the land to be subdivided into more lots or into smaller lots than allowed for in the planning scheme.
- (2) This Division does not apply to an amendment to a metropolitan fringe planning scheme if the amendment was approved by the Minister before the commencement of the **Planning and Environment (Metropolitan Green Wedge Protection) Act 2003**.

**46AG. Ratification by Parliament required for amendments to which this Division applies**

S. 46AG  
inserted by  
No. 43/2003  
s. 3.

- (1) An amendment to which this Division applies does not take effect unless ratified by Parliament in accordance with this Division.



*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3AA—MetroPolitan Green Wedge Protection

s. 46AH

Field Code Changed

- (2) Sections 36, 37 and 38 do not apply to an amendment to which this Division applies.

S. 46AH  
inserted by  
No. 43/2003  
s. 3.

**46AH. Procedure for ratification**

- (1) The Minister must cause an amendment to which this Division applies to be laid before each House of Parliament within 7 sitting days of that House after it is approved.
- (2) If a permit has been granted under section 96I in respect of an amendment to which this Division applies, the Minister must cause a notice specifying that the permit has been granted to be laid before each House of Parliament at the same time that the amendment is laid before that House under sub-section (1).
- (3) An amendment to which this Division applies does not take effect unless it is ratified by a resolution passed by each House of Parliament within 10 sitting days after it is laid before that House.

S. 46AI  
inserted by  
No. 43/2003  
s. 3.

**46AI. Notice of ratification**

The Minister must publish a notice of the ratification under section 46AG of an amendment in the Government Gazette specifying the place or places at which any person may inspect the amendment.

S. 46AJ  
inserted by  
No. 43/2003  
s. 3.

**46AJ. When does a ratified amendment commence?**

An amendment that has been ratified under this Division comes into operation—

- (a) when the notice of ratification of the amendment is published in the Government Gazette; or
- (b) on any later day or days specified in the notice.

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3AA—MetroPolitan Green Wedge Protection

Field Code Changed

s. 46AK

**46AK. When does an amendment lapse?**

- (1) An amendment to which this Division applies that has not been ratified in accordance with section 46AH lapses on the day immediately after the last day on which it could have been so ratified.
- (2) When an amendment has lapsed under sub-section (1) the Minister must publish a notice in the Government Gazette setting out the date on which the amendment lapsed.
- (3) The publication of the notice under sub-section (2) is conclusive proof of the date that the amendment lapsed.

S. 46AK  
inserted by  
No. 43/2003  
s. 3.

**46AL. Application of sections 40, 41 and 42**

Sections 40, 41 and 42 do not apply to an amendment to which this Division applies unless and until the amendment is ratified under this Division.

S. 46AL  
inserted by  
No. 43/2003  
s. 3.

**46AM. Application of Division 5 of Part 4**

If a permit has been granted under Division 5 of Part 4 and the amendment to which the permit applies is an amendment to which this Division applies—

- (a) if the amendment lapses under section 46AK(1), the permit is deemed to be cancelled on that lapsing;
- (b) if the amendment is ratified under this Division, the notice under section 46AI of ratification must also specify the places at which any person may inspect the permit.

S. 46AM  
inserted by  
No. 43/2003  
s. 3.

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3A—Upper Yarra Valley and Dandenong Ranges—Regional Strategy  
Plan

s. 46A

Field Code Changed

Pt 3A  
(Heading and  
ss 46A–46G)  
inserted by  
No. 118/1994  
s. 13.

**PART 3A—UPPER YARRA VALLEY AND DANDENONG  
RANGES—REGIONAL STRATEGY PLAN**

S. 46A  
inserted by  
No. 118/1994  
s. 13.

**46A. Definitions**

(1) In this Part—

**"appointed day"** means the day appointed by the Governor in Council by Order published in the Government Gazette as the appointed day for the purposes of this Part;

**"approved regional strategy plan"** means the regional strategy plan declared to be an approved regional strategy plan under section 17 of the **Upper Yarra Valley and Dandenong Ranges Authority Act 1976** as amended under that Act and as amended from time to time under this Part;

**"region"** means—

- (a) the area described in the Schedule to the **Upper Yarra Valley and Dandenong Ranges Authority Act 1976**; and
- (b) any area included in the region under sub-section (2)—

but excludes any area excluded from the region under sub-section (2).

- (2) The Governor in Council may by order published in the Government Gazette—
  - (a) include any area of land in the region; or
  - (b) exclude any area of land from the region.
- (3) An order must not be made under sub-section (2) after the appointed day.

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3A—Upper Yarra Valley and Dandenong Ranges—Regional Strategy  
Plan

s. 46B Field Code Changed

**46B. Saving of approved regional strategy plan and amending plans**

S. 46B  
inserted by  
No. 118/1994  
s. 13.

- (1) The repeal of the **Upper Yarra Valley and Dandenong Ranges Authority Act 1976** by section 12 of the **Planning Authorities Repeal Act 1994** does not affect the continuity, status or effect of the approved regional strategy plan or any amending regional strategy plan existing under that Act immediately before that repeal.
- (2) An amending regional strategy plan prepared under the **Upper Yarra Valley and Dandenong Ranges Authority Act 1976** but not declared to be approved under that Act before the repeal of that Act is deemed to be an amendment to the approved regional strategy plan prepared by the Minister under section 46C(1).
- (3) For the purposes of sub-section (2) and section 46C(2)—
  - (a) an amending strategy plan adopted by the Authority under section 14(11) of the **Upper Yarra Valley and Dandenong Ranges Authority Act 1976** and for which notice has been given under section 14(13) of that Act is deemed to have complied with Division 1 of Part 3 of the **Planning and Environment Act 1987**;
  - (b) any representations made in relation to an amending regional strategy plan by a person under section 14(16) of the **Upper Yarra Valley and Dandenong Ranges Authority Act 1976** within the period specified under that section are deemed to be submissions made under Division 2 of Part 3 of the **Planning and Environment Act 1987**;

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3A—Upper Yarra Valley and Dandenong Ranges—Regional Strategy  
Plan

s. 46B

Field Code Changed

- (c) a panel appointed under section 14(17) of the **Upper Yarra Valley and Dandenong Ranges Authority Act 1976** in relation to an amending regional strategy plan and existing immediately before the repeal of that Act is deemed to be a panel appointed under Part 8 of the **Planning and Environment Act 1987**;
  - (d) a report of a panel under section 14(29) of the **Upper Yarra Valley and Dandenong Ranges Authority Act 1976** in relation to an amending regional strategy plan is deemed to be a report of a panel under section 25 of the **Planning and Environment Act 1987**;
  - (e) a decision by the Minister under section 16(a) or (b) of the **Upper Yarra Valley and Dandenong Ranges Authority Act 1976** to proceed with a regional strategy plan is deemed to be an approval by the Minister under section 35(1)(a) or (b) (as the case requires) of the **Planning and Environment Act 1987**.
- (4) Despite the repeal of the **Upper Yarra Valley and Dandenong Ranges Authority Act 1976**—
- (a) section 19(2) of that Act continues to apply to any amending regional strategy plan laid before both Houses of Parliament under section 19(1) of that Act before that repeal; and
  - (b) if an amending regional strategy plan is revoked under section 19(2) it ceases to form part of the approved strategy plan for the purposes of this Part.

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3A—Upper Yarra Valley and Dandenong Ranges—Regional Strategy  
Plan

s. 46C Field Code Changed

**46C. Amendment of strategy plan**

- (1) The Minister may at any time prepare an amendment to the approved regional strategy plan.
- (2) Subject to section 46D, Part 3 (except Division 4) applies to an amendment to the approved regional strategy plan as if—
  - (a) the amendment were an amendment to a planning scheme; and
  - (b) the Minister were the planning authority.
- (3) An amendment to the approved regional strategy plan may make provision with respect to any matters referred to in section 6 and any other matters which the Minister considers necessary or desirable to be included in the amendment.

S. 46C  
inserted by  
No. 118/1994  
s. 13.

**46D. Approval of Parliament needed after appointed day**

- (1) On and from the appointed day—
  - (a) sections 36, 37 and 38 cease to apply to an amendment to the approved regional strategy plan; and
  - (b) the Minister must cause each approved amendment to the approved regional strategy plan to be laid before each House of Parliament within 7 sitting days of that House after the amendment is approved under section 35; and
  - (c) an approved amendment does not take effect unless it is also approved by a resolution passed by each House of Parliament within 10 sitting days after it is laid before that House.

S. 46D  
inserted by  
No. 118/1994  
s. 13.

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3A—Upper Yarra Valley and Dandenong Ranges—Regional Strategy  
Plan

s. 46E

Field Code Changed

- (2) The Minister must publish a notice of the approval of an amendment under sub-section (1) in the Government Gazette specifying the place or places at which any person may inspect the amendment.
- (3) An amendment approved under sub-section (1) comes into operation—
  - (a) when the notice of approval of the amendment is published in the Government Gazette; or
  - (b) on any later day or days specified in the notice.

S. 46E  
inserted by  
No. 118/1994  
s. 13.

**46E. Availability of amendment**

- (1) The Minister must lodge the prescribed documents and a copy of every approved amendment to the approved regional strategy plan with every municipal council whose municipal district is wholly or partly within the region.
- (2) The amendment must be lodged before notice of the approval of the amendment is published in the Government Gazette.
- (3) The Minister and every municipal council whose municipal district is wholly or partly within the region must make a copy of an approved amendment to the regional strategy plan and any documents lodged with it available at their respective offices during office hours for any person to inspect free of charge for two months after the amendment comes into operation and after that period on payment of the prescribed fee.
- (4) The Minister and every municipal council whose municipal district is wholly or partly within the region must keep a copy of the approved regional strategy plan incorporating all amendments to it

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3A—Upper Yarra Valley and Dandenong Ranges—Regional Strategy  
Plan

s. 46F Field Code Changed

available at their respective offices during office hours for any person to inspect free of charge.

**46F. Planning schemes to comply with approved regional strategy plan**

S. 46F  
inserted by  
No. 118/1994  
s. 13.

Despite anything to the contrary in this Act, the Minister must not approve an amendment to a planning scheme under section 35 in relation to the region if the amendment is inconsistent with the approved regional strategy plan.

**46G. Works to be in conformity with approved regional strategy plan**

S. 46G  
inserted by  
No. 118/1994  
s. 13.

- (1) Subject to sub-section (3), a government department, public authority or municipal council must not carry out works in the region which are not in conformity with the approved regional strategy plan.
- (2) If a government department, public authority or municipal council considers that any works or undertakings which are not in conformity with the approved regional strategy plan should be carried out, the department, authority or council may make submissions with respect to the proposed works and undertakings to the Premier.
- (3) After considering any submission under sub-section (2), the Premier, on the advice of the Minister, may, despite anything in any other Act, by Order prohibit, either absolutely or on such terms as he or she thinks fit, or restrict or regulate the carrying out of the works or undertakings or any part of them specified in the Order.



*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3B—Development Contributions

s. 46H

Field Code Changed

Pt 3B  
(Heading and  
ss 46H–46Q)  
inserted by  
No. 50/1995  
s. 3.

**PART 3B—DEVELOPMENT CONTRIBUTIONS**

S. 46H  
inserted by  
No. 50/1995  
s. 3.

**46H. Definitions**

In this Part—

**"approved development contributions plan"**

means a development contributions plan which forms part of an approved planning scheme;

S. 46H def. of  
"collecting  
agency"  
inserted by  
No. 101/2004  
s. 3(1).

**"collecting agency"** means a person specified in a development contributions plan as a person to whom a community infrastructure levy or development infrastructure levy is payable under this Part;

S. 46H def. of  
"development  
agency"  
inserted by  
No. 101/2004  
s. 3(1).

**"development agency"** means a person specified in a development contributions plan as a person responsible for the provision of works, services or facilities for which a community infrastructure levy or development infrastructure levy or part of a levy is payable under this Part;

**"dwelling"** means a building that is used, or is intended, adapted or designed for use, as a separate residence, (including kitchen, bathroom and sanitary facilities) for an occupier who has a right to the exclusive use of it but does not include—

- (a) a building that is attached to a shop, office, warehouse or factory and is used, or is intended, adapted or designed for use, as a residence for an occupier or caretaker of the shop, office, warehouse or factory; or

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3B—Development Contributions

Field Code Changed  
s. 46I

(b) any part of a motel, residential club or residential hotel or residential part of licensed premises under the **Liquor Control Act 1987**.

\* \* \* \* \*

S. 46H def of "relevant municipal council" repealed by No. 101/2004 s. 3(2).

**46I. Development contributions plan**

Without limiting section 6, a planning scheme may include one or more development contributions plans for the purpose of levying contributions for the provision of works, services and facilities.

S. 46I inserted by No. 50/1995 s. 3.

**46J. What can a plan provide for?**

A development contributions plan may provide for either or both of the following—

- (a) the imposition of a development infrastructure levy;
- (b) the imposition of a community infrastructure levy—

in relation to the development of land in the area to which the plan applies.

S. 46J inserted by No. 50/1995 s. 3.

**46K. Contents of plan**

- (1) A development contributions plan must—
  - (a) specify the area to which it applies; and
  - (b) set out the works, services and facilities to be funded through the plan, including the staging of the provision of those works, services or facilities; and

S. 46K inserted by No. 50/1995 s. 3.

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3B—Development Contributions

s. 46K

Field Code Changed

S. 46K(1)(d)  
substituted by  
No. 101/2004  
s. 4(1)(a).

- (c) relate the need for the works, services and facilities to the proposed development of land in the area; and
- (d) specify in respect of each of the works, services and facilities—
  - (i) the estimated cost of the works, services or facilities; or
  - (ii) the standard levy applicable to the works, services or facilities; and

S. 46K(1)(e)  
amended by  
No. 101/2004  
s. 4(1)(b).

- (e) unless a standard levy is applied, specify the proportion of the total estimated cost of the works services and facilities which is to be funded by a development infrastructure levy or community infrastructure levy or both; and
- (f) specify the land in the area and the types of development in respect of which a levy is payable and the method for determining the amount of levy payable in respect of any development of land; and

S. 46K(1)(fa)  
inserted by  
No. 101/2004  
s. 4(1)(c).

- (fa) specify the Minister, public authority or municipal council to whom or to which the community infrastructure levy or development infrastructure levy is payable under this Part (the "**collecting agency**"); and

S. 46K(1)(fb)  
inserted by  
No. 101/2004  
s. 4(1)(c).

- (fb) specify any Minister, public authority or municipal council that is to be responsible for the provision of the works, services or facilities for which the community infrastructure levy or development infrastructure levy or part of that levy is payable under this Part (the "**development agency**"); and

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3B—Development Contributions

Field Code Changed

s. 46L

- (g) provide for the procedures for the collection of a development infrastructure levy in respect of any development for which a permit under this Act is not required.
- (2) A development contributions plan may—
  - (a) exempt certain land or certain types of development from payment of a development infrastructure levy or community infrastructure levy or both; and
  - (b) provide for different rates or amounts of levy to be payable in respect of different types of development of land or different parts of the area.
- (3) A development contributions plan may specify the same person to be both a collecting agency and a development agency.

S. 46K(3)  
inserted by  
No. 101/2004  
s. 4(2).

**46L. Community infrastructure levy not to exceed maximum**

S. 46L  
inserted by  
No. 50/1995  
s. 3.

- (1) An approved development contributions plan must not in respect of a development of land require payment of an amount of community infrastructure levy which is greater than—
  - (a) in the case of the construction of a dwelling, \$900 for each dwelling to be constructed; and
  - (b) in any other case, 0.25 cents in the dollar of the cost of the building work for the development.
- (2) The Governor in Council may from time to time by Order published in the Government Gazette vary the maximum amount which may be collected under sub-section (1).

S. 46L(1)(a)  
amended by  
No. 101/2004  
s. 5.

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3B—Development Contributions

s. 46M

Field Code Changed

S. 46M  
inserted by  
No. 50/1995  
s. 3.

**46M. Directions**

- (1) The Minister may issue written directions to planning authorities in relation to the preparation and content of development contributions plans.
- (2) Without limiting sub-section (1), the Minister's directions may—
  - (a) set out the works, services or facilities for which a levy may or may not be imposed under a development contributions plan;
  - (b) set out the works, services and facilities which may or may not be funded from a development infrastructure levy;
  - (c) set out the works, services and facilities which may or may not be funded from a community infrastructure levy;
  - (d) specify the means by which or the factors in relation to which the estimated cost of the works, services or facilities may or may not be calculated;
  - (e) specify the means by which or the factors in relation to which the estimated total amount of a levy may or may not be calculated or determined;
  - (f) specify the means by which or the factors in relation to which the amount of levy payable in respect of any development of land may or may not be calculated or determined;
- (fa) subject to section 46L(1), specify standard levies for specified types or classes of works, services or facilities;

S. 46M(2)(fa)  
inserted by  
No. 101/2004  
s. 6.

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3B—Development Contributions

Field Code Changed

s. 46N

- (g) specify requirements for the staging and timing of the provision of works, services and facilities funded by a development contributions plan;
  - (h) specify any other information to be included in a development contributions plan.
- (3) The Minister must cause notice to be published in the Government Gazette of all directions issued under this section.

**46N. Collection of development infrastructure levy**

S. 46N  
inserted by  
No. 50/1995  
s. 3.

- (1) Without limiting section 62, if—
- (a) an approved development contributions plan provides that a development infrastructure levy is payable in respect of the development of any land; and
  - (b) an application is made under this Act for a permit to carry out that development on that land—
- the responsible authority must include a condition in the permit that the applicant—
- (c) pay the amount of the levy to the relevant collecting agency within a specified time or within a time specified by the collecting agency; or
  - (d) enter into an agreement with the relevant collecting agency to pay the amount of the levy within a time specified in the agreement.

S. 46N(1)(c)  
amended by  
No. 101/2004  
s. 7.

S. 46N(1)(d)  
amended by  
No. 101/2004  
s. 7.

- (2) If—
- (a) an approved development contributions plan provides that a development infrastructure levy is payable in respect of the development of any land; and

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3B—Development Contributions

s. 46O

Field Code Changed

(b) a permit is not required under this Act for the development—

a person who proposes to carry out that development of the land must—

S. 46N(2)(c)  
amended by  
No. 101/2004  
s. 7.

(c) pay the amount of the levy to the relevant collecting agency within a time and in a manner specified by the collecting agency in accordance with the approved development contributions plan; or

S. 46N(2)(d)  
amended by  
No. 101/2004  
s. 7.

(d) enter into an agreement with the relevant collecting agency to pay the amount of the levy within a time specified in the agreement.

S. 46O  
inserted by  
No. 50/1995  
s. 3.

**46O. Collection of community infrastructure levy**

(1) If—

(a) an approved development contributions plan provides that a community infrastructure levy is payable in respect of the development of any land; and

(b) an application is made under the **Building Act 1993** for a building permit to carry out building work in respect of that development—

the applicant must, before the building permit is issued—

S. 46O(1)(c)  
amended by  
No. 101/2004  
s. 7.

(c) pay the amount of the levy to the relevant collecting agency; or

S. 46O(1)(d)  
amended by  
No. 101/2004  
s. 7.

(d) enter into an agreement with the relevant collecting agency to pay the amount of the levy within a time specified in the agreement.

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3B—Development Contributions

Field Code Changed

s. 46P

(2) If—

- (a) an approved development contributions plan provides that a community infrastructure levy is payable in respect of the development of any land; and
- (b) a building permit under the **Building Act 1993** is not required for the building work for that development—

a person who proposes to carry out that development of the land must, before commencing the development—

- (c) pay the amount of the levy to the relevant collecting agency; or
- (d) enter into an agreement with the relevant collecting agency to pay the amount of the levy within a time specified in the agreement.

S. 46O(2)(c)  
amended by  
No. 101/2004  
s. 7.

S. 46O(2)(d)  
amended by  
No. 101/2004  
s. 7.

**46P. Provisions applying to collection of levies**

S. 46P  
inserted by  
No. 50/1995  
s. 3.

- (1) The relevant collecting agency may require the payment of an amount of levy referred to in section 46N or 46O to be secured to its satisfaction.
- (2) The relevant collecting agency may accept the provision of land, works, services or facilities by the applicant in part or full satisfaction of the amount of levy payable.
- (3) Sub-section (2) applies to land, works, services or facilities provided before or after the application for the permit was made or the development is carried out.

S. 46P(1)  
amended by  
No. 101/2004  
s. 7.

S. 46P(2)  
amended by  
No. 101/2004  
s. 7.



*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3B—Development Contributions

s. 46Q

Field Code Changed

- (4) Sub-section (2) does not apply to land provided in accordance with any requirement of the **Subdivision Act 1988** or any corresponding previous enactment.

S. 46Q  
inserted by  
No. 50/1995  
s. 3.

**46Q. Responsibilities of municipal councils**

S. 46Q(1)  
substituted by  
No. 101/2004  
s. 8(1).

- (1) A municipal council must, in accordance with the **Local Government Act 1989**, keep proper accounts of any amount of levy paid to it as a collecting agency or a development agency under this Part.

S. 46Q(1A)  
inserted by  
No. 101/2004  
s. 8(1).

- (1A) A municipal council to which an amount of levy is paid as a collecting agency under this Part must forward to a development agency any part of the levy that is imposed for the carrying out of works, services or facilities by or on behalf of that development agency.

S. 46Q(2)  
substituted by  
No. 101/2004  
s. 8(1).

- (2) Subject to this section, a municipal council to which an amount of levy is paid as a development agency under this Part must apply that amount only—
- (a) for a purpose relating to the provision of works, services and facilities in respect of which the levy was imposed; and
  - (b) in accordance with the approved development contributions plan.

S. 46Q(3)  
amended by  
No. 101/2004  
s. 8(2).

- (3) A municipal council may refund any amount of levy paid to it as a development agency under this Part in respect of a development if it is satisfied that the development is not to proceed.

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3B—Development Contributions

Field Code Changed

s. 46QA

(4) If—

S. 46Q(4)  
amended by  
No. 101/2004  
s. 8(3)(b).

- (a) an amount of levy has been paid to a municipal council as a development agency under this Part for the provision of works, services or facilities in an area; and
- (b) that amount has not been expended within the period required by the approved development contributions plan—

S. 46Q(4)(a)  
amended by  
No. 101/2004  
s. 8(3)(a).

the municipal council must within 6 months after the end of that period—

- (c) with the consent of the Minister and in the manner approved by the Minister, pay that amount to the current owners of land in the area; or
- (d) in accordance with Part 3, submit to the Minister an amendment to the approved development contributions plan to provide for the expenditure of that amount; or
- (e) with the consent of the Minister and in the manner approved by the Minister, expend that amount for the provision of other works, facilities or services in that area.

\* \* \* \* \*

S. 46Q(5)  
repealed by  
No. 101/2004  
s. 8(4).

**46QA. Responsibilities of collecting agencies**

S. 46QA  
inserted by  
No. 101/2004  
s. 9.

- (1) In this section "**collecting agency**" does not include a municipal council.
- (2) A collecting agency must keep proper accounts of any amount of levy paid to it under this Part.

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3B—Development Contributions

s. 46QB

Field Code Changed

- (3) A collecting agency to which an amount of levy is paid under this Part must forward to a development agency any part of the levy that is imposed for the carrying out of works, services or facilities by or on behalf of that development agency.
- (4) A collecting agency to which an amount of levy is paid under this Part must pay any part of that amount that it does not forward to a development agency under sub-section (3) into the Consolidated Fund.

Note: A collecting agency will pay an amount of levy into the Consolidated Fund under sub-section (4) if it is also the development agency in respect of that levy.

S. 46QB  
inserted by  
No. 101/2004  
s. 9.

**46QB. Responsibilities of development agencies**

- (1) In this section "**development agency**" does not include a municipal council.
- (2) A development agency to which an amount of levy is paid under this Part must pay that amount into the Consolidated Fund.
- (3) A development agency must keep proper accounts of any amount of levy paid to it under this Part.
- (4) Subject to this section, if a development agency pays an amount of levy into the Consolidated Fund under this Part, the development agency must apply that amount only—
  - (a) for a purpose relating to the provision of works, services or facilities in respect of which the levy was imposed; and
  - (b) in accordance with the approved development contributions plan.
- (5) A development agency may refund any amount of levy paid to it under this Part in respect of a development if it is satisfied that the development is not to proceed.

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3B—Development Contributions

Field Code Changed

s. 46QC

- (6) If—
- (a) an amount of levy has been paid to a development agency under this Part for the provision by it of works, services or facilities in an area; and
  - (b) that amount has not been expended within the period required by the approved development contributions plan—  
the development agency must within 6 months after the end of that period—
  - (c) with the consent of the Minister and in the manner approved by the Minister, pay that amount to the current owners of land in the area; or
  - (d) in accordance with Part 3, submit to the Minister an amendment to the approved development contributions plan to provide for the expenditure of that amount; or
  - (e) with the consent of the Minister and in the manner approved by the Minister, expend that amount for the provision of other works, facilities or services in that area.
- (7) The Consolidated Fund is appropriated to the extent necessary for the purposes of sub-sections (4), (5) and (6).

**46QC. Recovery of levy as debt**

A collecting agency may recover any amount of levy payable to it under this Part as a debt due to that collecting agency in any court of competent jurisdiction.

S. 46QC  
inserted by  
No. 101/2004  
s. 9.

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3C—Melbourne Airport Environs Strategy Plan

s. 46R

Field Code Changed

Pt 3C  
(Heading and  
ss 46R–46Y)  
inserted by  
No. 72/1998  
s. 3.

**PART 3C—MELBOURNE AIRPORT ENVIRONS STRATEGY  
PLAN**

S. 46R  
inserted by  
No. 72/1998  
s. 3.

**46R. Definitions**

(1) In this Part—

**"approved strategy plan"** means the Melbourne Airport Environs Strategy Plan approved under section 46U(2) as that plan is amended from time to time under this Part;

**"Melbourne Airport Environs Area"** means—

- (a) the Melbourne Airport Environs Area declared by order under section 46S(1); and
- (b) any area included in the Melbourne Airport Environs Area under section 46S(2)—

but excludes any area excluded from the Melbourne Airport Environs Area under section 46S(2).

S. 46S  
inserted by  
No. 72/1998  
s. 3.

**46S. Melbourne Airport Environs Area**

- (1) The Governor in Council may by order published in the Government Gazette declare an area of land to be the Melbourne Airport Environs Area.
- (2) The Governor in Council may by order published in the Government Gazette—
  - (a) include any area of land in the Melbourne Airport Environs Area; or
  - (b) exclude any area of land from the Melbourne Airport Environs Area.

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3C—Melbourne Airport Environs Strategy Plan

s. 46T

Field Code Changed

**46T. Preparation of strategy plan**

- (1) The Minister may at any time prepare a strategy plan for the Melbourne Airport Environs Area or any part of that area.
- (2) The strategy plan is to be known as the Melbourne Airport Environs Strategy Plan.
- (3) Subject to section 46U, Part 3 (except sections 36 to 39 and Division 4) applies to the preparation of the strategy plan as if—
  - (a) the plan were an amendment to a planning scheme; and
  - (b) the Minister were the planning authority.
- (4) The strategy plan may make provision with respect to any matters referred to in section 6 and any other matters which the Minister considers necessary or desirable to be included in the plan.

S. 46T  
inserted by  
No. 72/1998  
s. 3.

**46U. Approval of Parliament needed**

- (1) The Minister must cause the Melbourne Airport Environs Strategy Plan to be laid before each House of Parliament within 7 sitting days of that House after the plan is approved under section 35.
- (2) The strategy plan does not take effect unless it is also approved by a resolution passed by each House of Parliament within 10 sitting days after it is laid before that House.
- (3) The Minister must publish a notice of the approval of the strategy plan under sub-section (2) in the Government Gazette specifying the place or places at which any person may inspect the plan.

S. 46U  
inserted by  
No. 72/1998  
s. 3.

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3C—Melbourne Airport Environs Strategy Plan

s. 46V

Field Code Changed

- (4) The approved strategy plan comes into operation—
  - (a) when the notice of approval of the plan is published in the Government Gazette; or
  - (b) on any later day or days specified in the notice.

S. 46V  
inserted by  
No. 72/1998  
s. 3.

**46V. Availability of amendment**

- (1) The Minister must lodge the prescribed documents and a copy of the approved strategy plan with every municipal council whose municipal district is wholly or partly within the Melbourne Airport Environs Area.
- (2) The approved strategy plan must be lodged before notice of the approval of the plan is published in the Government Gazette.
- (3) The Minister and every municipal council whose municipal district is wholly or partly within the Melbourne Airport Environs Area must make a copy of the approved strategy plan and any documents lodged with it available at their respective offices during office hours for any person to inspect free of charge for two months after the plan comes into operation and after that period on payment of the prescribed fee.
- (4) The Minister and every municipal council whose municipal district is wholly or partly within the Melbourne Airport Environs Area must keep a copy of the approved strategy plan incorporating all amendments to it available at their respective offices during office hours for any person to inspect free of charge.

S. 46W  
inserted by  
No. 72/1998  
s. 3.

**46W. Amendment of approved strategy plan**

- (1) The Minister may at any time prepare an amendment to the approved strategy plan.

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 3C—Melbourne Airport Environs Strategy Plan

Field Code Changed

s. 46X

- (2) Sections 46S to 46U and section 46V(1), (2) and (3) apply to the preparation and approval of an amendment to the approved strategy plan as if the amendment were a strategy plan.

**46X. Planning schemes to comply with approved strategy plan**

S. 46X  
inserted by  
No. 72/1998  
s. 3.

Despite anything to the contrary in this Act, the Minister must not approve an amendment to a planning scheme under section 35 in relation to the Melbourne Airport Environs Area if the amendment is inconsistent with the approved strategy plan.

**46Y. Works to be in conformity with approved strategy plan**

S. 46Y  
inserted by  
No. 72/1998  
s. 3.

- (1) Subject to sub-section (3), a government department, public authority or municipal council must not carry out works in the Melbourne Airport Environs Area which are not in conformity with the approved strategy plan.
- (2) If a government department, public authority or municipal council considers that any works or undertakings which are not in conformity with the approved strategy plan should be carried out, the department, authority or council may make submissions with respect to the proposed works and undertakings to the Premier.
- (3) After considering any submission under sub-section (2), the Premier, on the advice of the Minister, may, despite anything in any other Act, by order prohibit, either absolutely or on such terms as he or she thinks fit, or restrict or regulate the carrying out of the works or undertakings or any part of them specified in the order.



**PART 4—PERMITS**

**Division 1—Permits Required by Planning Schemes**

**47. Applications for permits**

S. 47  
amended by  
No. 48/1991  
s. 61(1)(a)(b).

- (1) If a planning scheme requires a permit to be obtained for a use or development of land or in any of the circumstances mentioned in section 6A(2) or for any combination of use, development and any of those circumstances, the application for the permit must—

S. 47(1)(b)  
amended by  
No. 35/1995  
s. 3(2).

- (a) be made to the responsible authority in accordance with the regulations; and  
(b) be accompanied by the prescribed fee; and

S. 47(1)(c)  
inserted by  
No. 35/1995  
s. 3(2),  
amended by  
No. 100/2000  
s. 6.

- (c) be accompanied by the information required by the planning scheme; and

S. 47(1)(d)  
inserted by  
No. 100/2000  
s. 6.

- (d) if the land is burdened by a registered restrictive covenant, be accompanied by a copy of the covenant; and

S. 47(1)(e)  
inserted by  
No. 100/2000  
s. 6.

- (e) if the application is for a permit to allow the removal or variation of a registered restrictive covenant or if anything authorised by the permit would result in a breach of a registered restrictive covenant, be accompanied by—  
(i) information clearly identifying each allotment or lot benefited by the registered restrictive covenant; and

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*Act No. 45/1987*

Part 4—Permits

Field Code Changed

s. 48

(ii) any other information that is required by the regulations.

- (2) Sections 52 and 55 do not apply to an application for a permit to remove a restriction (within the meaning of the **Subdivision Act 1988**) over land if the land has been used or developed for more than 2 years before the date of the application in a manner which would have been lawful under this Act but for the existence of the restriction.

S. 47(2)  
inserted by  
No. 48/1991  
s. 61(1)(c).

**48. What if the applicant is not the owner?**

- (1) If the applicant is not the owner of the land for which the permit is needed, an application must—
- (a) be signed by the owner of the land; or
  - (b) include a declaration by the applicant that the applicant has notified the owner about the application.
- (2) A person must not obtain or attempt to obtain a permit by wilfully making or causing to be made any false representation or declaration either orally or in writing.

S. 48(2)  
amended by  
No. 28/2000  
s. 3.

Penalty: 60 penalty units.

**49. Register of applications**

- (1) The responsible authority must keep a register in the prescribed form of—
- (a) all applications for permits; and
  - (b) all decisions and determinations relating to permits.
- (2) The responsible authority must make the register available during office hours for any person to inspect free of charge.

## **50. Changes to applications**

- (1) With the agreement of the applicant and after giving notice to the owner, the responsible authority may make any changes to an application that it thinks necessary before notice of the application is first given under section 52 including—
  - (a) a change to the use or development mentioned in the application; and
  - (b) a change in the description of the land to which the application applies.
- (2) The responsible authority may require the applicant—
  - (a) to notify the owner under sub-section (1); and
  - (b) to make a declaration that that notice has been given.
- (3) The responsible authority must make a note in the register if any change is made to an application.

S. 51  
substituted by  
No. 128/1993  
s. 12.

## **51. Applications to be made available to the public**

The responsible authority must make a copy of every application and the prescribed information supplied in respect of it available at its office for any person to inspect during office hours free of charge until—

- (a) the end of the latest period during which an application for review may be made under section 77, 79, 80 or 82 in relation to the application or the permit; or
- (b) if an application for review is made to the Tribunal within that period, the application is determined by the Tribunal or withdrawn.

S. 51(a)  
amended by  
No. 52/1998  
s. 191(2)(b).

S. 51(b)  
substituted by  
No. 52/1998  
s. 191(2)(c).

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 4—Permits

Field Code Changed

s. 52

**52. Notice of application**

(1) Unless the responsible authority requires the applicant to give notice, the responsible authority must give notice of an application in a prescribed form—

(a) to the owners (except persons entitled to be registered under the **Transfer of Land Act 1958** as proprietor of an estate in fee simple) and occupiers of allotments or lots adjoining the land to which the application applies unless the responsible authority is satisfied that the grant of the permit would not cause material detriment to any person; and

S. 52(1)(a) amended by Nos 53/1988 s. 45(Sch. 3 item 57) (as amended by No. 47/1989 s. 23(2)), 86/1989 s. 4(2)(a), 128/1993 s. 13(1).

(b) to a municipal council, if the application applies to or may materially affect land within its municipal district; and

(c) to any person to whom the planning scheme requires it to give notice; and

(ca) to the owners (except persons entitled to be registered under the **Transfer of Land Act 1958** as proprietor of an estate in fee simple) and occupiers of land benefited by a registered restrictive covenant, if anything authorised by the permit would result in a breach of the covenant; and

S. 52(1)(ca) inserted by No. 100/2000 s. 7(1).

(cb) to the owners (except persons entitled to be registered under the **Transfer of Land Act 1958** as proprietor of an estate in fee simple) and occupiers of land benefited by a registered restrictive covenant, if the application is to remove or vary the covenant.

S. 52(1)(cb) inserted by No. 100/2000 s. 7(1).

(d) to any other persons, if the responsible authority considers that the grant of the permit may cause material detriment to them.

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 4—Permits

s. 52

Field Code Changed

**S. 52(1AA)**  
inserted by  
No. 100/2000  
s. 7(2).

- (1AA) If an application is made for a permit to remove or vary a registered restrictive covenant or for a permit which would authorise anything which would result in a breach of a registered restrictive covenant, then unless the responsible authority requires the applicant to give notice, the responsible authority must give notice of the application in a prescribed form—
- (a) by placing a sign on the land which is the subject of the application; and
  - (b) by publishing a notice in a newspaper generally circulating in the area in which that land is situated.

**S. 52(1A)**  
inserted by  
No. 86/1989  
s. 13,  
amended by  
No. 100/2000  
s. 7(3).

- (1A) The responsible authority may refuse an application and, if it does so, it does not have to comply with sub-sections (1) and (1AA)<sup>xxiv</sup>.

**S. 52(1B)**  
inserted by  
No. 86/1989  
s. 13.

- (1B) Sections 55 to 57 do not apply if the responsible authority decides under sub-section (1A) to refuse to grant the permit<sup>xxv</sup>.

**S. 52(1C)**  
inserted by  
No. 86/1989  
s. 13.

- (1C) Section 65(1) applies to a decision to refuse to grant a permit under sub-section (1A) as if the words "and each objector" were deleted<sup>xxvi</sup>.
- (2) A notice under sub-section (1)(d) may be given—
- (a) in all or any of the following ways—
    - (i) by placing a sign on the land concerned;
    - (ii) by publishing a notice in newspapers generally circulating in the area in which the land is situated;
    - (iii) by giving the notice personally or sending it by post; or

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*Act No. 45/1987*

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Field Code Changed

s. 52

- (b) in any other way that the responsible authority considers appropriate.
- (2A) An applicant may give notice under this section, if, within 10 working days after receiving the application, the responsible authority has not told the applicant—
- (a) whether or not the applicant is required to give notice under this section; and
  - (b) the persons (if any) it requires to be notified under sub-section (1)(d).
- (2B) It is sufficient notice for the purposes of this section if an applicant to whom sub-section (2A) applies—
- (a) gives the notice required by sub-section (1)(a), (b), (c) (ca) and (cb) and sub-section (1AA); and
  - (b) gives notice in accordance with sub-section (2)(a)(i) and (ii).
- (3) The responsible authority may give any further notice that it considers appropriate of an application for a use or development which is likely to be of interest or concern to the community.
- (4) A planning scheme may exempt any class or classes of applications from all or any of the requirements of sub-section (1) except paragraphs (ca) and (cb).
- (5) An exemption may be made subject to any other requirements as to notice that are set out in the planning scheme in respect of that class of applications.

S. 52(2A)  
inserted by  
No. 128/1993  
s. 13(2).

S. 52(2B)  
inserted by  
No. 128/1993  
s. 13(2).

S. 52(2B)(a)  
amended by  
No. 100/2000  
s. 7(4).

S. 52(4)  
inserted by  
No. 128/1993  
s. 13(3),  
amended by  
No. 100/2000  
s. 7(5).

S. 52(5)  
inserted by  
No. 128/1993  
s. 13(3).

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*Act No. 45/1987*

Part 4—Permits

s. 53

Field Code Changed

S. 52(6)  
inserted by  
No. 128/1993  
s. 13(3).

- (6) If an application for a permit could fall within more than one class of applications under sub-section (4), the notice requirements relating to each class of applications must be complied with.

**53. What are the duties of applicants?**

S. 53(1A)  
inserted by  
No. 100/2000  
s. 7(6).

- (1) The responsible authority may require the applicant to give the notice under section 52(1) to the persons specified by the responsible authority.
- (1A) The responsible authority may require the applicant to give the notice under section 52(1AA).

S. 53(1B)  
inserted by  
No. 100/2000  
s. 7(6).

- (1B) A requirement of the responsible authority to the applicant under sub-section (1) must be given in writing.

S. 53(4)  
amended by  
No. 100/2000  
s. 7(7).

- (2) The applicant must satisfy the responsible authority that the applicant has given the notice.
- (3) The applicant must pay the cost of the notice.
- (4) If the responsible authority gives the notice under section 52(1) or 52(1AA), the applicant must pay the costs to the responsible authority.
- (5) If the applicant gives the notice to the persons specified under sub-section (1), the applicant is not required to give any further notice of the application under section 52(1).

**54. More information**

S. 54(2)  
amended by  
No. 52/1998  
s. 191(2)(d).

- (1) A responsible authority may require the applicant to provide it or a referral authority with more information before it deals with the application.
- (2) If the responsible authority requires the applicant after the prescribed time to provide it with more information, that requirement does not affect the time after which an application for review may be made under section 79.

**55. Application to go to referral authorities**

- (1) A responsible authority must give a copy of an application to every person or body that the planning scheme specifies as a referral authority for applications of that kind without delay unless the applicant satisfies the responsible authority that the referral authority has—
  - (a) considered the proposal for which the application is made within the past three months; and
  - (b) stated in writing that it does not object to the granting of the permit for the proposal.
- (2) The referral authority must tell the responsible authority in writing within the prescribed time after getting the application if it needs any more information.

\* \* \* \* \*

S. 55A  
inserted by  
No. 97/1987  
s. 176(1),  
repealed by  
No. 94/1998  
s. 183(Sch. 4  
item 3).

**56. Action by referral authority on application**

- (1) A referral authority must consider every application referred to it and may tell the responsible authority in writing that—
  - (a) it does not object to the granting of the permit; or
  - (b) it does not object if the permit is subject to the conditions specified by the referral authority; or
  - (c) it objects to the granting of the permit on any specified ground.



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*Act No. 45/1987*

Part 4—Permits

s. 57

Field Code Changed

S. 56(2)  
amended by  
No. 86/1989  
s. 25(j).

- (2) The conditions specified by the referral authority may include a condition that something be done to the satisfaction of the responsible authority or a Minister, public authority, municipal council or referral authority.
- (3) The referral authority may also give the responsible authority its comments on the application.
- (4) A referral authority may apply to the Minister for an extension of the prescribed period or periods under section 59.
- (5) The Minister must inform the referral authority concerned and the responsible authority without delay of any extension of a prescribed period that the Minister grants under sub-section (4).

**57. Objections to applications for permits**

S. 57(1A)  
inserted by  
No. 100/2000  
s. 8.

- (1) Any person who may be affected by the grant of the permit may object to the grant of a permit.
- (1A) If the permit would allow the removal or variation of a registered restrictive covenant or if anything authorised by the permit would result in a breach of a registered restrictive covenant, an owner or occupier of any land benefited by the covenant is deemed to be a person affected by the grant of the permit.

S. 57(2)  
amended by  
No. 128/1993  
s. 14(1).

- (2) An objection must be made to the responsible authority in writing stating the reasons for the objection and stating how the objector would be affected by the grant of the permit.

S. 57(2A)  
inserted by  
No. 128/1993  
s. 14(2).

- (2A) The responsible authority may reject an objection which it considers has been made primarily to secure or maintain a direct or indirect commercial advantage for the objector.

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- (2B) If an objection has been rejected under sub-section (2A) this Act applies as if the objection had not been made.
- (3) If a number of persons make one objection, they may give the responsible authority the name and address of the person to whom the responsible authority is to give notice of the decision.
- (4) If a number of persons make one objection, it is sufficient compliance with sections 64(1) and 65(1) if the responsible authority gives the notice—
- (a) to the person named under sub-section (3); or
  - (b) if no name and address is given under sub-section (3) to one of the persons who made the objection.
- (5) The responsible authority must make a copy of every objection available at its office for any person to inspect during office hours free of charge until the end of the period during which an application may be made for review of a decision on the application.

S. 57(2B)  
inserted by  
No. 128/1993  
s. 14(2).

S. 57(5)  
amended by  
No. 52/1998  
s. 19(2)(e).

**58. Responsible authority to consider all applications**

The responsible authority must consider every application for a permit.

**59. Time for decision**

- (1) The responsible authority may decide on an application without delay if the responsible authority is not required—
- (a) to give notice under section 52(1) or 52(1AA); or
  - (b) to refer the application to a referral authority under section 55.

S. 59(1)(a)  
amended by  
No. 100/2000  
s. 7(8)(a).

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S. 59(2)(b)  
amended by  
No. 100/2000  
s. 7(8)(b).

- (2) The responsible authority may decide on an application as soon as it gets the last of the replies from referral authorities—
- (a) if the responsible authority gets all of the replies before the end of the prescribed period or periods or any extended period allowed by the Minister under section 56; and
  - (b) 14 days have elapsed after the giving of the last notice under sections 52(1) and 52(1AA).
- (3) In any other case, the responsible authority must not decide on the application until the later of—
- (a) the end of the prescribed period or periods or any extended period allowed by the Minister under section 56 if the application is referred to a referral authority; or
  - (b) 14 days after the giving of the last notice under sections 52(1) and 52(1AA).

S. 59(3)(b)  
amended by  
No. 100/2000  
s. 7(8)(b).

S. 60  
amended by  
No. 48/1991  
s. 61(2)(a).

**60. What matters must a responsible authority consider?**

- (1) Before deciding on an application, the responsible authority—
- (a) must consider—
    - (i) all objections and other submissions which it has received and which have not been withdrawn; and
    - (ii) any decision and comments of a referral authority which it has received; and
    - (iii) any significant effects which the responsible authority considers the use or development may have on the environment or which the responsible

S. 60(1)(a)(iii)  
amended by  
No. 86/1989  
s. 25(k).

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authority considers the environment may have on the use or development; and

- (b) if the circumstances appear to so require, may consider—
- (i) any significant social and economic effects of the use or development for which the application is made; and
  - (ii) any strategic plan, policy statement, code or guideline which has been adopted by a Minister, government department, public authority or municipal council; and
  - (iia) any amendment to the planning scheme which has been adopted by a planning authority; and
  - (iii) any other relevant matter.
- (2) The responsible authority must not grant a permit which allows the removal or variation of a restriction (within the meaning of the **Subdivision Act 1988**) unless it is satisfied that the owner of any land benefited by the restriction (other than an owner who, before or after the making of the application for the permit but not more than three months before its making, has consented in writing to the grant of the permit) will be unlikely to suffer—
- (a) financial loss; or
  - (b) loss of amenity; or
  - (c) loss arising from change to the character of the neighbourhood; or
  - (d) any other material detriment—
- as a consequence of the removal or variation of the restriction.

S. 60(1)(b)(ii) substituted by No. 35/1995 s. 5.

S. 60(1)(b)(iia) inserted by No. 35/1995 s. 5.

S. 60(2) inserted by No. 48/1991 s. 61(2)(b).

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S. 60(3)  
inserted by  
No. 128/1993  
s. 15.

(3) Despite sub-section (1)(a)(i), if no notice is required to be given under section 52(1) or the planning scheme of an application, the responsible authority is not required to consider any objection or submission received in respect of the application before deciding the application.

S. 60(4)  
inserted by  
No. 128/1993  
s. 15.

(4) Sub-section (2) does not apply to any restriction which was—

- (a) registered under the **Subdivision Act 1988**;  
or
- (b) lodged for registration or recording under the **Transfer of Land Act 1958**; or
- (c) created—

before 25 June 1991.

S. 60(5)  
inserted by  
No. 128/1993  
s. 15.

(5) The responsible authority must not grant a permit which allows the removal or variation of a restriction referred to in sub-section (4) unless it is satisfied that—

- (a) the owner of any land benefited by the restriction (other than an owner who, before or after the making of the application for the permit but not more than three months before its making, has consented in writing to the grant of the permit) will be unlikely to suffer any detriment of any kind (including any perceived detriment) as a consequence of the removal or variation of the restriction; and
- (b) if that owner has objected to the grant of the permit, the objection is vexatious or not made in good faith.

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- (6) If an application for a permit to remove or vary a restriction referred to in sub-section (4) was made on or after 25 June 1991 and the responsible authority had made a decision in respect of the application before the commencement of section 15 of the **Planning and Environment (Amendment) Act 1993**, the Tribunal must determine in accordance with sub-section (5) any appeal under this Act in respect of that decision.
- (7) Nothing in sub-section (4), (5) or (6) affects the validity of a permit to remove or vary a restriction issued under this Act before the commencement of section 15 of the **Planning and Environment (Amendment) Act 1993**.

S. 60(6)  
inserted by  
No. 128/1993  
s. 15,  
amended by  
No. 52/1998  
s. 191(1).

S. 60(7)  
inserted by  
No. 128/1993  
s. 15.

**61. Decision on application**

- (1) The responsible authority may decide—
- (a) to grant a permit; or
  - (b) to grant a permit subject to conditions; or
  - (c) to refuse to grant a permit on any ground it thinks fit.
- (2) The responsible authority must decide to refuse to grant the permit if a relevant referral authority objects to the grant of the permit.
- (3) The responsible authority—
- (a) must not decide to grant a permit to use or develop coastal Crown land within the meaning of the **Coastal Management Act 1995** unless the Minister administering that Act has consented under that Act to the use or development; and
  - (b) must refuse to grant the permit if the Minister administering that Act has refused or is deemed to have refused under that Act to consent to that use or development.

S. 61(3)  
inserted by  
No. 8/1995  
s. 44.

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S. 61(4)  
inserted by  
No. 100/2000  
s. 9.

- (4) If the grant of a permit would authorise anything which would result in a breach of a registered restrictive covenant, the responsible authority must refuse to grant the permit unless a permit has been issued, or a decision made to grant a permit, to allow the removal or variation of the covenant.

**62. What conditions can be put on permits?**

S. 62(1)(aa)  
inserted by  
No. 100/2000  
s. 10(1).

- (1) In deciding to grant a permit, the responsible authority must—
- (a) include any condition which the planning scheme or a relevant referral authority requires to be included; and
  - (aa) if the grant of the permit would authorise anything which would result in a breach of a registered restrictive covenant, include a condition that the permit is not to come into effect until the covenant is removed or varied; and
  - (b) not include additional conditions which conflict with any condition included under paragraph (a) or (aa).

S. 62(1)(b)  
amended by  
No. 100/2000  
s. 10(2).

- (2) The responsible authority may include any other condition that it thinks fit including—

S. 62(2)(a)  
amended by  
No. 86/1989  
s. 25(b).

- (a) a condition that specified things are to be done to the satisfaction of the responsible authority a Minister, public authority, municipal council or referral authority; and
- (b) a condition that the permit is not to come into effect unless a specified permit is cancelled or amended; and
- (c) in relation to a permit for a use for a specified time, a condition that—
  - (i) any development carried out on the land under the permit is to be removed at the end of the specified time; or

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- (ii) the land is to be restored to a specified state at the end of the specified time; and
- (d) a condition that the development is to be carried out in stages over the periods specified in or under the permit; and
- (e) a condition providing that no compensation is payable under Part 5 in respect of anything done under the permit or setting out—
  - (i) the circumstances in which compensation will be paid for anything done under the permit; and
  - (ii) the amount, or the method of determining the amount, of compensation payable; and
- (f) a condition that the owner of the land or applicant for the permit in anticipation of the applicant becoming owner of the land is to enter into an agreement with the responsible authority under section 173 within a specified period or before the use or development or a specified part of it starts; and
- (g) a condition that the owner of the land or, if the applicant for the permit is not the owner of the land, the applicant on the applicant becoming the owner of the land is to enter into a covenant with the relevant Minister under Division 2 of Part 4 of the **Heritage Act 1995** for the conservation of a registered place; and

S. 62(2)(f) amended by No. 53/1988 s. 45(Sch. 2 item 32A) (as amended by No. 47/1989 s. 13(2)).

S. 62(2)(g) amended by Nos 53/1988 s. 45(Sch. 2 item 32B) (as amended by No. 47/1989 s. 13(2)), 93/1995 s. 218(1)(Sch. 2 item 7.2).



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S. 62(2)(h)  
amended by  
Nos 53/1988  
s. 45(Sch. 2  
item 32C) (as  
amended by  
No. 47/1989  
s. 13(2)),  
86/1989  
s. 25(l),  
repealed by  
No. 50/1995  
s. 4(1).

\* \* \* \* \*

(i) a condition that plans, drawings or other documents be prepared by the applicant and lodged with the responsible authority for approval before the use or development or a specified part of it starts; and

S. 62(2)(j)  
amended by  
No. 53/1988  
s. 45(Sch. 2  
item 33) (as  
amended by  
No. 47/1989  
s. 6(3)(f)).

(j) a condition requiring changes to be made to any plan or drawing forming part of the application for the permit; and

S. 62(2)(k)  
inserted by  
No. 53/1988  
s. 45(Sch. 2  
item 33) (as  
amended by  
No. 47/1989  
s. 6(3)(f)),  
repealed by  
No. 48/1991  
s. 62(a).

\* \* \* \* \*

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- (l) a condition stating that it considers that the economical and efficient subdivision, consolidation or servicing of, or access to, land requires the holder of the permit to acquire or remove—
- (i) a right of way over the land covered by the permit; or
  - (ii) an easement over land not covered by the permit but in the vicinity of that land—
- using the procedure in section 36 of the **Subdivision Act 1988** and that the acquisition or removal will not result in an unreasonable loss of amenity in the area affected by the acquisition or removal;
- (m) a condition requiring or authorising any of the things listed in the Table in section 24A(1) of the **Subdivision Act 1988**.
- (3) The responsible authority may approve an amendment to any plans, drawings or other documents approved under a permit if—
- (a) the amendment is consistent with—
    - (i) the planning scheme currently applying to the land; and
    - (ii) the permit; and
  - (b) the amendment will not authorise anything which would result in a breach of a registered restrictive covenant.
- (4) The responsible authority must not include in a permit a condition which is inconsistent—
- (a) with the **Building Act 1993**; or
  - (b) the building regulations under that Act; or
- S. 62(2)(l) inserted by No. 53/1988 s. 45(Sch. 3 item 33) (as amended by No. 47/1989 s. 6(3)(f)), substituted by No. 48/1991 s. 62(b), amended by No. 72/1998 s. 4.
- S. 62(2)(m) inserted by No. 48/1991 s. 62(b).
- S. 62(3) substituted by Nos 28/2000 s. 4, 100/2000 s. 11(1).
- S. 62(4) inserted by No. 126/1993 s. 264(Sch. 5 item 17.1).

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S. 62(5)  
inserted by  
No. 50/1995  
s. 4(2),  
substituted by  
No. 101/2004  
s. 10.

- (c) a relevant determination of the Building Appeals Board under that Act in respect of the land to which the permit applies.
- (5) In deciding to grant a permit, the responsible authority may—
  - (a) include a condition required to implement an approved development contributions plan; or
  - (b) include a condition requiring specified works, services or facilities to be provided or paid for in accordance with an agreement under section 173; or
  - (c) include a condition that specified works, services or facilities that the responsible authority considers necessary to be provided on or to the land or other land as a result of the grant of the permit be—
    - (i) provided by the applicant; or
    - (ii) paid for wholly by the applicant; or
    - (iii) provided or paid for partly by the applicant where the remaining cost is to be met by any Minister, public authority or municipal council providing the works, services or facilities.

S. 62(6)  
inserted by  
No. 50/1995  
s. 4(2),  
substituted by  
No. 101/2004  
s. 10.

- (6) The responsible authority must not include in a permit a condition requiring a person to pay an amount for or provide works, services or facilities except—
  - (a) in accordance with sub-section (5) or section 46N; or
  - (b) a condition that a planning scheme requires to be included as referred to in sub-section (1)(a); or

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- (c) a condition that a referral authority requires to be included as referred to in sub-section (1)(a).

**63. Grant of permit if no objectors**

Once it has decided in favour of an application, the responsible authority must issue the permit to the applicant if no one has objected or if notice of the decision to grant the permit is not required to be given to objectors under section 64.

S. 63  
amended by  
No. 128/1993  
s. 16(1).

**64. Grant of permit if there are objectors**

- (1) The responsible authority must give the applicant and each objector a notice in the prescribed form of its decision to grant a permit.
- (2) The notice must set out any conditions to which the permit will be subject.
- (3) The responsible authority must not issue the permit to the applicant—
- (a) until the end of the period within which an objector may apply to the Tribunal for a review of the decision to grant the permit; or
- (b) if an application for review is made within that period, until the application is determined by the Tribunal or withdrawn.
- (4) A planning scheme may set out classes of applications the decisions on which are exempted from the requirements of sub-sections (1), (2) and (3).
- (5) If a planning scheme exempts a decision on an application from the requirements of sub-sections (1), (2) and (3), the responsible authority must give a copy of the decision to each objector.

S. 64(3)  
amended by  
No. 128/1993  
s. 16(2),  
substituted by  
No. 52/1998  
s. 191(3).

S. 64(4)  
inserted by  
No. 128/1993  
s. 16(3).

S. 64(5)  
inserted by  
No. 128/1993  
s. 16(3).

**65. Refusal of permit**

- (1) The responsible authority must give the applicant and each objector, a notice in the prescribed form of its decision to refuse to grant a permit.
- (2) The notice must set out the specific grounds on which the application is refused and state whether the grounds were those of the responsible authority or a referral authority.

**66. Notice to referral authority**

The responsible authority must give each relevant referral authority a copy of any permit which it decides to grant and a copy of any notice given under section 64 or 65.

**67. When does a permit begin?**

A permit operates—

- (a) from the date specified in the permit; or
- (b) if no date is specified, from—
  - (i) the date of the decision of the Tribunal, if the permit was issued at the direction of the Tribunal; or
  - (ii) the day on which it is issued, in any other case.

S. 67(b)(i)  
amended by  
No. 52/1998  
s. 191(1).

**68. When does a permit expire?**

- (1) A permit for the development of land expires if—
  - (a) the development or any stage of it does not start within the time specified in the permit; or
  - (aa) the development requires the certification of a plan of subdivision or consolidation under the **Subdivision Act 1988** and the plan is not certified within two years of the issue of the

S. 68(1)(aa)  
inserted by  
No. 128/1993  
s. 17.

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permit, unless the permit contains a different provision; or

- (b) the development or any stage is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit or in the case of a subdivision or consolidation within 5 years of the certification of the plan of subdivision or consolidation under the **Subdivision Act 1988**.

S. 68(1)(b)  
amended by  
No. 53/1988  
s. 45(Sch. 2  
item 34) (as  
amended by  
No. 47/1989  
s. 19(zj)).

- (2) A permit for the use of land expires if—
  - (a) the use does not start within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit; or
  - (b) the use is discontinued for a period of two years.
- (3) A permit for the development and use of land expires if—
  - (a) the development or any stage of it does not start within the time specified in the permit; or
  - (b) the development or any stage of it is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit; or
  - (c) the use does not start within the time specified in the permit, or, if no time is specified, within two years after the completion of the development; or
  - (d) the use is discontinued for a period of two years.

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S. 68(3A)  
inserted by  
No. 53/1988  
s. 45(Sch. 2  
item 35),  
amended by  
No. 48/1991  
s. 61(3)(a).

- (3A) If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in section 6A(2), or to any combination of use, development or any of those circumstances, requires the certification of a plan under the **Subdivision Act 1988**, unless the permit contains a different provision—
- (a) the use or development of any stage is to be taken to have started when the plan is certified; and
  - (b) the permit expires if the plan is not certified within two years of the issue of the permit.
- (4) The expiry of a permit does not affect the validity of anything done under that permit before the expiry.

**69. Extension of time**

S. 69(2)  
amended by  
No. 48/1991  
s. 61(3)(b).

- (1) Before the permit expires or within three months afterwards, the owner or the occupier of the land to which it applies may ask the responsible authority for an extension of time.
- (2) The responsible authority may extend the time within which the use or development or any stage of it is to be started or the development or any stage of it is to be completed or within which a plan under the **Subdivision Act 1988** is to be certified.
- (3) If the time is extended after the permit has lapsed the extension operates from the day the permit expired.

**70. Availability of permit**

The responsible authority must make a copy of every permit that it issues available at its office for inspection by any person during office hours free of charge.

**71. Correction of mistakes**

- (1) A responsible authority may correct a permit issued by the responsible authority if the permit contains—
  - (a) a clerical mistake or an error arising from any accidental slip or omission; or
  - (b) an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the permit.
- (2) The responsible authority must note the correction in the register.

**72. Request for minor amendment**

The owner of land, or a person with the consent of the owner, may ask the responsible authority in writing to amend a permit which applies to the land.

S. 72  
amended by  
No. 86/1989  
s. 4(2)(b).

**73. Decision to amend by responsible authority**

- (1) The responsible authority may amend the permit if it is satisfied that the amendment—
  - (a) does not change the effect of any condition required by the Tribunal; and

S. 73  
amended by  
No. 100/2000  
s. 11(2) (ILA  
s. 39B(1)).

S. 73(1)(a)  
amended by  
Nos 128/1993  
s. 18(a),  
52/1998  
s. 191(1).



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S. 73(1)(aa)  
inserted by  
No. 128/1993  
s. 18(b).

- (aa) does not change the effect of any condition required by a referral authority unless this is acceptable to the relevant referral authority; and
- (b) does not adversely affect the interests of a relevant referral authority, or is acceptable to the relevant referral authority; and

S. 73(1)(ba)  
inserted by  
No. 28/2000  
s. 5.

- (ba) is consistent with the planning scheme currently applying to the land the subject of the permit; and
- (c) will not cause an increase in detriment to any person; and
- (d) does not change the use for which the permit was issued other than a minor change to the description of the use.

S. 73(2)  
inserted by  
No. 100/2000  
s. 11(2).

- (2) The responsible authority must not amend the permit if the amendment of the permit would authorise anything which would result in a breach of a registered restrictive covenant.

**74. Notice of decision**

The responsible authority must give notice of the amendment to—

- (a) the person who made the request; and
- (b) if that person is not the owner of the land, the owner; and
- (c) any relevant referral authority.

**75. Insertion of amendment in register**

The responsible authority must note any amendment to a permit in the register.

**76. When does an amendment to a permit begin?**

A permit has effect as amended on and from the day that it is amended.

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**Division 2—Reviews by Tribunal**

**77. Appeals against refusal**

An applicant for a permit may apply to the Tribunal for review of a decision by a responsible authority to refuse to grant the permit.

Pt 4 Div. 2  
(Heading)  
substituted by  
No. 52/1998  
s. 191(4)(a).

S. 77  
amended by  
No. 52/1998  
s. 191(4)(b).

**78. Appeals against requirements**

An applicant for a permit may apply to the Tribunal for review of—

- (a) a requirement by the responsible authority to give notice under section 52(1)(d); or
- (b) a requirement by the responsible authority for more information under section 54.

S. 78  
amended by  
No. 52/1998  
s. 191(4)(b).

**79. Appeals against failure to grant permit**

An applicant for a permit may apply to the Tribunal for review of the failure of the responsible authority to grant the permit within the prescribed time.

S. 79  
amended by  
No. 52/1998  
s. 191(4)(b).

**80. Appeals against conditions on permits**

- (1) An applicant for a permit may apply to the Tribunal for review of any condition in a permit which the responsible authority has issued or decided to grant to the person.
- (2) This section does not apply to a condition included in a permit under section 62(1)(aa).

S. 80  
amended by  
Nos 52/1998  
s. 191(4)(b),  
100/2000  
s. 11(3) (ILA  
s. 39B(1)).

S. 80(2)  
inserted by  
No. 100/2000  
s. 11(3).

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S. 81  
amended by  
No. 52/1998  
s. 191(4)(b).

**81. Appeals relating to extensions of time**

Any person affected may apply to the Tribunal for review of—

- (a) a decision of the responsible authority refusing to extend the time within which any development or use is to be started or any development completed; or
- (aa) a decision of the responsible authority refusing to extend the time within which a plan under the **Subdivision Act 1988** is to be certified, in the case of a permit relating to any of the circumstances mentioned in section 6A(2); or
- (b) the failure of the responsible authority to extend the time within one month after the request for extension is made.

S. 81(aa)  
inserted by  
No. 48/1991  
s. 61(3)(c).

**82. Appeals where objectors**

S. 82(1)  
amended by  
No. 52/1998  
s. 191(4)(b).

(1) An objector may apply to the Tribunal for review of a decision of the responsible authority to grant a permit.

S. 82(2)  
substituted by  
No. 128/1993  
s. 19,  
amended by  
No. 52/1998  
s. 191(4)(c).

(2) A planning scheme may set out classes of applications for permits the decisions on which are exempted from sub-section (1).

S. 82(3)  
inserted by  
No. 128/1993  
s. 19,  
substituted by  
No. 52/1998  
s. 191(5).

(3) If a planning scheme exempts a decision of an application for a permit from sub-section (1), an application for review cannot be made under that sub-section in respect of that decision.

**82A. Appeal by Liquor Licensing Commission**

The Liquor Licensing Commission under the **Liquor Control Act 1987** may apply to the Tribunal for review of a decision of a responsible authority—

- (a) to refuse to grant a permit relating to the use of premises primarily for a purpose in respect of which a licence or permit may be sought under that Act if the Commission told the responsible authority that it did not object to the grant of the permit; or
- (b) to grant such a permit if the Commission objected to the grant; or
- (c) to grant such a permit subject to conditions that were not specified by the Commission.

S. 82A  
inserted by  
No. 97/1987  
s. 176(2),  
amended by  
Nos 86/1989  
s. 29(9),  
52/1998  
s. 191(4)(b).

**82AA. Appeals relating to coastal Crown land**

Despite anything to the contrary in section 77 or 79, an applicant for a permit for the use or development of coastal Crown land within the meaning of the **Coastal Management Act 1995**, has no right to apply to the Tribunal for review of—

- (a) a decision by a responsible authority to refuse to grant the permit, if the Minister administering that Act has refused or is deemed to have refused to consent to that use or development under that Act; or
- (b) the failure of the responsible authority to grant the permit within the prescribed time, if the Minister administering that Act has not consented to that use or development under that Act.

S. 82AA  
inserted by  
No. 8/1995  
s. 45,  
amended by  
No. 52/1998  
s. 191(4)(d).

*Planning and Environment Act 1987*  
*Act No. 45/1987*

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s. 82B

Field Code Changed

S. 82B  
inserted by  
No. 128/1993  
s. 20.

**82B. Affected person may seek leave to apply for review**

S. 82B(1)  
amended by  
No. 52/1998  
s. 191(4)(e)(f).

(1) Any person who is affected may apply to the Tribunal for leave to apply for review of a decision of the responsible authority to grant the permit in any case in which a written objection to the grant of the permit was received by the responsible authority.

S. 82B(2)  
amended by  
No. 52/1998  
s. 191(4)(e)(ii).

(2) Subject to sub-section (3), the Tribunal must give the applicant for the permit, the responsible authority and the affected person an opportunity to be heard before making a decision.

S. 82B(3)  
substituted by  
No. 52/1998  
s. 191(6).

(3) The Tribunal is not required to hold a hearing under sub-section (2) if the applicant for the permit consents to the request for leave to apply for review.

S. 82B(4)  
amended by  
Nos 72/1998  
s. 8(b),  
101/1998 s. 27.

(4) The Tribunal may grant the leave to apply for review if it believes it would be just and fair in the circumstances to do so.

S. 82B(5)  
substituted by  
No. 52/1998  
s. 191(7).

(5) If leave is granted by the Tribunal, the person affected may apply to the Tribunal for review of the decision of the responsible authority to grant the permit.

S. 82B(6)(a)  
amended by  
No. 52/1998  
s. 191(8).

(6) This section does not apply if—  
(a) the decision on the application for a permit is exempted from section 82(1); or

S. 82B(6)(b)  
amended by  
No. 52/1998  
s. 191(8).

(b) a permit has been issued under section 63 in respect of the application for a permit.

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**83. Parties to review**

- (1) In addition to any other party to a proceeding for review under this Act, a referral authority is a party to a proceeding for review—
  - (a) of a refusal to grant a permit if—
    - (i) the referral authority had objected to the grant of the permit; or
    - (ii) it was refused because a condition required by the referral authority conflicted with a condition required by another referral authority; and
  - (b) of a permit condition if the referral authority had required the condition to be included in the permit.
- (2) In addition to any other party to a proceeding for review under this Act, an objector is a party to a proceeding for review if the objector—
  - (a) is given notice of the application for review under this Act; and
  - (b) in accordance with the **Victorian Civil and Administrative Tribunal Act 1998**, lodges with the Tribunal a statement of the grounds on which the objector intends to rely at the hearing of the proceeding.

S. 83  
amended by  
No. 86/1989  
s. 11,  
substituted by  
No. 52/1998  
s. 184.

**83A. Objectors entitled to notice**

- (1) A person who objected to the grant of a permit is entitled to notice of an application by the applicant for the permit for review of—
  - (a) a decision refusing to grant the permit; or
  - (b) a failure to grant the permit; or
  - (c) a decision imposing a condition on the permit.

S. 83A  
inserted by  
No. 52/1998  
s. 184.

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- (2) Sub-section (1) does not apply to a person if under a planning scheme the person is not entitled to apply to the Tribunal under section 82 for a review of a decision to grant the permit.

S. 83B  
inserted by  
No. 52/1998  
s. 184.

**83B. Notice if permit application was made without notice**

- (1) If the President of the Tribunal is satisfied that notice of an application for a permit was not given or that notice is not adequate, he or she may direct—
- (a) an applicant for review of a decision to grant or to refuse to grant, or a failure to grant, the permit—
    - (i) to serve a copy of the application for review on any specified person; or
    - (ii) to publish a notice of the application for review in the manner and within the time specified by the President; or
    - (iii) to do both (i) and (ii); or
  - (b) the responsible authority, at the expense of the applicant for review, to give or publish notice of the application for review to the persons, in the manner and within the time specified by the President.
- (2) The President may give a direction under sub-section (1) whether or not the Tribunal has begun to hear the review.
- (3) If an applicant for review of a decision to refuse to grant, or a failure to grant, a permit fails to comply with a direction under sub-clause (1)(a) the application for review lapses.

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- (4) A notice given or published under this section is to be in the form and contain the matters—
  - (a) specified by the rules of the Tribunal; or
  - (b) as directed by the President.
- (5) This section does not permit the Tribunal to require notice to be given to a person if under a planning scheme the person is not entitled to apply to the Tribunal under section 82 for a review of a decision to grant the permit.

**84. An application may be determined after an appeal has been lodged**

- (1) A responsible authority may decide on an application for a permit at any time after an application is made for review of the failure of the responsible authority to grant the permit.
- (2) Except in accordance with the advice of the principal registrar under sub-section (4), the responsible authority must not issue or give a permit, notice of decision or notice of refusal to the applicant, a referral authority or any objector after an application is made to the Tribunal for review of a failure to grant a permit.
- (3) The responsible authority must inform the principal registrar if the responsible authority decides to grant a permit with or without conditions after an application is made for the review of its failure to grant the permit.
- (4) The principal registrar must refer the decision of the responsible authority to a presidential member of the Tribunal for consideration.
- (5) If the presidential member of the Tribunal so directs, the principal registrar must advise the responsible authority that a permit in accordance with the responsible authority's decision may be issued.

S. 84(1)  
amended by  
No. 52/1998  
s. 185(1).

S. 84(2)  
repealed by  
No. 62/1991  
s. 33,  
new s. 84(2)  
inserted by  
No. 52/1998  
s. 185(2).

S. 84(3)  
substituted by  
No. 52/1998  
s. 185(2).

S. 84(4)  
substituted by  
No. 52/1998  
s. 185(2).

S. 84(5)  
inserted by  
No. 52/1998  
s. 185(2).



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S. 84(6)  
inserted by  
No. 52/1998  
s. 185(2).

- (6) The responsible authority must issue the permit within 3 working days after receiving that advice.

S. 84A  
inserted by  
No. 52/1998  
s. 186.

**84A. Parties not restricted to grounds previously notified**

A party in a proceeding for review under this Act is not restricted at the hearing of the proceeding to any grounds previously notified to the other parties (whether in the course of or before the proceeding) or the Tribunal.

S. 84B  
inserted by  
No. 52/1998  
s. 186.

**84B. Matters which Tribunal may take into account**

- (1) In determining an application for review under this Act, the Tribunal—
- (a) must take into account any relevant planning scheme;
  - (b) must have regard to the objectives of planning in Victoria;
  - (c) must (where appropriate) take account of the approved regional strategy plan under Part 3A;
  - (ca) must (where appropriate) take account of the approved strategy plan under Part 3C;
  - (d) must take account of and give effect to any relevant State environment protection policy declared in any Order made by the Governor in Council under section 16 of the **Environment Protection Act 1970**;
  - (e) must (where appropriate) take account of the extent to which persons residing or owning land in the vicinity of the land which is the subject of the application for review were able to and in fact did participate in the procedures required to be followed under this Act before the responsible authority

S. 84B(1)(ca)  
inserted by  
No. 72/1998  
s. 5(1).

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- could make a decision in respect of the application for a permit;
- (f) must (where appropriate) have regard to any amendment to a planning scheme which has been adopted by the planning authority but not, as at the date on which the application for review is determined, approved by the Minister;
  - (g) must (where appropriate) have regard to any agreement made pursuant to section 173 affecting the land the subject of the application for review;
  - (h) must (where appropriate) have regard to any amendment to the approved regional strategy plan under Part 3A adopted under this Act but not, as at the date on which the application for review is determined, approved by the Minister;
  - (ha) must (where appropriate) have regard to any amendment to the approved strategy plan under Part 3C adopted under this Act but not, as at the date on which the application for review is determined, approved by the Minister;
  - (i) must take account of any other matter which the Tribunal is required by the provisions of this Act or any other Act to take account of in determining the application for review.
- (2) The matters set out in sub-section (1) are in addition to any other matters which the person or body in respect of whose decision the application for review is made could properly take account of or have regard to or is required to take account of or have regard to in making its decision.

S. 84B(1)(ha) inserted by No. 72/1998 s. 5(2).

S. 84B(1)(i) amended by No. 28/2000 s. 6(1).

S. 84B(2) amended by No. 28/2000 s. 6(2).

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**85. Determination of appeal**

S. 85(1)  
amended by  
No. 52/1998  
s. 191(9)(a)(f).

(1) After hearing an application for review, the Tribunal may—

S. 85(1)(b)  
substituted by  
No. 86/1989  
s. 14(1),  
amended by  
No. 52/1998  
s. 191(9)(a)(f).

- (a) direct that a permit must not be granted; or
- (b) in the case of an application for review of a refusal or failure to grant or a decision to grant a permit—

- (i) grant the permit and direct the responsible authority to issue it; or
- (ii) grant the permit, direct that the permit must or must not contain any specified conditions and direct the responsible authority to issue the permit; or

S. 85(1)(c)  
amended by  
No. 52/1998  
s. 191(9)(a)(f).

(c) in the case of an application for review of a requirement under section 52(1)(d)—

- (i) confirm the requirement; or
- (ii) change the requirement; or

S. 85(1)(d)  
amended by  
No. 52/1998  
s. 191(9)(a)(f).

(d) in the case of an application for review of a requirement for more information under section 54—

S. 85(1)(d)(i)  
amended by  
No. 52/1998  
s. 191(9)(a)(f).

- (i) direct the responsible authority to consider the application for a permit as made under section 47; or

- (ii) confirm the requirement; or
- (iii) change the requirement; or

(e) direct that a permit must or must not contain any specified condition; or

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- (f) direct that the time within which a development or use is to be started or the development is completed or within which a plan under the **Subdivision Act 1988** is to be certified must be extended for a specified period or must not be extended, in the case of an application for review of the refusal or failure of the responsible authority to extend the time; or
- (g) cancel a permit if—
- (i) it upholds an application for review of a condition specified in a permit on the ground that the responsible authority had no power to impose the condition; and
  - (ii) it considers that the permit should not or would not have been granted without the condition.
- (2) If the Tribunal gives a direction under subsection (1)(d)(i), the prescribed period for the purpose of making an application for review under section 79 begins on the day on which the direction is given.
- (3) Sections 71 to 76 apply to a permit granted by the Tribunal.
- S. 85(1)(f) amended by Nos 48/1991 s. 61(3)(d), 52/1998 s. 191(9)(a)(ii).
- S. 85(1)(g) amended by No. 52/1998 s. 191(9)(a)(ii).
- S. 85(2) substituted by No. 52/1998 s. 191(10).
- S. 85(3) inserted by No. 86/1989 s. 14(2), amended by No. 52/1998 s. 191(9)(b).

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S. 86  
repealed by  
No. 86/1989  
s. 15,  
new s. 86  
inserted by  
No. 62/1991  
s. 34,  
repealed by  
No. 35/1995  
s. 11(2),  
new s. 86  
inserted by  
No. 52/1998  
s. 187.

**86. Issue of permit**

If an order made by the Tribunal requires a responsible authority to issue a permit, the responsible authority must issue that permit—

- (a) if the responsible authority is a Minister, within 3 working days after the day on which the responsible authority receives a copy of the order; or
- (b) in any other case, within 3 working days after the first ordinary meeting of the responsible authority held after it receives a copy of the order.

**Division 3—Cancellation and Amendment of Permits**

**87. What are the grounds for cancellation or amendment of permits?**

S. 87(1)  
amended by  
Nos 86/1989  
s. 16(1),  
52/1998  
s. 191(11).

- (1) The Tribunal may cancel or amend any permit if it considers that there has been—
  - (a) a material mis-statement or concealment of fact in relation to the application for the permit; or
  - (b) any substantial failure to comply with the conditions of the permit; or
  - (c) any material mistake in relation to the grant of the permit; or
  - (d) any material change of circumstances which has occurred since the grant of the permit; or
  - (e) any failure to give notice in accordance with section 52; or
  - (f) any failure to comply with section 55, 61(2) or 62(1).

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- (2) The Tribunal may amend any permit to comply with the building regulations made under the **Building Act 1993** if a building permit cannot be obtained under that Act for the development for which the permit under this Act was issued because the development does not comply with those regulations.
- (3) The Tribunal may cancel or amend a permit at the request of—
- (a) the responsible authority; or
  - (b) any person under section 89; or
  - (c) a referral authority; or
  - (d) the owner or occupier of the land concerned.
- (4) Nothing in this Division affects the power of a responsible authority to make a minor amendment to a permit.
- (5) The Tribunal cannot cancel or amend a permit granted by the Governor in Council under section 95.
- (6) Without limiting the powers of the Tribunal, the Tribunal may cancel or amend a permit that is issued following an application for review.
- S. 87(2) amended by No. 86/1989 s. 16(1), substituted by No. 126/1993 s. 264(Sch. 5 item 17.2), amended by No. 52/1998 s. 191(11).
- S. 87(3) amended by No. 52/1998 s. 191(11).
- S. 87(4) amended by No. 86/1989 s. 16(2).
- S. 87(5) inserted by No. 86/1989 s. 16(3), amended by No. 52/1998 s. 191(11).
- S. 87(6) inserted by No. 86/1989 s. 16(3), amended by No. 52/1998 s. 191(11), substituted by No. 52/1998 s. 191(12).

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S. 87(7)  
inserted by  
No. 86/1989  
s. 16(3),  
amended by  
No. 52/1998  
s. 191(11),  
substituted by  
No. 52/1998  
s. 191(12).

- (7) The Tribunal must not cancel or amend a permit on a ground mentioned in sub-section (1)(a), (c) or (f) unless there has been no application under Division 2 on that ground for review of the decision to grant the permit or of a condition of the permit.

**88. What are the limits on the power to cancel or amend a permit?**

The power to cancel or amend a permit under this Division may be exercised—

- (a) if the permit relates to the construction of buildings or the carrying out of other works, at any time before those operations have been completed; or
- (b) if the permit relates to any other development of land, at any time before that development is substantially carried out; or
- (c) at any time, if the permit relates to the use of land.

**89. Request for cancellation or amendment**

S. 89(1)  
amended by  
No. 52/1998  
s. 191(1).

- (1) Any person who objected or would have been entitled to object to the issue of a permit may ask the Tribunal to cancel or amend the permit if—
- (a) the person believes that the person should have been given notice of the application for the permit and was not given that notice; or
  - (b) the person believes that the person has been adversely affected by—
    - (i) a material mis-statement or concealment of fact in relation to the application for the permit; or
    - (ii) any substantial failure to comply with the conditions of the permit; or

- (iii) any material mistake in relation to the grant of the permit.
- (2) The request must be made in writing in accordance with the regulations.
- (3) The Tribunal may refuse to consider a request under this section or section 87 unless it is satisfied that the request has been made as soon as practicable after the person making it had notice of the facts relied upon in support of the request.

**90. Hearing by Tribunal**

- (1) The Tribunal must give the following persons a reasonable opportunity to be heard at the hearing of any request—
  - (a) the responsible authority;
  - (b) the owner and the occupier of the land concerned;
  - (c) any person who asked for the cancellation or amendment of the permit under section 87;
  - (d) the Minister;

S. 90(1) amended by No. 52/1998 s. 191(1).

\* \* \* \* \*

S. 90(1)(e) repealed by No. 35/1995 s. 4(h).

- (f) any relevant referral authority.
- (2) The Tribunal may give any other person who appears to it to have a material interest in the outcome of the request an opportunity to be heard at the hearing of the request.

**90A. Matters which Tribunal must take into account**

- (1) In determining a request, the Tribunal must take into account the matters set out in section 84B(1) as if the request were an application for review.

S. 90A inserted by No. 28/2000 s. 7.



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- (2) The matters set out in section 84B(1) are in addition to any other matters which the Tribunal can properly take account of or have regard to or is required to take account of or have regard to in determining a request.

**91. Determination by Tribunal**

S. 91(1)  
amended by  
No. 52/1998  
s. 191(1).

- (1) After hearing a request, the Tribunal may direct the responsible authority to cancel or amend the permit and to take any action required in relation to the permit.

S. 91(2)  
amended by  
No. 52/1998  
s. 191(1).

- (2) The responsible authority must comply with the directions of the Tribunal without delay.

S. 91(3)  
amended by  
No. 52/1998  
s. 191(1).

- (3) The Tribunal must not direct a responsible authority to cancel or amend a permit on a request under section 89(1) unless it is satisfied that—
- (a) in the case of a request under section 89(1)(a) the person—
    - (i) could not reasonably be expected to have been aware of the application for the permit in time to lodge an objection under Division 1; and
    - (ii) was substantially disadvantaged by the issue of the permit; and
  - (b) in the case of a request under section 89(1)(b), the person was substantially disadvantaged by the matter set out in the request; and
  - (c) it would be just and fair in the circumstances to do so.

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- (3A) The Tribunal must not direct a responsible authority to amend a permit if the amendment would authorise anything which would result in a breach of a registered restrictive covenant.
- (4) If a cancelled permit relates to a subdivision or consolidation any plan certified under the **Subdivision Act 1988** must be surrendered to the responsible authority.
- (5) A permit which relates to a subdivision or consolidation cannot be cancelled if the plan of subdivision or consolidation has been registered under the **Subdivision Act 1988**.
- S. 91(3A) inserted by No. 100/2000 s. 12.
- S. 91(4) inserted by No. 53/1988 s. 45(Sch. 2 item 36) (as amended by No. 47/1989 s. 19(zj)).
- S. 91(5) inserted by No. 53/1988 s. 45(Sch. 2 item 36) (as amended by No. 47/1989 s. 19(zj)).

**92. Notice of the cancellation or amendment**

The responsible authority must give notice in accordance with the regulations of the cancellation or amendment of a permit under this Division to any person who was entitled to be heard by the Tribunal under section 90.

S. 92 amended by No. 52/1998 s. 191(1).

**93. Order to stop development**

- (1) The Tribunal may, if it considers it appropriate, order that pending the hearing of a request no development other than that specified in the order is to be carried out or continued on the land.
- (1A) Before making an order, the Tribunal must consider whether the person making the request should give any undertaking as to damages.
- (2) The responsible authority must give notice of the order without delay to the persons and in the manner the Tribunal directs or (if no direction is given) as are prescribed.
- S. 93 amended by No. 52/1998 s. 191(1).
- S. 93(1A) inserted by No. 128/1993 s. 21(1).

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- (3) Any person to whom the notice is given who fails to comply with the notice is guilty of an offence.

**94. Right to compensation**

S. 94(1)  
amended by  
No. 128/1993  
s. 21(2).

- (1) If a permit is not cancelled or amended after a notice is given under section 93, the responsible authority or a person who has given an undertaking under section 93 is liable to pay compensation to the owner of the land and the occupier of the land and any other person who had an interest in the land for any loss or damage they suffer as a result of the giving of notice.
- (2) If a permit is cancelled or amended under this Division the responsible authority is liable to pay compensation to any person who has incurred expenditure or liability for expenditure as a result of the issue of the permit in respect of—
- (a) any of that expenditure which is wasted because the permit is cancelled or amended; and
  - (b) any additional expenditure or liability necessarily incurred in purchasing other land to use or develop in the required manner because the permit is cancelled or amended.
- (3) There must be deducted from the amount of the additional expenditure or liability—
- (a) the market value of the land in respect of which the permit was cancelled or amended at the date when the claimant for compensation sold it; or
  - (b) if the land has not been sold, the market value of that land at the date when the claimant bought the other land.
- (4) Compensation is not payable if the permit is cancelled or amended—

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- (a) on the ground that there has been a substantial failure to comply with the conditions of the permit; or
- (b) on the ground that the permit was granted following an application in relation to which a material mis-statement or concealment of fact was made; or
- (c) on the ground of any material mistake in relation to the grant of a permit if the Tribunal considers that the mistake arose from any act or omission by or on behalf of the applicant for the permit; or
- (d) on the ground referred to in section 87(2).

S. 94(4)(c)  
amended by  
No. 52/1998  
s. 191(1).

- (5) Parts 10 and 11 and section 37 of the **Land Acquisition and Compensation Act 1986** with any necessary changes apply to the determination of compensation under this section as if a claim for compensation were a claim under section 37 of that Act.

**Division 4—Provisions relating to Ministers, Government Departments and Responsible Authorities**

**95. Permits required by Ministers or government departments**

- (1) Subject to sub-sections (2) and (3), an application for a permit by or on behalf of a Minister or government department must be made and dealt with in accordance with this Part.
- (2) The Governor in Council may by Order published in the Government Gazette declare that a responsible authority must refer all applications in a specified class of applications for permits by

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Ministers or government departments to the Minister.

- (3) The Minister may direct the responsible authority to refer to the Minister an application for a permit by or on behalf of a Minister or government department if—
  - (a) not less than 21 days have elapsed since lodgment of the application; and
  - (b) the Minister has consulted with the responsible authority; and
  - (c) the Governor in Council considers that the over-riding interests of the State required that the application be so referred.
- (4) The responsible authority must comply with an Order or direction and must not proceed further with the application.
- (5) The Governor in Council may determine any application referred to the Minister under sub-section (2) or (3).
- (6) A determination by the Governor in Council under sub-section (5) is final and is not subject to review or appeal except in the Supreme Court on a question of law.
- (7) If the Governor in Council determines that a permit is to be granted, with or without conditions, the Minister is to be the responsible authority for the purpose of issuing, administering and enforcing the permit.
- (8) The Governor in Council may by Order published in the Government Gazette change or revoke an Order under sub-section (2).

**96. Land owned or permit required by responsible authorities**

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- (1) A responsible authority must obtain a permit from the Minister before carrying out any use or development for which a permit is required under the planning scheme for which it is the responsible authority unless the planning scheme exempts the land, use or development from this sub-section.
- (2) A person other than the responsible authority must obtain the consent of the responsible authority and a permit from the Minister before carrying out any use or development on any land managed (whether as committee of management or otherwise) occupied or owned by the responsible authority for which a permit is required under the planning scheme for which it is the responsible authority unless the planning scheme exempts the land, use or development from this sub-section.
- (3) The consent of the responsible authority under sub-section (2) may be subject to any specified conditions to be included in the permit.
- (4) Divisions 1, 2, 3 and 5 apply to an application or permit under this section as if the Minister were the responsible authority.
- (5) The Minister may exercise the powers of a responsible authority under this Act in relation to the administration and enforcement of any permit granted under this section to a person other than a responsible authority as if the Minister were the responsible authority.
- (6) If a responsible authority ceases to manage occupy or own the land for which a permit has been granted under this section—
- (a) the Minister must cease to act as the responsible authority in relation to the

S. 96(1)  
amended by  
No. 86/1989  
s. 5(3)(a).

S. 96(2)  
amended by  
No. 86/1989  
ss 4(2)(c),  
5(3)(b).

S. 96(6)  
amended by  
No. 86/1989  
s. 4(2)(d).

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permit for the purposes of sub-sections (4) and (5)—

- (i) if the responsible authority is carrying out the use or development, upon the completion of that use or development; or
  - (ii) in any other case, immediately; and
- (b) once the Minister ceases to act, the responsible authority must carry out its functions in relation to the permit as if it had granted the permit.
- (7) If a permit is granted under this section to use or develop any land a further permit is not needed under Division 1 for the use or development.

S. 96(8) substituted by No. 86/1989 s. 4(2)(e), repealed by No. 89/1997 s. 75(2).

\* \* \* \* \*

Pt 4 Div. 5 (Heading and ss 96A–96N) inserted by No. 77/1996 s. 14.

**Division 5—Combined permit and amendment process<sup>xxvii</sup>**

S. 96A inserted by No. 77/1996 s. 14.

**96A. Application for permit when amendment requested**

S. 96A(1) substituted by No. 100/2000 s. 13(1).

- (1) A person who requests a planning authority to prepare an amendment to a planning scheme may also apply to the planning authority for—

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- (a) a permit for any purpose for which the planning scheme as amended by the proposed amendment would require a permit to be obtained; or
  - (b) if the amendment provides for the removal or variation of a registered restrictive covenant, a permit for a use or development which would, if the restrictive covenant were not removed or varied, result in a breach of that registered restrictive covenant.
- (2) The planning authority may agree to consider the application for the permit concurrently with the preparation of the proposed amendment.
- (3) An application may be made for a permit under this section even if it could not be granted under the existing planning scheme.
- (4) The application for the permit must—
- (a) be accompanied by the prescribed fee; and
  - (b) be accompanied by the information required by the planning scheme; and
  - (c) if the land is burdened by a registered restrictive covenant, be accompanied by a copy of the covenant; and
  - (d) if the application is for a permit to allow the removal or variation of a registered restrictive covenant or if the grant of the permit would authorise anything which would result in a breach of a registered restrictive covenant, be accompanied by—

S. 96A(4)(b)  
amended by  
No. 100/2000  
s. 13(2).

S. 96A(4)(c)  
inserted by  
No. 100/2000  
s. 13(2).

S. 96A(4)(d)  
inserted by  
No. 100/2000  
s. 13(2).



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- (i) information clearly identifying each allotment or lot benefited by the registered restrictive covenant; and
  - (ii) any other information that is required by the regulations.
- (5) An application cannot be made under this section after the notice of the proposed amendment to the planning scheme has been given under section 19.
- (6) Sections 48, 49 and 50 apply to an application under this section as if—
- (a) it were an application under Division 1; and
  - (b) in section 50(1) and (2) a reference—
    - (i) to the responsible authority were a reference to the planning authority; and
    - (ii) to section 52 were a reference to section 96C(1).

S. 96B  
inserted by  
No. 77/1996  
s. 14.

**96B. Application of provisions**

- (1) Subject to this Division, if a planning authority has agreed to consider an application for a permit concurrently with the preparation of a proposed amendment—
- (a) sections 17, 18 and 20 to 25 and Part 8 apply to the application as if—
    - (i) except in section 23, the application were an amendment to a planning scheme; and
    - (ii) any reference in those sections to section 19 were a reference to section 96C; and

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- (iii) any reference in section 23 to an amendment were a reference to the proposed permit; and
  - (b) Parts 3 and 5 apply to the proposed amendment as if any reference in those Parts to section 19 were a reference to section 96C.
- (2) Sections 166 and 185A apply to an application for a permit under this Division as if it were an amendment to a planning scheme and as if any reference in those sections to Part 3 included a reference to this Division.

**96C. Notice of amendment, application and permit**

S. 96C  
inserted by  
No. 77/1996  
s. 14.

- (1) A planning authority must give notice of its preparation of an amendment to a planning scheme and notice of an application being considered concurrently with the amendment under this Division—
- (a) to every Minister, public authority and municipal council that it believes may be materially affected by the amendment or application; and
  - (b) to the owners (except persons entitled to be registered under the **Transfer of Land Act 1958** as proprietor of an estate in fee simple) and occupiers of land that it believes may be materially affected by the amendment or application; and
  - (c) to any Minister, public authority, municipal council or person prescribed; and
  - (d) to the Minister administering the **Land Act 1958** if the amendment provides for the

S. 96C(1)  
amended by  
No. 28/2000  
s. 8(a).

S. 96C(1)(a)  
amended by  
No. 28/2000  
s. 8(b).

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closure of a road wholly or partly on Crown land; and

- (e) to the responsible authority, if it is not the planning authority; and
- (f) to the owners (except persons entitled to be registered under the **Transfer of Land Act 1958** as proprietor of an estate in fee simple) and occupiers of allotments or lots adjoining the land to which the application applies unless the planning authority is satisfied that the grant of the permit would not cause material detriment to any person; and
- (g) to the owners (except persons entitled to be registered under the **Transfer of Land Act 1958** as proprietor of an estate in fee simple) and occupiers of land benefited by a registered restrictive covenant, if—
  - (i) the amendment or the permit would allow the removal or variation or the covenant; or
  - (ii) anything authorised by the permit would result in a breach of the covenant.

S. 96C(1)(f)  
amended by  
No. 100/2000  
s. 14(1).

S. 96C(1)(g)  
inserted by  
No. 100/2000  
s. 14(1).

- (2) A planning authority must publish a notice of the amendment and the application in a newspaper generally circulating in the area to which the amendment applies.

S. 96C(2A)  
inserted by  
No. 100/2000  
s. 14(2).

- (2A) A planning authority must cause notice of an amendment providing for the removal or variation of a registered restrictive covenant to be given by placing a sign on the land which is the subject of the amendment.

S. 96C(2B)  
inserted by  
No. 100/2000  
s. 14(2).

- (2B) A sign under sub-section (2A) must state the place where a copy of the proposed permit under this Division may be inspected.

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- (3) On the same day that it gives the last of the notices under sub-sections (1), (2) and (2A) or after that day, the planning authority must publish a notice of the preparation of the amendment and of the application in the Government Gazette.
- (4) Any notice must—
- (a) be given in accordance with the regulations; and
  - (b) set a date for submissions to the planning authority which, if notice of the preparation of the amendment and the application is given in the Government Gazette, must be not less than one month after the date that the notice is given in the Government Gazette.
- (5) The failure of a planning authority to give a notice under sub-section (1) does not prevent—
- (a) the adoption of the amendment by the planning authority or its submission to or approval by the Minister; or
  - (b) the grant of a permit under this Division.
- (6) Sub-section (5)(a) does not apply to a failure to notify an owner of land about the preparation of an amendment which provides for—
- (a) the reservation of that land for public purposes; or
  - (b) the closure of a road which provides access to that land.
- (7) A planning authority may take any other steps it thinks necessary to tell anyone who may be affected by the amendment about its preparation.
- (8) The planning authority must give a copy of the proposed permit under this Division to each

S. 96C(3)  
amended by  
No. 100/2000  
s. 14(3).

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person to whom the notice of the amendment and application is given under sub-section (1).

S. 96C(8A)  
inserted by  
No. 100/2000  
s. 14(4).

- (8A) The planning authority must make a copy of the proposed permit under this Division available at its office during office hours for any person to inspect free of charge until the amendment to which the proposed permit applies is approved or lapses.
- (9) The applicant for a permit under this Division must pay to the planning authority the cost of any notice of the amendment and the application given under this section.
- (10) Section 19 does not apply to an amendment of which notice is given under this section.

S. 96D  
inserted by  
No. 77/1996  
s. 14.

**96D. Hearing by panel**

Section 24 applies in respect of an application under this Division as if it also required the panel to give a reasonable opportunity to be heard to the applicant.

S. 96E  
inserted by  
No. 77/1996  
s. 14.

**96E. Report by panel on proposed permit**

- (1) Without limiting section 25(2), if a panel recommends under that section that an amendment be adopted, the panel may also recommend—
- (a) that a permit be granted under this Division for any purpose for which the planning scheme as amended by the proposed amendment would require a permit to be obtained; and
- (b) the conditions to which the permit should be subject.

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- (2) Sub-section (1) applies whether or not an application has been made under this Division for the permit.

**96F. Planning authority to consider panel's report**

S. 96F  
inserted by  
No. 77/1996  
s. 14.

The planning authority must consider the panel's report under section 96E before deciding whether or not to recommend the granting of a permit.

**96G. Determination by planning authority**

S. 96G  
inserted by  
No. 77/1996  
s. 14.

- (1) A planning authority may determine to recommend to the Minister that a permit be granted under this Division with or without changes if—
- (a) an application for a permit has been made under this Division and sections 96A to 96F have been complied with; or
  - (b) a panel has recommended the grant of a permit under this Division and section 96F has been complied with; or
  - (c) as a result of changes made to an amendment under Part 3, the planning authority considers it appropriate that a permit be granted under this Division for any purpose for which the planning scheme as amended by the proposed amendment would require a permit to be obtained.
- (2) A planning authority may only make a determination under sub-section (1) if it has adopted the amendment or the part of the amendment to which the permit applies.
- (3) If an amendment or the part of the amendment to which the permit applies lapses under Part 3, the permit application also lapses.
- (4) If a planning authority determines to refuse to recommend to the Minister that a permit be

granted under this Division for which an application has been made, the planning authority must notify the applicant in writing of the determination and the reasons for the determination.

S. 96H  
inserted by  
No. 77/1996  
s. 14.

**96H. Recommendation by planning authority**

- (1) If the planning authority has determined under section 96G to recommend the granting of a permit, the planning authority must submit the recommendation and the proposed permit to the Minister at the same time as it submits the adopted amendment to which the permit applies.
- (2) The Minister may direct the planning authority to give more notice of the application for the permit if the Minister thinks that the notice which the planning authority gave was inadequate, even if the planning authority has complied with section 96C.
- (3) The planning authority must give the notice of the application required by the Minister and comply again with sections 21 to 26 and sections 96D to 96H (so far as applicable).
- (4) Sections 33 and 34 apply to a proposed permit submitted under this section as if it were an amendment.

S. 96I  
inserted by  
No. 77/1996  
s. 14.

**96I. Minister may grant permit on approval of amendment**

- (1) If a planning authority has recommended the grant of a permit under section 96H, the Minister may—
  - (a) grant the permit; or
  - (b) grant the permit subject to conditions the Minister thinks fit; or
  - (c) refuse to grant the permit on any ground the Minister thinks fit.

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- (1A) If the grant of a permit would authorise anything which would result in a breach of a registered restrictive covenant, the Minister must refuse to grant the permit unless—
- S. 96(1A)  
inserted by  
No. 100/2000  
s. 15.
- (a) the amendment to which the permit applies provides for the variation or removal of the covenant; or
  - (b) a permit has been issued, or a decision made to grant a permit, to allow the removal or variation of the covenant.
- (1B) If the grant of the permit would authorise anything which would result in a breach of a registered restrictive covenant, the permit must be granted subject to a condition that the permit is not to come into effect until the covenant is removed or varied.
- S. 96(1B)  
inserted by  
No. 100/2000  
s. 15.
- (2) In addition to sub-section (1), the Minister may grant a permit under this section subject to any conditions the Minister thinks fit, if the Minister considers that, as a result of changes made to an amendment under Part 3, it is appropriate that a permit be granted under this section for any purpose for which the planning scheme as amended by the proposed amendment would require a permit to be obtained.
  - (3) The permit must be granted at the same time as the approval of the amendment to which the permit applies.
  - (4) The permit must state that it operates from a day specified in the permit being a day on or after the day on which the amendment to which the permit applies comes into operation.
  - (5) Section 60(2), (4) and (5) apply to the consideration of a decision to grant a permit under this section as if any reference to the responsible authority were a reference to the Minister.



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- (6) Section 62(2) to (6) apply to a permit granted under this section by the Minister as if a reference to the responsible authority in section 62(2) (where first occurring), 62(4), 62(5) and 62(6) were a reference to the Minister.

S. 96J  
inserted by  
No. 77/1996  
s. 14.

**96J. Issue of permit**

- (1) If the Minister grants a permit under section 96I, the Minister must direct the responsible authority to issue the permit.
- (2) The responsible authority must issue the permit within 7 days after a direction is given under subsection (1).
- (3) The permit must be issued to—
  - (a) the applicant; or
  - (b) if there was no application for the permit under this Division, to the owner of the land.
- (4) The responsible authority must comply with a direction of the Minister under this section.

S. 96K  
inserted by  
No. 77/1996  
s. 14.

**96K. Notice of refusal**

- (1) The Minister may direct the responsible authority to give notice of the refusal of the permit to any person or body specified by the Minister.
- (2) The direction and the notice by the responsible authority must set out the specific grounds on which the permit is refused.
- (3) The responsible authority must comply with a direction of the Minister under this section.

S. 96L  
inserted by  
No. 77/1996  
s. 14.

**96L. Cancellation of permit**

If a permit is granted under this Division and the amendment to which the permit applies is revoked

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under section 38, the permit is deemed to be cancelled on that revocation.

**96M. Application of provisions**

S. 96M  
inserted by  
No. 77/1996  
s. 14.

- (1) Sections 68 to 76 apply to a permit granted under this Division.
- (2) Sections 81 and 85(1)(f) apply to a permit under this Division.
- (3) Except as provided in this Division, Divisions 1 and 2 do not apply to an application or permit under this Division.
- (4) Division 3 applies to a permit issued under this Division as if—

- (a) for section 87(1)(e) there were substituted—

S. 96M(4)(a)  
amended by  
No. 100/2000  
s. 14(5).

"(e) in the case of an application for a permit under section 96A, any failure to give notice in accordance with section 96C; or"; and

- (b) section 87(1)(f) were omitted.

- (5) If a permit is granted under this Division—

- (a) the notice under section 36(1) of approval of the amendment to which the permit applies must also specify the places at which any person may inspect the permit; and
- (b) the notice under section 38 of approval of the amendment to which the permit applies must specify that the permit has been granted.

**96N. Who is to be the responsible authority?**

S. 96N  
inserted by  
No. 77/1996  
s. 14.

Once a permit is granted under this Division, the responsible authority under the planning scheme

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becomes the responsible authority in respect of the permit.

Pt 4 Div. 5  
(Heading)  
repealed by  
No. 72/1998  
s. 8(a).

\* \* \* \* \*

S. 97  
amended by  
No. 31/1989  
s. 13(4),  
repealed by  
No. 67/1995  
s. 57(2),<sup>xxviii,</sup>  
xxix

\* \* \* \* \*

Pt 4 Div. 6  
(Heading and  
ss 97A–97M)  
inserted by  
No. 128/1993  
s. 22.

## **Division 6—Powers of Minister in relation to applications**

S. 97A  
inserted by  
No. 128/1993  
s. 22.

### **97A. Definition**

In this Division "**first responsible authority**" means the responsible authority which has referred an application to the Minister under section 97B or 97C.

S. 97B  
inserted by  
No. 128/1993  
s. 22.

### **97B. Call in power**

- (1) Before a responsible authority makes a decision in respect of an application for a permit in accordance with section 61, the Minister may direct the responsible authority to refer the application to the Minister if it appears to the Minister—
  - (a) that the application raises a major issue of policy and that the determination of the application may have a substantial effect on the achievement or development of planning objectives; or

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- (b) that the decision on the application has been unreasonably delayed to the disadvantage of the applicant; or
  - (c) that the use or development to which the application relates is also required to be considered by the Minister under another Act or regulation and that consideration would be facilitated by the referral of the application to the Minister.
- (2) The responsible authority must comply with the direction without delay and must not proceed further with the application.

S. 97B(1)(b)  
amended by  
No. 35/1995  
s. 6.

S. 97B(1)(c)  
inserted by  
No. 35/1995  
s. 6.

**97C. Request by responsible authority**

- (1) Before a responsible authority makes a decision in respect of an application for a permit in accordance with section 61, the responsible authority may request the Minister to decide the application.
- (2) If the Minister agrees to the request, the responsible authority must refer the application to the Minister and must not proceed further with the application.

S. 97C  
inserted by  
No. 128/1993  
s. 22.

**97D. Referral of applications to Minister**

- (1) The first responsible authority and its officers and employees must comply with any directions of the Minister with respect to—
  - (a) the provision to the Minister of any document relating to the application; and
  - (b) the provision to the Minister of assistance with respect to any steps to be taken under this Part with respect to the application.
- (2) Division 1 (except sections 59, 61, 63, 64, 65, 66 and 70) applies to any application referred to the Minister under this Division as if—

S. 97D  
inserted by  
No. 128/1993  
s. 22.

- (a) the Minister were the responsible authority; and
- (b) all steps taken under Division 1 by the first responsible authority had been taken by the Minister.

S. 97E  
inserted by  
No. 128/1993  
s. 22.

**97E. Panel**

- (1) Subject to sub-section (5), the Minister—
  - (a) must refer to a panel appointed under Part 8 any objections and submissions received in respect of an application within 2 weeks after the giving of the last notice required to be given under Division 1 in respect of the application; and
  - (b) may refer to a panel appointed under Part 8 any late objections and submissions.
- (2) The panel must consider the objections and submissions referred to it and give any person who made an objection or submission referred to it a reasonable opportunity to be heard.
- (3) The panel may give any other person affected a reasonable opportunity to be heard.
- (4) The panel must report its findings to the Minister setting out the panel's recommendations on the application.
- (5) The Minister is not required—
  - (a) to refer submissions to a panel if no objections have been received in respect of the application; or
  - (b) to refer objections or submissions to a panel if no notice of the application is required to be given under section 52(1) or the planning scheme and the decision on the application is exempt from sections 64(1), (2) and (3) and 82(1); or

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- (c) to consider the report of a panel if—
- (i) the Minister has not received the panel's report at the end of 3 months from the panel's appointment or 1 month from the date on which the panel completed its hearing, whichever is the earlier; and
  - (ii) the Minister considers that delay in considering whether to grant the permit may adversely affect the applicant.
- (6) The Minister may ask the applicant for the permit or the owner of the land to which the application relates to contribute an amount specified by the Minister to the costs of the panel.

S. 97E(6)  
inserted by  
No. 72/1998  
s. 6.

S. 97F  
inserted by  
No. 128/1993  
s. 22.

**97F. Decision of Minister**

- (1) After considering the report of the panel (if any), the planning scheme and any matters to be considered under section 60, the Minister may—
- (a) grant the permit; or
  - (b) grant the permit subject to conditions; or
  - (c) refuse to grant the permit on any ground he or she thinks fit.
- (2) Once the Minister has decided in favour of an application, the Minister must issue the permit to the applicant.

**97G. Notice of availability**

- (1) The Minister must give the applicant a notice in the prescribed form of his or her decision to refuse to grant a permit under this Division.
- (2) The notice under sub-section (1) must set out the specific grounds on which the application is refused and state whether the grounds were those of the Minister or the referral authority.

S. 97G  
inserted by  
No. 128/1993  
s. 22.

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- (3) The Minister must give the first responsible authority and each referral authority a copy of any permit which he or she decides to grant and a copy of a notice given under sub-section (1).
- (4) The Minister must give notice of the decision under section 97F to the persons who made objections or submissions in respect of the application.
- (5) A notice under sub-section (4) may be given by notice published in a newspaper circulating generally in the area to which the relevant planning scheme applies.
- (6) The Minister and the first responsible authority must make a copy of every permit issued under section 97F available at their respective offices for inspection by any person during office hours free of charge.

S. 97H  
inserted by  
No. 128/1993  
s. 22.

**97H. Effect of issue of permit**

Once a permit is issued under section 97F, the first responsible authority becomes the responsible authority for the administration and enforcement of this Act and the relevant planning scheme in respect of the permit (whether or not the permit is amended) except that the Minister remains the responsible authority in respect of—

- (a) any matters which the permit specifies to be done by, approved by or done to the satisfaction of the Minister; and
- (b) the approval of any amendment under section 62(3) in respect of the permit; and

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- (c) any extension of time under section 69 in relation to the permit; and
- (d) the correction of the permit under section 71(1); and
- (e) the amendment of the permit under sections 72 to 74; and
- (f) the amendment of the permit under section 97J.

**97I. Application for amendment of permit**

- (1) A person who is entitled to use or develop land in accordance with a permit issued under this Division may apply to the Minister for an amendment to the permit.
- (2) Sections 97D and 97E (with any necessary changes) apply to an application for an amendment to a permit as if it were an application for a permit referred to the Minister under section 97B or 97C.
- (3) Nothing in this Division prevents a person from applying under Division 1 for an amendment to a permit.

S. 97I  
inserted by  
No. 128/1993  
s. 22.

**97J. Decision on amendment**

After considering the report of a panel (if any), the planning scheme and any matters to be considered under section 60, the Minister may—

- (a) amend the permit; or
- (b) amend the permit subject to conditions; or
- (c) refuse to amend the permit on any ground he or she thinks fit.

S. 97J  
inserted by  
No. 128/1993  
s. 22.

**97K. Notice of decision**

- (1) The Minister must give notice—
  - (a) of the decision under section 97J to the

S. 97K  
inserted by  
No. 128/1993  
s. 22.



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applicant; and

- (b) of the correction of a permit under section 71 or the amendment of a permit under section 97J or section 73 to the first responsible authority; and
  - (c) of the amendment of a permit under section 97J to any person who made objections or submissions in respect of the amendment to the permit.
- (2) A notice under sub-section (1)(c) may be given by notice published in a newspaper circulating generally in the area to which the relevant planning scheme applies.

S. 97L  
inserted by  
No. 128/1993  
s. 22.

**97L. Register**

The first responsible authority must include in the register kept by that responsible authority under section 49 details of—

- (a) any decision made under section 97F of which the responsible authority is notified under section 97G; and
- (b) any correction or amendment of which the responsible authority is notified under section 97K.

S. 97M  
inserted by  
No. 128/1993  
s. 22.

**97M. Provisions of Act not to apply**

Divisions 2 and 3 of this Part and section 149A do not apply in relation to—

- (a) an application referred to the Minister under this Division; or
- (b) a permit issued under this Division; or
- (c) an amendment of a permit issued under this Division.

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s. 97N

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**PART 4A—CERTIFICATES OF COMPLIANCE**

Pt 4A  
(Heading and  
ss 97N–97R)  
inserted by  
No. 128/1993  
s. 23.

**97N. Application for certificate**

S. 97N  
inserted by  
No. 128/1993  
s. 23.

- (1) Any person may apply to the responsible authority for—
  - (a) a certificate stating that an existing use or development of land complies with the requirements of the planning scheme at the date of the certificate; or
  - (b) a certificate stating that a proposed use or development (or part of a use or development) of land would comply with the requirements of the planning scheme at the date of the certificate.
- (2) The application must be accompanied by the prescribed fee.

**97O. Certificate of compliance**

S. 97O  
inserted by  
No. 128/1993  
s. 23.

- (1) The responsible authority must consider the application and must—
  - (a) issue to the applicant a certificate of compliance in accordance with section 97N(1)(a) or (b); or
  - (b) refuse to issue the certificate on a ground set out in sub-section (4) or (5).
- (2) A certificate of compliance must be in the prescribed form and contain the prescribed information.

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 4A—Certificates of Compliance

s. 97P

Field Code Changed

- (3) The responsible authority may specify in a certificate referred to in section 97N(1)(b) any part of the use or development which would require a permit or is prohibited under the planning scheme at the date of the certificate.
- (4) The responsible authority must refuse to issue a certificate applied for under section 97N(1)(a) if the use or development or any part of the use or development would require a permit or is prohibited under the planning scheme.
- (5) The responsible authority must refuse to issue a certificate applied for under section 97N(1)(b) if the whole of the use or development would require a permit or is prohibited under the planning scheme.

S. 97P  
inserted by  
No. 128/1993  
s. 23.

**97P. Appeal against failure or refusal to issue certificate**

S. 97P(1)  
amended by  
No. 52/1998  
s. 191(13)(a)(i).

- (1) An applicant for a certificate may apply to the Tribunal for review of—
  - (a) a decision by the responsible authority to refuse to issue a certificate of compliance; or
  - (b) the failure of the responsible authority to issue the certificate within the prescribed time.

S. 97P(2)  
amended by  
No. 52/1998  
s. 191(13)  
(a)(ii).

- (2) After hearing an application, the Tribunal may—
  - (a) direct that a certificate must not be issued; or
  - (b) direct the responsible authority to issue the certificate.

S. 97P(3)  
amended by  
No. 52/1998  
s. 191(13)  
(a)(iii).

- (3) The responsible authority must comply with the directions of the Tribunal.

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 4A—Certificates of Compliance

Field Code Changed

s. 97Q

**97Q. Cancellation or amendment of certificate**

- (1) Any person may request the Tribunal to cancel or amend a certificate of compliance issued under this Part if the person believes that the person has been adversely affected by a material mis-statement or concealment of fact in relation to the application for the certificate or a material mistake in relation to the issue of the certificate.
- (2) The Tribunal must give the following persons the opportunity to be heard at the hearing of any request—
- (a) the responsible authority;
  - (b) the owner and occupier of the land concerned;
  - (c) the person who made the request;
  - (d) the Minister.
- (3) After hearing a request, the Tribunal may direct the responsible authority to cancel or amend the certificate and to take any action required in relation to the certificate, if it is satisfied that—
- (a) there has been a material mis-statement or concealment of fact in relation to the application for the certificate or a material mistake in relation to the issue of the certificate; and
  - (b) the person who made the request was substantially disadvantaged by the mis-statement, concealment or mistake; and
  - (c) it would be just and fair in the circumstances to do so.

S. 97Q  
inserted by  
No. 128/1993  
s. 23.

S. 97Q(1)  
amended by  
No. 52/1998  
s. 191(1).

S. 97Q(2)  
amended by  
No. 52/1998  
s. 191(1).

S. 97Q(3)  
amended by  
No. 52/1998  
s. 191(1).

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 4A—Certificates of Compliance

s. 97R

Field Code Changed

S. 97Q(4)  
amended by  
No. 52/1998  
s. 191(1).

- (4) The responsible authority must comply with the directions of the Tribunal.
- (5) Sections 88, 89(2) and (3), 92, 93 and 94 (with any necessary changes) apply to a request and direction under this section as if any reference in those sections to a permit were a reference to a certificate of compliance under this Part.

S. 97R  
inserted by  
No. 128/1993  
s. 23.

**97R. Register**

The responsible authority must include in the register kept under section 49 details of—

- (a) all applications for certificates under this Part; and
- (b) all decisions and determinations relating to those certificates.

## PART 5—COMPENSATION

### 98AA. Definitions

In this Part—

**"occupier"** does not include a committee of management;

**"owner"** does not include an owner within the meaning of paragraph (c) or (d) of the definition of "owner" in section 3.

S. 98AA  
inserted by  
No. 86/1989  
s. 17.

### 98. Right to compensation

- (1) The owner or occupier of any land may claim compensation from the planning authority for financial loss suffered as the natural, direct and reasonable consequence of—
  - (a) the land being reserved for a public purpose under a planning scheme; or
  - (b) the land being shown as reserved for a public purpose in a proposed amendment to a planning scheme of which notice has been published in the Government Gazette under section 19; or
  - (c) a declaration of the Minister under section 113 that the land is proposed to be reserved for a public purpose; or
  - (d) access to the land being restricted by the closure of a road by a planning scheme.
- (2) The owner or occupier of any land may claim compensation from a responsible authority for financial loss suffered as the natural, direct and reasonable consequence of a refusal by the responsible authority to grant a permit to use or develop the land on the ground that the land is or will be needed for a public purpose.

*Planning and Environment Act 1987*  
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Field Code Changed

- (3) A person cannot claim compensation under subsection (1) if—
- (a) the planning authority has purchased or compulsorily acquired the land or part of the land; or
  - (b) a condition on the permit provides that compensation is not payable.
- (4) The responsible authority must inform any person who asks it to do so of the person or body from whom the first-mentioned person may claim compensation under this Part.

**99. When does the right to compensation arise?**

A right to compensation and the liability of a planning authority or responsible authority to pay compensation arises—

- (a) under section 98(1)(a), (b) or (c) after—
- (i) the responsible authority has refused to grant a permit for the use or development of the land on the ground that it is or may be required for a public purpose; or
  - (ii) the Tribunal directs that a permit must not be granted on the ground that the land is or may be required for a public purpose; or
  - (iii) the responsible authority—
    - (A) fails to grant a permit within the period prescribed for the purposes of section 79; or

S. 99(a)(ii)  
amended by  
No. 52/1998  
s. 191(13)(b)(i).

S. 99(a)(iii)  
amended by  
No. 52/1998  
s. 191(13)(b)(i)  
(ii).

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*Act No. 45/1987*

Part 5—Compensation

Field Code Changed

s. 100

(B) grants a permit subject to any condition which is not acceptable to the applicant—

and the Tribunal disallows any application for review of the failure or condition on the ground that the land is or may be required for a public purpose; or

- (b) under section 98(1)(a), (b) or (c), on the sale of the land concerned under section 106; or
- (c) under section 98(1)(d), on the coming into operation of the relevant provision of the planning scheme; or
- (d) under section 98(2), on the refusal of the permit.

**100. Increased compensation for effect on residence**

- (1) The amount of compensation payable under section 98 in respect of a residence may be increased by an amount which is reasonable to compensate the claimant for any intangible and non-financial disadvantages arising from the circumstances which gave rise to the claim under section 98.
- (2) The amount paid under this section must not exceed 10% of the amount of compensation which would have been payable except for this section.
- (3) All relevant circumstances must be taken into account in assessing the amount payable under this section including—
  - (a) the interest of the claimant in the residence;
  - (b) the length of time during which the claimant has occupied the residence;
  - (c) the age of the claimant;



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- (d) the number, age and circumstances of any other people living with the claimant;
- (e) the amount of compensation payable arising from a sale of the residence compared with the value of the land at the date of the sale.

**101. Claim for expenses**

If compensation is payable under section 98, the owner or occupier of any land may also claim from the planning authority or responsible authority any legal, valuation or other expenses reasonably incurred in preparing and submitting the claim.

**102. What if compensation has been previously paid?**

In determining the compensation to be paid under this Part, regard must be had to any amount already paid or payable in respect of the land by way of compensation under—

- (a) this Part, or any corresponding previous enactment; and
- (b) any other Part of this Act or any other Act.

**103. Small claims**

A planning authority or responsible authority may reject a claim for compensation under this Part if the financial loss is less than the greater of—

- (a) \$500 or any greater amount prescribed by the regulations; or
- (b) 0.1% of the value that the land would have had if the land had not been affected by any circumstance set out in section 98(1) or (2) or 107.

**104. Maximum amount of compensation payable**

The compensation payable for financial loss under section 98 must not exceed the difference between—

- (a) the value of the land at the date on which the liability to pay compensation first arose; and
- (b) the value that the land would have had at the date if the land had not been affected by any circumstance set out in section 98(1) or (2) or 107.

**105. Land Acquisition and Compensation Act 1986 to apply**

Parts 10 and 11 and section 37 of the **Land Acquisition and Compensation Act 1986**, with any necessary changes, apply to the determination of compensation under this Part as if the claim were a claim under section 37 of that Act.

**106. Loss on sale**

- (1) The owner of land may claim compensation under section 98 after the sale of the land if—
  - (a) the owner of the land sold it at a lower price than the owner might reasonably have expected to get if the land or part of the land had not been reserved or proposed to be reserved; and
  - (b) before selling the land, the owner gave the planning authority not less than 60 days notice in writing of the owner's intention to sell the land.

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- (2) The owner is not required to give notice under sub-section (1)(b) if—
- (a) the owner and the planning authority have agreed that the owner does not have to give notice; or
  - (b) before or after the sale, the Minister exempts the owner from giving notice on the ground that the requirement to give notice would cause hardship to the owner.

**107. Compensation for removal or lapsing of reservation**

- (1) The owner of land may claim compensation from the planning authority for any financial loss suffered as the natural, direct and reasonable consequence of—
- (a) the amendment of a planning scheme to remove any reservation over the land; or
  - (b) the lapsing of an amendment which proposed to reserve the land for public purposes; or
  - (c) the cancellation of a declaration under section 113 affecting the land.
- (2) A claim for compensation under this section must be made within two years after the removal of the reservation or the cancellation of the declaration or the lapsing of the amendment.
- (3) The time within which a claim must be made may be extended—
- (a) by the Minister after consultation with the Minister administering the **Land Acquisition and Compensation Act 1986**; or
  - (b) by agreement between the claimant and the planning authority.

**108. Persons who are not eligible to claim compensation**

- (1) A person does not have a claim for compensation in respect of any land if that person was not the owner or occupier of the land at the time the right to claim compensation arose.
- (2) A person does not have a claim for compensation in respect of the sale of land which the person acquired after—
  - (a) notice is published in the Government Gazette under section 19 of a proposed planning scheme or amendment to a planning scheme which shows the land as being reserved for a public purpose; or
  - (b) the approval of a planning scheme or amendment reserving the land for public purposes; or
  - (c) a declaration under section 113 that the land is proposed to be reserved for public purposes—

unless a subsequent amendment to the planning scheme provides or proposes more stringent planning controls over the use or development of the land.

**109. When is compensation payable by other authorities?**

- (1) A Minister or public authority is liable to pay any compensation payable under this Part which arises from the reservation or proposed reservation of land for public purposes if the Minister or public authority had asked—
  - (a) the planning authority in writing to prepare a planning scheme or amendment to reserve the land for a public purpose; or
  - (b) the Minister in writing to declare the land to be proposed to be reserved for a public purpose.

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- (2) A referral authority is liable to pay compensation under this Part which arises from a refusal to grant a permit if the responsible authority refused to grant the permit because the referral authority objected.
- (3) The claimant must claim the compensation from the Minister, the public authority or the referral authority instead of the planning authority.
- (4) Despite anything to the contrary in any Act, a public authority may pay out of its funds any amount it is required to pay because of this section.
- (5) Any land which was reserved under the Melbourne Metropolitan Planning Scheme before the commencement of section 21(2) of the **Town and Country Planning (Transfer of Functions) Act 1985** for the purposes of the Melbourne and Metropolitan Board of Works (except planning purposes) is to be treated under this section as having been reserved at the request of the Melbourne and Metropolitan Board of Works.
- (6) The Governor in Council may determine any question arising under sub-section (5) as to whether any land had been reserved for planning purposes or for other purposes of the Board of Works.

**110. Compensation paid to be noted on title**

- (1) Any person who has paid compensation under this Act or a corresponding previous enactment to the owner or occupier of any land and who has not already done so under that enactment must lodge a statement with the Registrar of Titles without delay.

S. 110(1)  
substituted by  
No. 85/1998  
s. 24(Sch.  
item 45.2).

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- (2) The statement must in the prescribed manner—
- (a) describe the land for which the compensation was paid; and
  - (b) give the prescribed particulars of the compensation.
- (3) On receiving a statement, the Registrar of Titles must make any recordings in the Register which are necessary to bring the statement to the notice of anyone searching the Register.
- (4) At the request of any person who lodged a statement under sub-section (1) or a corresponding previous enactment, the Registrar of Titles must delete from the Register a recording made under sub-section (3).

S. 110(3) amended by No. 18/1989 s. 13(Sch. 2 item 63(b)), substituted by No. 85/1998 s. 24(Sch. item 45.3).

S. 110(4) substituted by Nos 18/1989 s. 13(Sch. 2 item 63(c)), 85/1998 s. 24(Sch. item 45.3).

**111. Recovery of compensation previously paid**

- (1) Any person who has paid compensation under this Part in respect of land as a result of a reservation or proposed reservation may recover the amount of compensation which is set out in a statement lodged under section 110(1) in respect of the land from the present owner of the land if—
- (a) the planning scheme is amended to remove the reservation; or
  - (b) the amendment which proposed to reserve the land lapses; or
  - (c) the declaration under section 113 is cancelled.

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*Act No. 45/1987*

Part 5—Compensation

s. 112

Field Code Changed

- 
- (2) The owner must pay the amount—
- (a) on getting a demand in writing; or
  - (b) within any further period—
    - (i) agreed with the person entitled to demand payment; or
    - (ii) which the Minister allows under subsection (3).
- (3) The Minister administering the **Land Acquisition and Compensation Act 1986** may allow the amount owing to be paid—
- (a) by a day later than the demand; or
  - (b) on the sale or transfer of the land—
- if the Minister thinks that it would cause hardship to the owner to pay the amount on demand.
- (4) Any compensation which is repayable to any person under this section is a charge on the land.

**112. Reimbursement of compensation paid**

- (1) If—
- (a) any person has lodged a statement under section 110(1); and
  - (b) another person acquires the land or part of the land in respect of which the statement was lodged—
- the second person must pay to the first person an amount equal to—
- (c) the compensation set out in the statement; or
  - (d) if only part of the land is acquired, the proportion of the compensation which is attributable to that part.

*Planning and Environment Act 1987*  
*Act No. 45/1987*

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s. 113

- (2) Despite anything to the contrary in any Act, a public authority or municipal council may pay out of its funds any amount which it is required to pay under this section.

**113. Declaration of proposed reservation**

The Minister administering the **Land Acquisition and Compensation Act 1986** may declare land to be proposed to be reserved for public purposes if the Minister—

- (a) is satisfied that the value of the land may be substantially affected by a proposal to reserve or which could lead to the reservation of land for public purposes; and
- (b) considers that it is appropriate that the land should be so declared.
-



**PART 6—ENFORCEMENT AND LEGAL PROCEEDINGS**

**Division 1—Enforcement Orders**

**114. Application for enforcement order**

S. 114(1)  
amended by  
Nos 5/1988  
s. 5(a),  
62/1991  
s. 35(1),  
52/1998  
s. 188(1)(a).

- (1) A responsible authority or any person may apply to the Tribunal for an enforcement order against any person specified in sub-section (3) if a use or development of land contravenes or has contravened, or, unless prevented by the enforcement order, will contravene this Act, a planning scheme, a condition of a permit or an agreement under section 173.

\* \* \* \* \*

S. 114(2)  
repealed by  
No. 52/1998  
s. 188(1)(b).

- (3) An enforcement order may be made against one or more of the following persons—
- (a) the owner of the land;
  - (b) the occupier of the land;
  - (c) any other person who has an interest in the land;
  - (d) any other person by whom or on whose behalf the use or development was, is being, or is to be carried out.

\* \* \* \* \*

S. 114(4)  
inserted by  
No. 62/1991  
s. 35(2),  
repealed by  
No. 52/1998  
s. 188(1)(b).

*Planning and Environment Act 1987*  
*Act No. 45/1987*

Part 6—Enforcement and Legal Proceedings

Field Code Changed

s. 115

**115. Notice of application**

The following persons are entitled to notice of an application for an enforcement order—

- (a) the responsible authority if it is not the applicant;
- (b) any person against whom the enforcement order is sought;
- (c) the owner of the land;
- (d) the occupier of the land;
- (e) any other person whom the Tribunal considers may be adversely affected by the enforcement order.

S. 115(1) substituted by No. 52/1998 s. 188(2).

\* \* \* \* \*

S. 115(2) amended by No. 86/1989 s. 25(m), repealed by No. 52/1998 s. 188(3).

\* \* \* \* \*

S. 115(3) amended by No. 62/1991 ss 25(3), 35(3), repealed by No. 52/1998 s. 188(3).

\* \* \* \* \*

S. 115(4) inserted by No. 62/1991 s. 35(4), repealed by No. 52/1998 s. 188(3).

\* \* \* \* \*

S. 115(5) inserted by No. 62/1991 s. 35(4), repealed by No. 52/1998 s. 188(3).

S. 116  
amended by  
No. 52/1998  
s. 188(4)(a).

**116. Determination of Tribunal where no objections**

If the Tribunal receives no objections to an application within the period specified in the notice, the Tribunal may—

- (a) make any enforcement order it thinks fit in accordance with section 119 in respect of the land; or
- (b) reject the application.

**117. Determination of Tribunal where objections are received**

S. 117(1)  
amended by  
No. 52/1998  
s. 188(4)(a).

- (1) If the Tribunal receives an objection to the application within the period specified in the notice, the Tribunal must give the following persons a reasonable opportunity to be heard or to make written submissions in respect of the application—
  - (a) the responsible authority;
  - (b) any person against whom the enforcement order is sought;
  - (c) the owner of the land;
  - (d) the occupier of the land;
  - (e) the applicant for the enforcement order;
  - (f) any other person whom it considers may be adversely affected by the enforcement order;
  - (g) any person whom it considers has been or may be adversely affected by the contravention.
- (2) After hearing any person under sub-section (1) and considering any written submissions made under that sub-section, the Tribunal may—

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s. 119

- (a) make any enforcement order it thinks fit in accordance with section 119 in respect of the land; or
- (b) reject the application.

\* \* \* \* \*

S. 118 amended by No. 62/1991 s. 35(5), repealed by No. 52/1998 s. 188(4)(b).

**119. What can an enforcement order provide for?**

S. 119 amended by No. 52/1998 s. 188(4)(c).

An enforcement order made by the Tribunal—

- (a) must specify—
  - (i) the use or development which contravenes or has contravened or will contravene this Act or the planning scheme, permit condition or agreement; and
  - (ii) any other prescribed information; and
- (b) may direct any person against whom it is made to do any one or more of the following—
  - (i) to stop the use or development within a specified period;
  - (ii) not to start the use or development; or
  - (iii) to maintain a building in accordance with the order; or
  - (iv) to do specified things within a specified period—
    - (A) to restore the land as nearly as practicable to its condition immediately before the use or development started or to any condition specified in the order

S. 119(a)(i) amended by No. 62/1991 s. 35(6).

S. 119(b) amended by No. 86/1989 s. 25(n).

S. 119(b)(iv)(A) amended by Nos 62/1991 s. 35(7)(a)(b), 128/1993 s. 24.

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or to any other condition to the satisfaction of the responsible authority, a Minister, public authority, municipal council, referral authority or other person or body specified in the Order; or

- (B) to otherwise ensure compliance with this Act, or the planning scheme, permit condition or agreement under section 173.

**120. Interim enforcement orders**

S. 120(1)  
amended by  
No. 52/1998  
s. 191(1).

- (1) Any responsible authority or person who has applied under section 114 for an enforcement order may apply to the Tribunal in an urgent case for an interim enforcement order against any person or persons in relation to whom the application under section 114 was made.
- (2) The Tribunal may consider an application under this section without notice to any person.
- (3) Before making an interim enforcement order, the Tribunal must consider—
  - (a) what the effect of not making the interim enforcement order would be; and
  - (b) whether the applicant should give any undertaking as to damages; and
  - (c) whether it should hear any other person before the interim enforcement order is made.
- (4) After complying with sub-section (3), the Tribunal may make an interim enforcement order directing any person against whom the order is made—
  - (a) to stop the use or development immediately or within the period specified in the order; or
  - (b) not to start the use or development; or

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Field Code Changed

(c) to do specified things to ensure compliance with this Act or a planning scheme, permit condition or agreement under section 173.

\* \* \* \* \*

S. 120(5)  
repealed by  
No. 52/1998  
s. 188(4)(d).

(6) An interim enforcement order does not have any operation after the earlier of—

(a) the date or the happening of an event specified in the order; or

(b) the determination of the application under section 114.

\* \* \* \* \*

S. 120(7)(8)  
repealed by  
No. 52/1998  
s. 188(4)(d).

(9) If an application for an interim enforcement order was made without notice to any person, the Tribunal must give any person affected by the interim enforcement order a reasonable opportunity to be heard by it with respect to the interim enforcement order within seven days after making the order.

(10) After hearing any person under sub-section (9) the Tribunal may continue, amend, or cancel the interim enforcement order.

\* \* \* \* \*

S. 120(11)  
repealed by  
No. 86/1989  
s. 7(2).

**121. Cancellation of enforcement order or interim enforcement order**

The Tribunal may cancel or amend any enforcement order or interim enforcement order.

S. 121  
amended by  
Nos 62/1991  
s. 35(8),  
52/1998  
s. 191(1).

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**122. Offences**

S. 122(1)–(3)  
repealed by  
No. 52/1998  
s. 188(4)(e).

\*            \*            \*            \*            \*

S. 122(4)  
amended by  
No. 52/1998  
s. 188(4)(f),  
repealed by  
No. 28/2000  
s. 9.

\*            \*            \*            \*            \*

- (5) In any proceedings for a contravention of an enforcement order or interim enforcement order, it is not relevant whether or not the use or development affected by the order contravened or may have contravened this Act, a planning scheme, a permit condition or an agreement under section 173.

**123. Responsible authority may carry out work**

S. 123(1)  
amended by  
No. 52/1998  
s. 191(1).

- (1) The responsible authority, or, with the consent of the Tribunal, any other person may—
- (a) carry out any work which an enforcement order or interim enforcement order required to be carried out and which was not carried out within the period specified in the order; and
  - (b) recover the costs of the work from the person in default in any court of competent jurisdiction as a debt.

S. 123(2)  
amended by  
No. 86/1989  
s. 25(o)(i)(ii).

- (2) The responsible authority or other person carrying out any work under sub-section (1) may sell any building, equipment or other materials salvaged in carrying out that work if the authority or person is satisfied that the building equipment or materials is or are the property of the land owner or the person against whom the order is made and apply

the proceeds of the sale toward payment of the expenses incurred in carrying out the work.

- (3) Sub-section (2) does not authorise the sale of Crown property including Crown land.

S. 123(3)  
inserted by  
No. 86/1989  
s. 4(2)(f).

#### **124. Orders to bind future owners and occupiers**

Any enforcement order or interim enforcement order served on an owner or occupier of land is binding on every subsequent owner or occupier to the same extent as if the order had been served on that subsequent owner or occupier.

#### **125. Injunctions**

Whether or not proceedings are instituted for an offence against this Act, a responsible authority or any other person may apply to any court of competent jurisdiction for an injunction restraining any person from contravening an enforcement order or interim enforcement order.

#### **Division 2—Offences and Penalties**

#### **126. Offence to contravene scheme, permit or agreement**

- (1) Any person who uses or develops land in contravention of or fails to comply with a planning scheme, or a permit, or an agreement under section 173 is guilty of an offence.
- (2) The owner of any land is guilty of an offence if—
- (a) the land is used or developed in contravention of a planning scheme, a permit or an agreement under section 173; or
  - (b) there is any failure to comply with any planning scheme, permit or agreement under section 173 applying to the land.



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Field Code Changed

s. 127

S. 126(3)  
amended by  
No. 86/1989  
s. 4(2)(g).

- (3) The occupier of any land, is guilty of an offence if—
- (a) the land is used or developed in contravention of a planning scheme, a permit or an agreement under section 173; or
  - (b) there is any failure to comply with any planning scheme, permit or agreement under section 173 applying to the land.

S. 126(3)(b)  
amended by  
No. 86/1989  
s. 25(p).

S. 126(4)  
inserted by  
No. 86/1989  
s. 4(2)(h).

- (4) This section does not apply to the owner of Crown land.

### 127. General penalties

Any person who is guilty of an offence against this Act for which a penalty is not expressly provided is liable to—

S. 127(a)  
substituted by  
No. 28/2000  
s. 10(1).

- (a) a penalty of not more than 1200 penalty units; and

S. 127(b)  
amended by  
No. 28/2000  
s. 10(2).

- (b) if the contravention or failure is of a continuing nature, a further penalty of not more than 60 penalty units for each day during which the contravention or failure continues after conviction.

### 128. Offences by corporations

- (1) If a person charged with an offence against this Act is a body corporate, any person who is concerned or takes part in the management of that body corporate may be charged with the same offence.
- (2) If a body corporate is convicted of an offence against this Act, a person charged under this section with the same offence may also be convicted of the offence and is liable to the penalty for that offence unless that person proves

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that the act or omission constituting the offence took place without that person's knowledge or consent.

**129. Penalties to be paid to prosecuting authority**

If an offence against this Act has been prosecuted by a responsible authority, all penalties recovered in relation to the offence must be paid to it.

**130. Planning infringements**

- |  |   |
|--|---|
| (1) An authorised officer of a responsible authority may serve a planning infringement notice on any person, if the authorised officer has reason to believe that the person has committed an offence against section 126 in an area for which the authority is responsible.     | S. 130(1)<br>amended by<br>No. 86/1989<br>s. 18(1).   |
| (2) A planning infringement notice must state that an offence against section 126 has been committed and must state the prescribed penalty for that offence and the additional steps (if any) required to expiate the offence and must contain any other prescribed particulars. | S. 130(2)<br>amended by<br>No. 86/1989<br>s. 18(2)(a)(b).   |
| (3) The penalty for the purposes of this section for an offence against section 126 is—<br><br>(a) in the case of a natural person, 5 penalty units; and<br><br>(b) in the case of a body corporate, 10 penalty units.   | S. 130(3)<br>amended by<br>No. 86/1989<br>s. 18(3),<br>substituted by<br>No. 28/2000<br>s. 10(3). |
| (4) Additional steps required to expiate an offence may include, but are not limited to, the following—<br><br>(a) stopping the development or use of land that constituted the offence;<br><br>(b) modifying the development or use of land that constituted the offence;       | S. 130(4)<br>amended by<br>No. 86/1989<br>s. 18(4).   |

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- (c) removing the development that constituted the offence;
- (d) acting to prevent or minimise any adverse impact of the development or use of land that constituted the offence;
- (e) entering into an agreement under section 173;
- (f) doing or omitting to do anything in order to remedy a contravention of a planning scheme, permit or agreement under section 173.

S. 130(5)  
inserted by  
No. 86/1989  
s. 18(4).

- (5) If a planning infringement notice requires additional steps to be taken to expiate an offence and, before the end of the remedy period set out in the notice or, if the responsible authority allows, at any time before the service of a summons in respect of the offence, the person served with the notice informs the responsible authority that those steps have been taken, an authorised officer of the authority must, without delay, find out whether or not those steps have been taken, and serve on the person a notice stating whether or not those steps have been taken.

S. 130(6)  
inserted by  
No. 86/1989  
s. 18(4).

- (6) A statement in a notice under sub-section (5) that additional steps have been taken is for all purposes conclusive proof of that fact.

**131. Withdrawal of planning infringement notice**

- (1) The responsible authority may withdraw a planning infringement notice at any time within 28 days after the notice is served by serving a withdrawal notice on the alleged offender.
- (2) Subject to sub-section (2A) a planning infringement notice may be withdrawn even if the appropriate penalty has been paid.

S. 131(2)  
amended by  
No. 86/1989  
s. 18(5).

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- (2A) If a planning infringement notice states that additional steps must be taken to expiate an offence and—
- (a) the appropriate penalty has been paid; and
  - (b) those steps have been taken—
- the planning infringement notice cannot be withdrawn.
- (3) Once a notice of withdrawal is served, the responsible authority must refund the amount of any penalty paid on a planning infringement notice before it is withdrawn.

S. 131(2A)  
inserted by  
No. 86/1989  
s. 18(6).

**132. Payment of penalty**

- (1) If—
- (a) a planning infringement notice states that a penalty must be paid and the amount of the penalty is paid at the appropriate place before the end of the period for payment set out in the notice or, if the responsible authority allows, at any time before the service of a summons in respect of the offence; or
  - (b) a planning infringement notice states that a penalty must be paid and that additional steps must be taken to expiate an offence and—
    - (i) the amount of the penalty is paid at the appropriate place before the end of the period for payment set out in the notice or, if the responsible authority allows, at any time before the service of a summons in respect of the offence; and
    - (ii) those additional steps have been taken before the end of the remedy period set out in the notice or, if the responsible authority allows, at any time before the

S. 132(1)  
substituted by  
No. 86/1989  
s. 18(7).

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service of a summons in respect of the offence—

the offender has expiated the offence, no further proceedings may be taken in respect of the offence, and no conviction for the offence may be regarded as having been recorded.

S. 132(2)  
amended by  
No. 57/1989  
s. 3(Sch.  
item 153(a)).

- (2) Every penalty paid pursuant to this section must be applied in the same manner as if the offender had been convicted of the offence in the Magistrates Court on a charge filed by the authorised officer who served the planning infringement notice.
- (3) Payment of any penalty under this section may be made in accordance with the regulations.
- (4) Nothing in this section prejudices the institution or the prosecution of proceedings for an offence for which a planning infringement notice has been served—
  - (a) if the notice states that a penalty must be paid, and the amount of the penalty is not paid before the end of the period for payment shown on the notice or of any further period allowed by the responsible authority; or
  - (b) if the notice states that a penalty must be paid and additional steps must be taken to expiate the offence, and—
    - (i) the amount of the penalty is not paid before the end of the period for payment shown in the notice or of any further period allowed by the responsible authority; or

S. 132(4)  
substituted by  
No. 86/1989  
s. 18(8).

- (ii) the person served with the notice does not, before the end of the remedy period shown in the notice or of any further period allowed by the responsible authority, take those additional steps.
- (5) In any proceedings for an offence, if the court is satisfied that a planning infringement notice was served in respect of the offence, the conviction imposed by the court must not be taken to be a conviction for any purpose except in relation to—
  - (a) the making of the conviction itself; and
  - (b) subsequent proceedings which may be taken in respect of the conviction itself, including proceedings by way of appeal.

S. 132(5)(b)  
amended by  
No. 57/1989  
s. 3(Sch.  
item 153(b)).

### **Division 3—Powers of Entry**

#### **133. Powers of entry**

The following persons are authorised to enter any land at any reasonable time to carry out and enforce this Act, the regulations, a planning scheme, a permit condition, an enforcement order or an agreement under section 173 or, if the person has a reasonable suspicion, to find out whether any of them has been or is being contravened—

- (a) any authorised officer of the Department;
- (b) any authorised officer of the responsible authority;
- (c) any other person whom the Minister authorises to assist an authorised officer of the Ministry or authority.

S. 133(a)  
amended by  
No. 35/1995  
s. 11(1)(c).

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S. 134  
substituted by  
No. 86/1989  
s. 19(1).

**134. What must be done before entry?**

- (1) Before entering any land an authorised person must—
  - (a) get the consent of the occupier; or
  - (b) give two clear days' notice to any occupier; or
  - (c) obtain a warrant in accordance with this section.
- (2) An authorised person may apply to the Magistrates' Court for a warrant to enter land.
- (3) The warrant is to be directed to an authorised person named in the warrant and authorises that person to enter the land named or described in the warrant without notice to the occupier, and to do the things authorised to be done by sections 133 and 135.
- (4) The provisions of the **Magistrates' Court Act 1989** relating to application for, and issue and execution of, search warrants apply with any necessary modifications to warrants under this section.

**135. Powers of authorised persons who enter land**

On entering any land, an authorised person may take any action that is necessary to find out if any person has contravened the Act, the regulations, a planning scheme, a permit condition, an enforcement order or an agreement under section 173 including—

- (a) taking photographs or measurements; and
- (b) making sketches or recordings; and
- (c) taking and removing samples.

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**136. Police to assist authorised persons**

All members of the police force are required to assist an authorised officer of a responsible authority, at the request of that authorised officer in the execution of his or her powers under section 133 to enter any land.

S. 136  
amended by  
No. 46/1998  
s. 7(Sch. 1).

**137. Offence to obstruct**

Any person who without lawful excuse obstructs an authorised person or a member of the police force in taking any action which is authorised under this Division is guilty of an offence.

Penalty: 60 penalty units.

S. 137  
amended by  
No. 28/2000  
s. 10(4).

**138. No legal proceedings against authorised persons**

A person is not entitled to bring an action against an authorised person or a member of the police force or the Crown or the employer of an authorised person in respect of any entry on land or other action done or in good faith purportedly done in the course of an investigation or the performance of any other duty under this Division.

**Division 4—Evidence and Notices**

**139. Evidence of ownership**

- (1) In any proceedings under this Act in addition to any other method of proof available—
  - (a) evidence that the person proceeded against is rated in respect of any land to any general rate for the municipal district in which the land is situated; or
  - (b) evidence by a certificate as to any recording in the Register or by a certified reproduction of a registered instrument given under section 114(2) of the **Transfer**

S. 139(1)(b)  
amended by  
No. 18/1989  
s. 13(Sch. 2  
item 63(d)).



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**of Land Act 1958** that any person is the registered proprietor of an estate in fee-simple or of a leasehold estate held of the Crown in any land; or

- (c) evidence by the certificate of the Registrar-General or a Deputy Registrar-General authenticated by the seal of the Registrar-General that any person appears from the memorial of any deed, conveyance or instrument to be the last registered owner of any land—

is evidence that the person is the owner or the occupier (as the case may be) of the land.

- (2) The Registrar-General must provide a certificate under sub-section (1)(c) upon the written application of an authorised officer of the responsible authority who must certify that it is required for legal proceedings under this Act.

**140. Proof of existence and contents of planning scheme**

S. 140(1)  
amended by  
No. 35/1995  
s. 11(1)(d).

- (1) In any proceedings under this Act or in which the existence of a planning scheme or part of a planning scheme at a specified date is in question, the production of a copy of the planning scheme or the relevant part of it kept by the Minister or a responsible authority under section 42 which appears to be certified by or on behalf of the Secretary to the Department or the secretary of the responsible authority (as the case requires) to be a true copy of the planning scheme or part in force at that date is evidence of the existence and contents of the planning scheme or of the relevant part at that date.

S. 140(2)  
amended by  
No. 43/2003  
s. 5(c).

- (2) In any proceedings under this Act or in which the existence of an approved amendment to a planning scheme is in question, the production of—

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- (a) the Government Gazette containing notice of the approval, or the ratification under Part 3AA, of the amendment; and
- (b) a copy of the amendment appearing to be certified by or on behalf of the Minister, the planning authority, the responsible authority or the municipal council with whom the amendment is lodged under section 40, to be a true copy of the amendment as approved or as approved and ratified (as the case may be)—

S. 140(2)(a)  
amended by  
No. 43/2003  
s. 5(a).

S. 140(2)(b)  
amended by  
Nos 128/1993  
s. 25, 43/2003  
s. 5(b).

is evidence of the valid making and publication of the amendment and of the contents of the amendment.

- (3) In any proceedings under this Act, the production of any instrument, document, map or plan—
  - (a) appearing to be an instrument, document, map or plan made or issued in connection with a planning scheme or an amendment to a planning scheme or a true copy of one of those things; and
  - (b) appearing to be certified as such by the secretary of the responsible authority—

is evidence until the contrary is proved of the proper making, existence and approval of the instrument, document, map or plan and of all preliminary steps necessary to give full effect to it and of its contents.

**141. Evidence of planning scheme provisions and permits**

- (1) In any proceedings under this Act a statement in writing appearing to be signed by the secretary of a responsible authority to the effect that at a specified date—

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- (a) the land described in the statement or any specified part of the land was in an area in which land was to be used for specified purposes under a specified planning scheme; or
  - (b) under a specified planning scheme any specified use or development of land in that area was prohibited or was a use or development for which a permit was required; or
  - (c) no permit was in force in respect of the use or development described in the statement; or
  - (d) a permit or permits identified in the statement were in force in respect of the use or development described in the statement—
- is evidence of the matters stated.
- (2) In any proceedings under this Act, the production of a document which appears to be—
- (a) a copy of a permit issued by a responsible authority; and
  - (b) certified by the secretary of the responsible authority to be a true copy—
- is to be accepted as a true copy of the permit until the contrary is proved.

**142. Evidence of agreements under section 173**

- (1) In any proceedings under this Act a statement in writing appearing to be signed by the secretary of the responsible authority to the effect that at a specified date an agreement or agreements entered into by a responsible authority under section 173 and identified in the statement were in operation in respect of the land described in the statement is evidence of the matters stated.

- (2) In any proceedings, the production of a document purporting to be a true copy of an agreement entered into by the responsible authority under section 173 and appearing to be certified by the secretary of the authority to be a true copy of the agreement is to be treated as a true copy until the contrary is proved.

**143. Constitution and procedure of planning authority or responsible authority**

Until evidence is given to the contrary, no proof is required in any proceedings under this Act—

- (a) of the proper constitution of a planning authority or responsible authority or of its membership; or
- (b) that a planning authority is the relevant planning authority for the purposes of this Act; or
- (c) that a responsible authority is the relevant responsible authority for the purposes of this Act; or
- (d) of any order or direction to prosecute or of the particular or general appointment of an officer of a responsible authority to take proceedings against any person; or
- (e) of the power of any officer of a responsible authority to prosecute; or
- (f) of the appointment of the chairperson or deputy chairperson or any officer of a planning authority or responsible authority; or
- (g) of the presence of a quorum at any meeting at which any order or direction is made or given or any act or matter is done or dealt with by a planning authority or responsible authority.

**144. Evidence of minutes**

In any proceedings under this Act—

- (a) any minutes appearing to be—
  - (i) minutes of the proceedings of any meeting of the planning authority or responsible authority; and
  - (ii) signed by the chairperson of the authority or the chairperson of a meeting of the authority either at the meeting at which the proceedings took place or at the next meeting; or
- (b) a copy of or an extract from the minutes appearing to be certified to be a true copy by a person appearing to be the secretary of the authority—

is evidence—

- (c) as to the meeting to which they refer having been duly convened or held; or
- (d) of the persons attending the meeting having been members of the authority; or
- (e) of the signature of the secretary or the chairperson or of the fact of his or her having been the secretary or chairperson.

**145. Notices and service of orders**

- (1) Unless this Act or the regulations authorise or require a notice or order to be given in any other way, every notice or order which this Act authorises or requires a planning authority or responsible authority to give to or serve on the owner or the occupier of any land must be addressed to the owner or to the occupier of the land and—

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- (aa) in the case of a Minister, public authority or committee of management—
- (i) may be given to a person authorised by that Minister, public authority or committee to accept service of documents on his, her or its behalf; or
  - (ii) may be left at the principal office of the Minister, public authority or committee; or
- (a) if the residence of the owner or occupier is known to the authority, may be given to or served on the owner or occupier or left with an adult person apparently living there; or
- (b) if the owner's residence is not known to the authority—
- (i) may be served on the occupier of the land or left with an adult person apparently living there; or
  - (ii) if there is no occupier, may be put up on a conspicuous part of the land; or
- (c) if the occupier's residence is not known to the authority, may be put up on a conspicuous part of the land.
- (2) Unless this Act or the regulations authorise or require a notice or order to be given in any other way, a notice or order may also be served by post by prepaid letter addressed to the owner or occupier, and in proving service it is sufficient to prove that the notice or order was addressed to the usual or last-known place of residence or of business of the owner or occupier and was put into the post.

S. 145(1)(aa)  
inserted by  
No. 86/1989  
s. 4(2)(f).

- (3) A notice or order under this Act may be addressed by the description of "the owner" or "the occupier" of the land (naming it) in respect of which the notice is given, without further name or description.

#### **146. Copies of schemes and amendments**

If a person is required to give, serve, lodge or make available a copy of a planning scheme or an amendment to a planning scheme, it is sufficient if the person gives, serves, lodges or makes available a document which reproduces in substance the provisions of the scheme or amendment if—

- (a) the document contains all the information contained in the scheme or amendment; and
- (b) the form of the document is certified by the Secretary to the Department or, if the Minister directs, by the planning authority.

S. 146(b)  
amended by  
No. 35/1995  
s. 11(1)(e).

#### **147. General provisions**

- (1) If this Act requires a person to give, serve or publish any notice or document—
- (a) the person may cause that notice or document to be given, served or published; and
  - (b) the person is not required to give or serve the notice or document to or on himself, herself or itself; and
  - (c) the person may serve the document personally, by post, or in any other prescribed way.
- (2) If this Act requires the Minister to keep any document at the Minister's office, the document may be kept at any office or offices of the Department that the Minister specifies.

S. 147(1)(b)  
amended by  
No. 86/1989  
s. 25(q).

S. 147(1)(c)  
inserted by  
No. 86/1989  
s. 25(q).

S. 147(2)  
amended by  
No. 35/1995  
s. 11(1)(f).

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(3) If a Minister is the planning authority or the responsible authority under this Act any reference in this Act to—

(a) the chairperson of the planning authority or responsible authority is a reference to the Minister; and

(b) a member or officer of the planning authority or responsible authority is a reference to—

(i) the Department Head of the Minister's department; or

S. 147(3)(b)(i) amended by Nos 35/1995 s. 11(1)(g).

(ii) any employee of the Minister's department.

S. 147(3)(b)(ii) amended by Nos 35/1995 s. 11(1)(h), 46/1998 s. 7(Sch. 1).

(4) Any reference in this Act to an authorised officer of a responsible authority or of the Department is a reference to an officer or employee of the authority or employee of the Department whom the authority or the Secretary to the Department (as the case requires) authorises in writing generally or in a particular case to carry out the duty or function or to exercise the power in connection with which the expression is used.

S. 147(4) amended by Nos 35/1995 s. 11(1)(i) (i)–(iii), 46/1998 s. 7(Sch. 1).

**Division 5—Applications to Tribunal.**

Pt 6 Div. 5 (Heading) substituted by No. 52/1998 s. 189.

**148. Definitions**

In this Division—

"specified body" means—

(a) a Minister; or

(b) the responsible authority; or

S. 148 amended by Nos 86/1989 s. 12(a)–(c), 62/1991 s. 36(1)(a) (b)(2), substituted by No. 52/1998 s. 190.



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- (c) a public authority; or
- (d) a municipal council; or
- (e) a referral authority;

**"specified person"** means in relation to a matter—

- (a) the owner, user or developer of the land directly affected by the matter; or
- (b) a specified body; or
- (c) if the matter affects Crown land, the occupier of the Crown land.

S. 149  
substituted by  
No. 52/1998  
s. 190.

**149. Application for review**

- (1) A specified person may apply to the Tribunal for the review of—
  - (a) a decision of a specified body in relation to a matter if a planning scheme specifies or a permit contains a condition that the matter must be done to the satisfaction, or must not be done without the consent or approval, of the specified body; or
  - (b) a decision of a specified body in relation to a matter if an agreement under section 173 provides that the matter must be done to the satisfaction, or must not be done without the consent, of the specified body and makes no provision for settling disputes in relation to the matter; or
  - (c) a decision of a specified body or of a person or body specified in an enforcement order in relation to a matter if the order requires that the matter must be done to the satisfaction of that person or body; or

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- (d) if there is no prescribed time for a decision of a kind referred to in paragraph (a), (b) or (c), a failure of a person or body to make that decision within a reasonable time after the matter is referred to it.
- (2) An application for review of a decision referred to in sub-section (1)(a), (b) or (c) must be made within 28 days after the day on which the decision is made.
- (3) The responsible authority is a party to any proceedings under this section.

**149A. Application by specified person for declaration**

- (1) A specified person may apply to the Tribunal for the determination of a matter if—
  - (a) the matter relates to the interpretation of the planning scheme or a permit in relation to land or a particular use or development of land;
  - (b) the matter relates to whether section 6(3) applies to a particular use or development of land; or
  - (c) the matter relates to a provision of a planning scheme or amendment permitting the continuation of a use lawfully existing before the coming into operation of the planning scheme or amendment, or permitting the use of buildings or works for a purpose for which they were lawfully erected or carried out before the coming into operation of the planning scheme or amendment.
- (2) The Tribunal may determine the matter and may do one or both of the following—
  - (a) make any declaration that it considers appropriate;

S. 149A  
inserted by  
No. 86/1989  
s. 20(1),  
amended by  
Nos 62/1991  
s. 36(3)(4),  
128/1993 s. 24,  
35/1995 s. 7,  
substituted by  
No. 52/1998  
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- (b) direct a specified body to take, or refrain from taking, action specified by the Tribunal.
- (3) The responsible authority is a party to any proceedings under this section.
- (4) The Tribunal's power under this section is exercisable only by a presidential member of the Tribunal or a member of the Tribunal who is a legal practitioner.

S. 149B  
inserted by  
No. 52/1998  
s. 190.

**149B. General application for declaration**

- (1) A person may apply to the Tribunal for a declaration concerning—
  - (a) any matter which may be the subject of an application to the Tribunal under this Act; or
  - (b) anything done by a responsible authority under this Act.
- (2) On an application under sub-section (1), the Tribunal may make any declaration it thinks appropriate in the circumstances.
- (3) The Tribunal's power under this section is exercisable only by a presidential member of the Tribunal.

**150. Tribunal orders in relation to proceedings**

S. 150(1)–(3)  
repealed by  
No. 86/1989  
s. 20(2).

\* \* \* \* \*

S. 150(4)  
amended by  
No. 52/1998  
s. 191(1).

- (4) If any proceedings are brought before the Tribunal under this Act and the Tribunal is satisfied that—

S. 150(4)(a)  
amended by  
No. 128/1993  
s. 26(1).

- (a) the proceedings have been brought vexatiously or frivolously or primarily to secure or maintain a direct or indirect commercial advantage for the person who brought the proceedings; and

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(b) any other person has suffered loss or damage as a result of the proceedings—

the Tribunal may order the person who brought the proceedings to pay to that other person an amount assessed by the Tribunal as compensation for the loss or damage and an amount for costs.

- (5) If the Tribunal is satisfied that a third party (being a person other than the person who brought proceedings to which sub-section (4) applies) sponsored the bringing of the proceedings, the Tribunal after giving the third party an opportunity to be heard, may order the third party to pay the whole or any part of the compensation and costs referred to in sub-section (4) either jointly with or in place of the person who brought the proceedings.
- (6) The Tribunal may make an order under sub-section (4) whether or not the responsible authority has under section 57 rejected an objection by the person bringing the proceedings on the ground that it was made primarily to secure or maintain a direct or indirect commercial advantage for the objector.

S. 150(5)  
amended by  
No. 5/1988  
s. 5(b).

S. 150(6)  
inserted by  
No. 128/1993  
s. 26(2).

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**PART 7—ADVISORY COMMITTEES**

**151. Advisory committees**

- (1) The Minister may establish committees to advise on any matters which the Minister refers to them.
- (2) The Minister may appoint one of the members of a committee to be the chairperson of the committee.
- (3) A member of a committee is not subject to the **Public Sector Management and Employment Act 1998** just because he or she is a member.
- (4) The Governor in Council may fix fees and allowances for all members of a committee or for particular members or classes of members.
- (5) A member of a committee is entitled to be paid any fees and allowances which the Governor in Council fixes.
- (6) Subject to the regulations, a committee may regulate its own proceedings.
- (7) If the Minister establishes a committee under this section to consider a request for the preparation of an amendment to a planning scheme, the Minister may ask the person who requested the amendment to contribute an amount specified by the Minister to the costs of the advisory committee.
- (8) If the Minister establishes a committee under this section to consider a matter in a proceeding which has been referred to the Governor in Council for determination under clause 58 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**, the Minister may ask the following person to contribute an amount specified by the Minister to the costs of the advisory committee—

S. 151(3)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 151(7)  
inserted by  
No. 72/1998  
s. 7.

S. 151(8)  
inserted by  
No. 72/1998  
s. 7.

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- (a) if the proceeding relates to an application for a permit, the applicant for the permit; or
- (b) if the proceeding is for the review of a decision referred to in section 149(1)(a), (b) or (c), the applicant for the review.

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**S. 152**  
repealed by  
No. 35/1995  
s. 4(i).

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**PART 8—PANELS**

**Division 1—Appointment of Panels**

**153. Appointment of panels**

The Minister must appoint a panel to consider submissions to be referred to a panel under this Act.

S. 154  
substituted by  
No. 128/1993  
s. 27.

**154. Composition of panels**

A panel may consist of one or more persons.

S. 155  
substituted by  
No. 128/1993  
s. 27.

**155. Chairperson**

If a panel consists of more than one member, the Minister must appoint one of the members to be chairperson.

**156. Fees and allowances**

- (1) Each member of a panel is entitled to receive any fees and allowances fixed by the Minister in respect of that member unless the person is employed by or on behalf of the Crown.
  - (2) The relevant planning authority must pay the fees or allowances unless the Minister otherwise directs.
- (2A) If any member of a panel is a person employed by or on behalf of the Crown, the relevant planning authority must pay to the Crown the amount fixed by the Minister in respect of the costs of remuneration and expenses of that person for the period he or she is a member of the panel.

S. 156(2)  
substituted by  
No. 35/1995  
s. 8(1).

S. 156(2A)  
inserted by  
No. 22/1996  
s. 17(1).

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- (3) A planning authority required to pay an amount under sub-section (2) or (2A) may ask any person who has requested the amendment of the planning scheme to agree to contribute to that amount.

S. 156(3) substituted by No. 86/1989 s. 21(1), amended by No. 35/1995 s. 8(2), substituted by No. 22/1996 s. 17(2).

- (4) If, when asked, a person does not agree to contribute to the amount required to be paid by the planning authority, the planning authority may abandon the amendment or a part of it without referring submissions to a panel.

S. 156(4) inserted by No. 86/1989 s. 21(1), amended by No. 22/1996 s. 17(3).

**157. Panels with more than one member**

The following provisions apply to panels with more than one member—

- (a) in the case of a panel of 2 members, the chairperson constitutes a quorum;
- (b) in the case of a panel of more than 2 members, a quorum is half the number of members constituting the panel and, if this would not be a whole number, the next highest whole number;
- (c) the members of a panel of more than 2 members may appoint a member to act as chairperson at a meeting of the panel if the chairperson is unable to attend;
- (d) the chairperson has an additional or casting vote if there is an equality of votes at a meeting of the panel;
- (e) if there is a quorum, the panel may act despite a vacancy in its membership;
- (f) the Minister may appoint another member to a panel if there is a vacancy.

S. 157 substituted by No. 128/1993 s. 28.



**158. Planning authority to provide assistance**

The relevant planning authority must provide a panel with any secretarial and other assistance that the panel requires to carry out its functions under this Part.

**Division 2—Hearings**

**159. Directions about hearings**

- (1) A panel may give directions about—
  - (a) the times and places of hearings; and
  - (b) matters preliminary to hearings; and
  - (c) the conduct of hearings.
- (2) The panel may refuse to hear any person who fails to comply with a direction of the panel.

**160. Hearings to be in public**

- (1) A panel must conduct its hearings in public unless any person making a submission objects to making the submission in public and the panel is satisfied that the submission is of a confidential nature.
- (2) A panel may by order exclude from its proceedings a person who does an act referred to in section 169.

**161. General procedure for hearings**

- (1) In hearing submissions, a panel—
  - (a) must act according to equity and good conscience without regard to technicalities or legal forms; and
  - (b) is bound by the rules of natural justice; and
  - (c) is not required to conduct the hearing in a formal manner; and

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- (d) is not bound by the rules or practice as to evidence but may inform itself on any matter—
  - (i) in any way it thinks fit; and
  - (ii) without notice to any person who has made a submission.
- (2) A panel may require a planning authority or other body or person to produce any documents relating to any matter being considered by the panel under this Act which it reasonably requires<sup>xxx</sup>.
- (3) A panel may prohibit or regulate cross-examination in any hearing.
- (4) A panel may hear evidence and submissions from any person whom this Act requires it to hear.
- (5) Submissions and evidence may be given to the panel orally or in writing or partly orally and partly in writing.

S. 161(2)  
substituted by  
No. 77/1996  
s. 15.

**162. Who may appear before a panel?**

A person who has a right to be heard by a panel or who is called by a panel may—

- (a) appear and be heard in person; or
- (b) be represented by any other person.

**163. Effect of failure to attend hearing**

A panel may report and make recommendations on a submission without hearing the person who made the submission if the person is not present or represented at the time and place appointed for the hearing of the submission.

**164. Panel may hear two or more submissions together**

A panel may consider two or more submissions together if the submissions concern the same land or the same or a related matter.

**165. Adjournment of hearings**

A panel may from time to time adjourn a hearing to any times and places and for any purposes it thinks necessary and on any terms as to costs or otherwise which it thinks just in the circumstances.

**166. Technical defects**

S. 166(1)  
amended by  
No. 86/1989  
s. 25(r).

(1) A panel may continue to hear submissions and make its report and recommendations despite any defect, failure or irregularity in the preparation of a planning scheme or amendment or any failure to comply with Division 1, 2 or 3 of Part 3 in relation to the preparation of the planning scheme or amendment.

S. 166(2)  
amended by  
No. 86/1989  
s. 25(r).

(2) A panel may adjourn the hearing of submissions and make an interim report to the planning authority if it thinks there has been a substantial defect, failure or irregularity in the preparation of a planning scheme or amendment or any failure to comply with Division 1, 2 or 3 of Part 3 in relation to the preparation of the planning scheme or amendment.

(3) The interim report may recommend that the planning authority give notice of the planning scheme or amendment to a specified person or body.

**167. Panel may regulate its own proceedings**

A panel may regulate its own proceedings.

**168. Panel may take into account any relevant matter**

A panel may take into account any matter it thinks relevant in making its report and recommendations.

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**169. Offences**

A person who—

- (a) insults, assaults or obstructs a member of a panel while the member is performing functions or exercising powers as a member; or
- (b) insults, assaults or obstructs any person attending a hearing before a panel; or
- (c) misbehaves at a hearing before a panel; or
- (d) repeatedly interrupts a hearing before a panel; or
- (e) without lawful excuse disobeys a direction of a panel—

is guilty of an offence.

Penalty: 60 penalty units.

**170. No legal proceedings against panel members**

A person is not entitled to bring an action against a member of a panel arising from any hearing conducted, publication made or anything done or in good faith purportedly done in the performance of the person's duties as a member of a panel.

S. 169  
amended by  
No. 28/2000  
s. 10(5).

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**PART 9—ADMINISTRATION**

**Division 1—General Powers**

**171. Powers of responsible authority**

- (1) A responsible authority has all the powers necessary for the purpose of—
  - (a) carrying out its functions and duties under this Act; and
  - (b) carrying into effect the objectives of a planning scheme for which it is the responsible authority.
- (2) The powers under sub-section (1) include the power to—
  - (a) enter into agreements; and
  - (b) purchase, hold, lease and dispose of land by public auction, private treaty or otherwise on terms and conditions satisfactory to the authority; and
  - (c) exchange land for other land and make any financial adjustment required as a result; and
  - (d) consolidate, subdivide, re-subdivide and develop land for any purpose consistent with the planning scheme for which it is the responsible authority; and
  - (e) in the case of a responsible authority other than a municipal council, enter into arrangements with other persons with respect to the development of land within the area of the planning scheme for which it is the responsible authority; and
  - (f) carry out studies and commission reports; and

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- (g) grant and reserve easements; and
  - (h) conserve, restore and enhance areas, buildings and objects of community significance; and
  - (i) carry out any other use or development necessary for the orderly and proper development of the area covered by the planning scheme for which it is the responsible authority.
- (3) Nothing in sub-section (2)(e) affects any power of a municipal council under the **Local Government Act 1958** or the **Local Government Act 1989** (as the case requires) to enter into any arrangement with respect to the development of land.

S. 171(3)  
amended by  
No. 62/1991  
s. 38.

**172. Powers of compulsory acquisition**

- (1) The Minister or the responsible authority may compulsorily acquire—
- (a) any land which is required for the purposes of any planning scheme even if the scheme or an amendment to the scheme including the requirement has not been adopted by the relevant planning authority or approved by the Minister; or
  - (b) any land which—
    - (i) is used for any purpose not in conformity with, whether or not actually prohibited by, the planning scheme; or
    - (ii) is vacant and unoccupied—if in the opinion of the Minister or the responsible authority to achieve the proper development of any area in accordance with the planning scheme it is desirable that the use should not be continued or (as the case

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requires) that the land should be put to appropriate use; or

- (c) any land in an area in respect of which a declaration under sub-section (2) is in force.
- (2) If the Governor in Council is satisfied that to enable the better use, development or planning of an area, it is desirable that the Minister or a responsible authority compulsorily acquire land in the area, the Governor in Council may, by notice published in the Government Gazette, declare the area to be an area to which sub-section (1)(c) applies.
- (3) The **Land Acquisition and Compensation Act 1986** applies to this Act and for that purpose—
- (a) the **Planning and Environment Act 1987** is the special Act; and
- (b) the Minister or the responsible authority is the Authority.

S. 172(3)  
amended by  
No. 5/1988  
s. 5(c).

**Division 2—Agreements<sup>xxxi</sup>**

**173. Responsible authority may enter into agreements**

- (1) A responsible authority may enter into an agreement with an owner of land in the area covered by a planning scheme for which it is a responsible authority.
- (2) A responsible authority may enter into the agreement on its own behalf or jointly with any other person or body.
- (3) A responsible authority may enter into an agreement under sub-section (1) with a person in anticipation of that person becoming the owner of the land.

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- (4) Despite anything in this Division, if an agreement entered into with a purchaser in anticipation of the purchaser becoming owner is registered by the Registrar of Titles, it does not bind the vendor unless the vendor assumes the purchaser's rights and obligations under the agreement.

S. 173(4)  
substituted by  
No. 48/1991  
s. 63(1).

\* \* \* \* \*

S. 173(5)  
repealed by  
No. 86/1989  
s. 4(2)(i).

**174. Form and contents of agreement**

- (1) An agreement must be under seal and must bind the owner to the covenants specified in the agreement.
- (2) An agreement may provide for any one or more of the following matters—
- (a) the prohibition, restriction or regulation of the use or development of the land;
  - (b) the conditions subject to which the land may be used or developed for specified purposes;
  - (c) any matter intended to achieve or advance—
    - (i) the objectives of planning in Victoria;  
or
    - (ii) the objectives of the planning scheme or any amendment to the planning scheme of which notice has been given under section 19;
  - (d) any matter incidental to any one or more of the above matters.



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**175. Bonds and guarantees**

S. 175(1)  
amended by  
No. 86/1989  
s. 4(2)(k).

- (1) An agreement other than an agreement with a Minister may include a condition that the owner is to deposit with the responsible authority—
  - (a) a sum of money fixed by or determined in accordance with the agreement; or
  - (b) an undertaking to pay that sum together with security in a form determined by or in accordance with the agreement.
- (2) The agreement may provide that the sum or part of the sum is forfeited if there is any failure by the owner to carry out the agreement to the satisfaction of the responsible authority.
- (3) Any money paid must be returned to the owner on a date or dates specified in the agreement to the extent that it has not been forfeited.
- (4) Any money payable under this section is a charge on the land which is the subject of the agreement.

S. 175(1)(b)  
amended by  
No. 86/1989  
s. 22.

**176. When does an agreement begin?**

An agreement may provide that the agreement or any specified provision of the agreement comes into effect on or after—

- (a) the coming into operation of a specified amendment to a planning scheme; or
- (b) the granting of a permit permitting the use or development of the land or part of the land for a specified purpose; or
- (c) the happening of a specified event; or
- (d) a specified time; or
- (e) the start or completion of a use or development or a specified part of a use or development.

**177. When does an agreement end?**

- (1) An agreement may provide that the agreement ends wholly or in part or as to any part of the land on or after—
  - (a) the happening of any specified event; or
  - (b) a specified time; or
  - (c) the cessation of the use or the development of the land or any part of the land for a specified purpose.
- (2) An agreement may be ended wholly or in part or as to any part of the land by the responsible authority with the approval of the Minister or by agreement between the responsible authority and all persons who are bound by any covenant in the agreement.

S. 177(1)  
amended by  
No. 35/1995  
s. 9(1)(a).

S. 177(2)  
amended by  
No. 35/1995  
s. 9(1)(b).

**178. Amendment of agreements**

An agreement may, with the approval of the Minister, be amended by agreement between the responsible authority and all persons who are bound by any covenant in the agreement.

**179. Agreement to be lodged with Minister**

- (1) The responsible authority must lodge a copy of an agreement at the office of the Minister without delay after the agreement is made.
- (2) The responsible authority must keep a copy of each agreement indicating any amendment made to it available at its office for any person to inspect during office hours free of charge.

**180. Agreement may not breach planning scheme**

An agreement must not require or allow anything to be done which would breach a planning scheme or a permit.

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### 181. Registration of agreement

S. 181(1)  
amended by  
No. 85/1998  
s. 24(Sch.  
item 45.4).

(1) A responsible authority may apply to the Registrar of Titles to register an agreement relating to land other than Crown land.

(2) An application must include a copy of the agreement to which it relates and the prescribed particulars.

S. 181(3)  
amended by  
Nos 18/1989  
s. 13(Sch. 2  
item 63(e)),  
85/1998  
s. 24(Sch.  
item 45.5).

(3) The Registrar of Titles must make a recording of the agreement in the Register.

S. 181(4)  
amended by  
No. 86/1989  
s. 4(2)(l),  
substituted by  
No. 85/1998  
s. 24(Sch.  
item 45.6).

(4) The amendment of this Act by section 24 of the **Transfer of Land (Single Register) Act 1998** does not affect the operation, effect or enforcement of a covenant in an agreement registered under the **Property Law Act 1958** before the commencement of that section 24 and existing immediately before that commencement.

S. 181(5)  
repealed by  
No. 85/1998  
s. 24(Sch.  
item 45.6).

\* \* \* \* \*

S. 182  
amended by  
Nos 18/1989  
s. 13(Sch. 2  
item 63(f)),  
85/1998  
s. 24(Sch.  
item 45.7).

### 182. Effect of registration

After the making of a recording in the Register—

(a) the burden of any covenant in the agreement runs with the land affected; and

(b) the responsible authority may enforce the covenant against any person deriving title from any person who entered into the covenant as if it were a restrictive covenant despite the fact that it may be positive in

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nature or that it is not for the benefit of any land of the responsible authority.

**183. Cancellation or alteration of registration**

- (1) The responsible authority must tell the Registrar of Titles in the prescribed manner without delay of the ending of any agreement wholly or in part or as to any part of the land or any amendment to an agreement.
- (2) The Registrar of Titles must, as appropriate, cancel in whole or in part or alter the recording of the agreement in the Register or make a recording in the Register of the matters notified under sub-section (1).
- (3) This section does not apply to an agreement in respect of Crown land.

S. 183(1)  
amended by  
No. 35/1995  
s. 9(1)(c).

S. 183(2)  
amended by  
No. 48/1991  
s. 63(2),  
substituted by  
No. 35/1995  
s. 9(2),  
amended by  
No. 85/1998  
s. 24(Sch.  
item 45.8).

S. 183(3)  
amended by  
No. 86/1989  
s. 4(2)(l),  
substituted by  
No. 85/1998  
s. 24(Sch.  
item 45.9).

\* \* \* \* \*

S. 183(4)  
repealed by  
No. 85/1998  
s. 24(Sch.  
item 45.9).

**184. Application to Tribunal**

- (1) An owner of land may apply to the Tribunal for an amendment to a proposed agreement if—
  - (a) under a planning scheme or a permit the use or development of land for specified purposes is conditional upon an agreement being entered into under this Division; and
  - (b) the owner objects to any provision of the agreement.

S. 184(1)  
amended by  
No. 52/1998  
s. 191(1).

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S. 184(3)  
inserted by  
No. 48/1991  
s. 63(3),  
amended by  
No. 52/1998  
s. 191(1).

S. 184(4)  
inserted by  
No. 48/1991  
s. 63(3).

- (2) The Tribunal may approve the proposed agreement with or without amendments.
- (3) A purchaser of land who is a party to an agreement, or an owner of land, may apply to the Tribunal for an amendment to the agreement to remove the land from the application of the agreement, if the parties to the agreement cannot agree that the agreement should be amended.
- (4) The Tribunal may approve the amendment if—
  - (a) it considers that the land owner is not subject to any further liability under the agreement;  
or
  - (b) having regard to any relevant permit, or requirements under the **Subdivision Act 1988**, it considers it inappropriate that the agreement should continue to apply to the land and the owner.

**Division 3—Powers of Minister**

**185. Inquiry powers**

S. 185(1)  
amended by  
No. 126/1993  
s. 264(Sch. 5  
item 17.3).

- (1) The provisions of Division 1 of Part 13 of the **Building Act 1993** with such changes as are necessary apply to and in respect of powers and duties conferred or imposed on any municipal council by or under this Act.
- (2) Sub-section (1) does not affect any other proceeding or remedy against or liability of the municipal council or the municipality concerned.

S. 185A  
inserted by  
No. 128/1993  
s. 29.

**185A. Expedition of planning process**

- (1) The Minister may by notice in writing direct a planning authority ("the first planning authority") to take any steps required to be taken under Part 3 in respect of an amendment to a planning scheme within the time (being not less than 6 weeks) specified in the notice.

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- (2) If the planning authority fails to take a required step within the specified time, the Minister may take that step and all other steps required to be taken under Part 3 in respect of that amendment.
- (3) For the purposes of sub-section (2)—
  - (a) the Minister becomes the planning authority in respect of the amendment; and
  - (b) anything done in respect of the amendment by the first planning authority is to be taken to have been done by the Minister.
- (4) The first planning authority and its officers and employees must comply with any directions of the Minister with respect to—
  - (a) the provision to the Minister of any document relating to the amendment; and
  - (b) the provision to the Minister of assistance with respect to any steps to be taken under Part 3 with respect to the amendment.

**Division 4—Delegation**

**185AA. Interpretation**

- (1) In this Division, "Act" includes any regulation, planning scheme, permit or agreement made under an Act.
- (2) Nothing in sub-section (1) limits or affects the meaning of "Act" in any other provision of this Act (other than this Division).

**186. Minister may delegate some powers to employees**

- (1) The Minister may by instrument delegate any of his or her powers, discretions or functions under this Act or any other Act to—

S. 185AA  
inserted by  
No. 128/1993  
s. 30.

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S. 186(1)(a)  
substituted by  
No. 35/1995  
s. 11(1)(i),  
S. 186(1)(b)  
substituted by  
No. 35/1995  
s. 11(1)(i),  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(a) the Secretary to the Department; or

(b) a committee of employees of the  
Department; or

S. 186(1)(c)  
substituted by  
No. 35/1995  
s. 11(1)(i),  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(c) any employee of the Department.

S. 186(2)  
amended by  
No. 103/1997  
s. 4.

(2) Sub-section (1) includes the Minister's powers  
under section 35, but does not include the  
Minister's powers under section 172, section 201F  
or sub-section (1).

S. 187  
amended by  
Nos 35/1995  
s. 11(1)(k)(i)(ii),  
46/1998  
s. 7(Sch. 1).

**187. Secretary may delegate powers to employees**

The Secretary to the Department may by  
instrument delegate to any employee of the  
Department any of the powers, discretions or  
functions which this Act gives to the Secretary  
except—

- (a) this power of delegation; and
- (b) any power, discretion or function which the  
Secretary exercises or performs as a  
delegate.

**188. Planning authorities and responsible authorities  
may delegate powers**

(1) A planning authority or responsible authority  
other than the Minister may by instrument  
delegate any of its powers, discretions or  
functions under this Act to—

- (a) a committee of the authority; or

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(b) an officer of the authority; or

\* \* \* \* \*

S. 188(1)(c)  
repealed by  
No. 89/1997  
s. 75(3).

(2) Sub-section (1) does not apply to—

(a) the powers of a planning authority under sections 28, 29 and 191 and sub-section (1); and

(b) the powers of a responsible authority under sections 125, 171(2)(b), (c), (d) and (e), 172 and 191 and sub-section (1); and

S. 188(2)(b)  
substituted by  
No. 35/1995  
s. 10.

(c) the power of a responsible authority to authorise any officer to carry out a duty or function or to exercise a power.

**189. Minister may delegate to advisory committees and regional planning authorities**

(1) The Minister may by instrument delegate to an advisory committee any of the powers, discretions and functions under a planning scheme in relation to applications for permits which must be—

S. 189(1)  
amended by  
No. 35/1995  
s. 4(j).

(a) referred to the Minister under the scheme; or

(b) considered by the Minister under Division 4 of Part 4.

(2) The Minister must publish a notice of the delegation in the Government Gazette.

(3) The delegation has effect from the later of—

(a) a date specified in the instrument of delegation; or

(b) the date of publication of the notice.



**190. Minister may delegate administration of planning schemes**

- (1) The Minister may by instrument delegate any of his or her powers, discretions and functions under this Act as a responsible authority to—
  - (a) any other responsible authority; or
  - (b) any municipal council.
- (2) The Minister must publish a notice of the delegation in the Government Gazette.
- (3) The delegation has effect from the later of—
  - (a) a date specified in the instrument of delegation; or
  - (b) the date of publication of the notice.

**Division 5—Hearings**

**191. Appointment of committee**

A planning authority or responsible authority may nominate a committee of two or more persons to hear any person—

- (a) whom the authority is authorised or required to hear before it makes a decision; or
- (b) to whom the authority must give an opportunity to be heard before it makes a decision.

**192. Who may be on the committee?**

The committee may include a member of the planning authority or responsible authority.

**193. Who may attend the hearing?**

A person who has a right to be heard may appear before the committee in person or be represented by any other person.

**194. Functions of committee**

The committee must—

- (a) hear the person on behalf of the planning authority or responsible authority; and
- (b) report on the hearing and make recommendations to the authority.

**195. Effect of hearing**

A hearing by a committee under this Division has effect as if it were a hearing by the planning authority or responsible authority.

**196. Fees and allowances**

- (1) The planning authority or responsible authority may agree with a prospective member of a committee under this Division to pay reasonable fees and allowances in respect of that person's services on the committee.
- (2) Sub-section (1) does not apply—
  - (a) to a person who is an officer or full-time member of the planning authority or responsible authority; or
  - (b) if the responsible authority is a municipal council, to a councillor of that municipal council.

**Division 6—Time**

**197. Expedition**

Where the Minister or any responsible authority, planning authority, public authority, municipal council, panel, committee or officer is required to do any act, including making any decision or forming any opinion, that act must be done as promptly as is reasonably practicable, in any event

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within the time limits prescribed or any extension of those time limits allowed by or under this Act, so that loss or damage to any person from unreasonable or unnecessary delay is avoided.

**Division 7—Planning Certificates**

**198. Application for planning certificate**

- (1) Any person may apply—
  - (a) to the person nominated in the planning scheme for that purpose; or
  - (b) if no person is nominated, to the responsible authority—for a planning certificate in respect of land.
- (2) The application must be accompanied by the prescribed fee.

**199. Planning certificates**

- (1) The responsible authority or nominated person must give or send the applicant without delay a planning certificate setting out the prescribed information about the effect of the relevant planning scheme on the land at the date of the certificate.
- (2) The planning certificate—
  - (a) must be in the prescribed form; and
  - (b) must indicate that it is produced by authority of an authorised officer of the responsible authority or by authority of the nominated person, whether by being initialled, signed or sealed by the authorised officer or person or by bearing a facsimile of those initials or that signature or seal or in any other manner prescribed; and

S. 199(2)  
substituted by  
No. 128/1993  
s. 31(1).

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Field Code Changed

s. 200

- (c) may be produced in any manner the responsible authority or nominated person considers appropriate.

**200. Certificate to be proof of certain matters**

- (1) A planning certificate which appears to be produced by authority of an officer of the responsible authority or by a nominated person is conclusive proof that at the date specified in the certificate the facts set out in it were true and correct.
- (2) Any person acting on the basis of a planning certificate who suffers financial loss because of an error or mis-statement in the certificate may recover damages for that loss from the responsible authority or the nominated person (as the case requires).

S. 200(1)  
amended by  
No. 128/1993  
s. 31(2).

**201. Underlying zoning**

- (1) If—
- (a) a planning certificate states that the land is wholly or partly reserved for public purposes under the planning scheme; and
- (b) the certificate does not indicate the provisions of the scheme which would have applied to the land if the land had not been reserved—

S. 201(1)  
amended by  
No. 86/1989  
s. 25(s).

the applicant for the certificate may apply for the purpose of valuing the land for compensation—

- (c) if the land is controlled, whether as committee of management or otherwise, occupied or owned or to be acquired by the responsible authority, to the Minister; or

S. 201(1)(c)  
inserted by  
No. 86/1989  
s. 25(s),  
amended by  
No. 128/1993  
s. 32(1).

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S. 201(1)(d)  
inserted by  
No. 86/1989  
s. 25(s).

(d) in the case of any other land, to the person nominated for the purpose of section 198 or, if no person is nominated, to the responsible authority—

for a declaration setting out the provisions of the scheme which would have applied to the land if it had not been reserved.

S. 201(2)  
amended by  
No. 86/1989  
s. 25(t).

(2) The application must be in the prescribed form and may request that the declaration set out the provisions of the scheme as in force at a date specified in the application.

S. 201(2A)  
inserted by  
No. 128/1993  
s. 32(2).

- (2A) An application cannot be made under this section in respect of land which is owned by the Crown or a public authority.
- (3) If the responsible authority or nominated person fails to make a declaration within the prescribed time, the applicant may refer the matter to the Minister.
- (4) The Minister may make the declaration.
- (5) No fee shall be charged for an application or declaration under this section.
- (6) Any declaration under this section is to be treated as forming part of the planning certificate for the purposes of section 200.

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s. 201A

**Division 8—Change of responsible authority or area**

Pt 9 Div. 8  
(Heading and  
s. 201A)  
inserted by  
No. 86/1989  
s. 23,  
amended by  
No. 128/1993  
s. 33.

**201A. What if the responsible authority changes?**

S. 201A  
inserted by  
No. 86/1989  
s. 23.

If because of—

(a) the operation of section 15, 96 or 201CA;  
or

S. 201A(a)  
amended by  
No. 77/2003  
s. 6.

(b) an amendment to a planning scheme; or

(c) revocation of an order under section 95; or

S. 201A(c)  
amended by  
No. 39/2004  
s. 261.

(ca) the operation of any Act—

a person (in this section called "the old authority") ceases to be or to have the powers and duties of a responsible authority for a planning scheme and another person (in this section called "the new authority") becomes, or acquires the powers of, the responsible authority for the scheme—

S. 201A(ca)  
inserted by  
No. 39/2004  
s. 261.

(d) anything of a continuing nature (including a contract, agreement or proceeding) done or commenced by or in relation to the old authority under the scheme or this Act may be done enforced or completed by or in relation to the new authority; and

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s. 201B

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- (e) the old authority must give to the new authority any document it holds that is relevant to anything done by it; and
- (f) anything done by or in relation to the old authority that concerns a matter of a continuing nature has effect as if done by or in relation to the new authority.

S. 201B  
inserted by  
No. 128/1993  
s. 34.

**201B. What if area of planning scheme changes?**

If an amendment to a planning scheme or the making of a new planning scheme causes the area or part of the area included in an existing planning scheme (the old scheme) to be included in another planning scheme (the new scheme) then in relation to each area included in the new scheme and previously covered by the old scheme—

- (a) anything of a continuing nature done or commenced under or in relation to the old scheme has effect on and from the inclusion of the area in the new scheme as if done or commenced under or in relation to the new scheme and may be continued and completed accordingly; and
- (b) anything of a continuing nature done or commenced under this Act in relation to the old scheme has effect on and from the inclusion of the area in the new scheme as if done or commenced under this Act in relation to the new scheme and may be continued and completed accordingly.

S. 201C  
inserted by  
No. 128/1993  
s. 34.

**201C. Changes to schemes arising from changes to municipal boundaries**

- (1) In addition to any other powers of the Minister under this Act, the Minister may prepare and approve amendments to any planning scheme for the purpose of any consequential matter relating to the restructuring of municipal boundaries by or

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s. 201CA

under the **Local Government Act 1989** or any Act relating to local government.

- (2) This Act (except sections 12(1)(a) and (e), 12(2), 12(3), Divisions 1 and 2 of Part 3 and sections 39(1), 39(2), 39(3), 39(4), 39(5) and 39(6) and any regulations made for the purpose of those provisions) applies to the preparation and approval of amendments under sub-section (1).

**201CA. Change in boundary of Port of Melbourne Area**

S. 201CA  
inserted by  
No. 77/2003  
s. 7.

- (1) If any land in the Port of Melbourne Area is excluded from that Area by order under section 3(3)—
- (a) any planning scheme applying to the excluded land immediately before the commencement of that order; and
  - (b) all things done under that scheme—
- continue to have the same operation and effect as they would have had if the order had not been made except that the responsible authority for the subsequent administration and enforcement of the planning scheme to the extent that it applies to the excluded land is the council of the municipal district in which the excluded land is situated.
- (2) If any land in a municipal district is included in the Port of Melbourne Area by order under section 3(3)—
- (a) any planning scheme applying to the included land immediately before the commencement of that order; and
  - (b) all things done under that scheme—
- continue to have the same operation and effect as they would have had if the order had not been made except that the responsible authority for the subsequent administration and enforcement of the



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s. 201D

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planning scheme to the extent that it applies to the included land is the Minister.

Pt 9 Div. 9  
(Heading and  
s. 201D)  
inserted by  
No. 128/1993  
s. 35.

**Division 9—Supreme Court—limitation of jurisdiction**

S. 201D  
inserted by  
No. 128/1993  
s. 35,  
amended by  
No. 77/1996  
s. 16(1).

**201D. Supreme Court—limitation of jurisdiction<sup>xxxii</sup>**

S. 201D(1)  
repealed by  
No. 52/1998  
s. 191(13)(c).

\* \* \* \* \*

S. 201D(2)  
inserted by  
No. 77/1996  
s. 16(2).

(2) It is the intention of sections 4F and 4J to alter or vary section 85 of the **Constitution Act 1975**.

S. 201D(3)  
inserted by  
No. 77/1996  
s. 16(2),  
repealed by  
No. 52/1998  
s. 191(13)(c).

\* \* \* \* \*

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Part 9A—Projects of State or Regional Significance

Field Code Changed  
s. 201E

**PART 9A—PROJECTS OF STATE OR REGIONAL  
SIGNIFICANCE**

Pt 9A  
(Heading and  
ss 201E–  
201Q)  
inserted by  
No. 103/1997  
s. 3.

**201E. Definitions**

In this Part—

**"declared project"** means a development or proposed development declared by notice under section 201F to be of State or regional significance;

**"restriction"** means—

- (a) a restriction within the meaning of the **Subdivision Act 1988**; or
- (b) a covenant under Division 2 of Part 4 of the **Heritage Act 1995**; or
- (c) a covenant under section 3A of the **Victorian Conservation Trust Act 1972**;

**"Secretary"** means the body corporate established under section 35 of the **Project Development and Construction Management Act 1994**.

S. 201E  
inserted by  
No. 103/1997  
s. 3.

**201F. Declaration of project**

The Minister may, by notice published in the Government Gazette, declare a development or proposed development to be of State or regional significance.

S. 201F  
inserted by  
No. 103/1997  
s. 3.

**201G. Delegation**

The Secretary may, by instrument, delegate to any officer or class of officers of the Department any of the powers conferred on the Secretary under this Part except—

S. 201G  
inserted by  
No. 103/1997  
s. 3.

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s. 201H

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- (a) this power of delegation; and
- (b) the Secretary's powers under section 201I.

S. 201H  
inserted by  
No. 103/1997  
s. 3.

**201H. Acquisition by agreement**

For the purposes of a declared project, the Secretary may acquire land by agreement on any terms (including consideration) that the Secretary considers appropriate.

S. 201I  
inserted by  
No. 103/1997  
s. 3.

**201I. Powers of compulsory acquisition**

- (1) The Secretary may compulsorily acquire land for the purposes of a declared project.
- (2) The **Land Acquisition and Compensation Act 1986** applies to this Part and for that purpose—
  - (a) Part 9A of the **Planning and Environment Act 1987** is the special Act; and
  - (b) the Secretary is the Authority.
- (3) The Minister may, by notice published in the Government Gazette, declare specified land required for a declared project to be special project land for the purposes of section 5 of the **Land Acquisition and Compensation Act 1986**.

S. 201J  
inserted by  
No. 103/1997  
s. 3.

**201J. Secretary's powers to dispose of land**

- (1) The Secretary may—
  - (a) grant a lease, licence, easement or privilege over land vested in or acquired by the Secretary pursuant to this Part; or
  - (b) sell or dispose of the Secretary's interest in fee simple in any land vested in or acquired by the Secretary pursuant to this Part—on any terms (including consideration) that the Secretary considers appropriate.

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s. 201K

- (2) The Secretary may enter into an agreement with another person concerning the use or development of land—
  - (a) on disposing of the whole of its interest in the land to that person; or
  - (b) in anticipation of disposing of the whole of its interest in the land to that person.
- (3) Division 2 of Part 9 applies to an agreement under sub-section (2) as if—
  - (a) it was an agreement under that Division;
  - (b) it referred to the Secretary instead of the responsible authority for the planning scheme;
  - (c) section 174(2)(c) were omitted;
  - (d) sections 177(2), 178 and 179(1) referred to the Secretary instead of the Minister.

**201K. Recommendation of closure of roads**

- (1) For the purposes of a declared project, the Secretary may recommend to the Governor in Council to close any road or part of a road.
- (2) Before making a recommendation to close a road or part of a road, the Secretary must—
  - (a) serve notice of the proposed closure on the owner of any property which the Secretary, after making inquiry into the matter, considers is likely to be substantially affected by the closure of the road or part of the road; and
  - (b) give each of those owners an opportunity to object to the closure; and
  - (c) consider all objections so made.

S. 201K  
inserted by  
No. 103/1997  
s. 3.

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s. 201L

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- (3) Before making a recommendation to close a road or part of a road, the Secretary must ensure that provision is made—
  - (a) with respect to pipes, wires, apparatus, sewers, drains, tunnels, conduits, poles, posts and fixtures lawfully on over under or across the road or part of the road; and
  - (b) for access to any land likely to be prejudicially affected by the closure.
- (4) The Secretary may only recommend the closure of a road or part of a road under this section if the Secretary is satisfied that the closure will not substantially injure the public or any person objecting under sub-section (2).

S. 201L  
inserted by  
No. 103/1997  
s. 3.

**201L. Order for closure of road**

- (1) On a recommendation under section 201K, the Governor in Council, by order published in the Government Gazette, may close the road or part of the road.
- (2) On the publication of the order—
  - (a) the land over which the closed road ran (whether the property of the Crown or not) ceases to be a road; and
  - (b) all rights, easements and privileges existing or claimed in the land either in the public or by any body or person as incident to any express or implied grant, or past dedication or by user or operation of law or otherwise, cease; and
  - (c) the land vests in the Secretary without transfer or conveyance freed and discharged from all trusts, limitations, reservations, restrictions, encumbrances, estates and interests.

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**201M. Temporary closure of road**

For the purposes of a declared project, the Secretary may temporarily close a road or part of a road to traffic if the Secretary considers it necessary to do so so that works on the road or neighbouring land can be carried out.

S. 201M  
inserted by  
No. 103/1997  
s. 3.

**201N. Recommendation for removal of easements and restrictions**

- (1) For the purposes of a declared project, the Secretary may recommend to the Governor in Council to remove an easement, or restriction applying to any land.
- (2) Before making a recommendation under sub-section (1), the Secretary must—
  - (a) serve notice of the proposed removal on the owner of any property which the Secretary, after making inquiry into the matter, considers is likely to be substantially affected by the removal; and
  - (b) give each of those owners an opportunity to object to the removal; and
  - (c) consider all objections so made.
- (3) Before making a recommendation under sub-section (1), the Secretary must ensure that provision is made for access to any land likely to be prejudicially affected by the removal.
- (4) The Secretary may only recommend the removal of an easement or restriction under this section if the Secretary is satisfied that the removal will not substantially injure the public or any person objecting under sub-section (2).

S. 201N  
inserted by  
No. 103/1997  
s. 3.

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s. 201O

Field Code Changed

S. 201O  
inserted by  
No. 103/1997  
s. 3.

**201O. Order for removal of easement or restriction**

- (1) On a recommendation under section 201N, the Governor in Council, by order published in the Government Gazette, may remove the easement or restriction.
- (2) On the publication of the order, the easement or restriction is extinguished.

S. 201P  
inserted by  
No. 103/1997  
s. 3.

**201P. Compensation**

- (1) If an order is made under section 201L or section 201O, the Secretary must make provision for the payment of compensation—
  - (a) to any person in whom the land comprised in the road or part of the road is vested; and
  - (b) to any owner of property which in the opinion of the Secretary is likely to be substantially affected by the closure of the road or the removal of the easement or restriction.
- (2) The Minister may certify that, having regard to the extent to which a person referred to in sub-section (1) is or is likely to be affected by the closure of the road or the removal of the easement or restriction, the compensation payable to that person should not exceed the amount stated in the certificate (not being less than \$400).
- (3) If the Minister so certifies under sub-section (2), the amount stated in the certificate in respect of that person shall be the full amount payable to him or her under sub-section (1) by the Secretary by way of compensation.

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s. 201Q

- (4) If the Minister is satisfied that a person who might be entitled to compensation under sub-section (1) cannot be found, the Minister may direct that no provision, or such provision as the Minister specifies, shall be made for payment of compensation to that person.
- (5) If neither sub-section (3) nor (4) applies, the compensation payable under sub-section (1) to a person—
  - (a) shall be as agreed between the Secretary and the person; or
  - (b) if agreement is not reached, shall be determined in accordance with Part 10 of the **Land Acquisition and Compensation Act 1986** as if the amount of compensation payable were a disputed claim.

**201Q. Action by Registrar of Titles and Registrar-General**

S. 201Q  
inserted by  
No. 103/1997  
s. 3.

- (1) The publication of an order under section 201L brings the land under the operation of the **Transfer of Land Act 1958** if it is not already under that Act.
- (2) If an order is made under section 201L in relation to land, the Registrar of Titles, on being requested to do so and on production of the relevant order—
  - (a) must make any recordings in the Register that are necessary because of the order; and
  - (b) may create a folio of the Register recording the Secretary as the registered proprietor of the land.
- (3) If an order under section 201L or 201O affects the right, estate or interest of the registered proprietor of land in a folio of the Register under the **Transfer of Land Act 1958** in respect of an easement or restriction recorded on that folio or



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implied by statute appurtenant to the land, the Registrar of Titles on being requested to do so and on production of the relevant order, must delete from the folio the recording of that easement or restriction to the extent to which it has been extinguished.

- (4) If the description of any land under the operation of the **Transfer of Land Act 1958** or a folio of the Register is or may be affected by any order made under this Part closing a road or part of a road or removing an easement or restriction, the Registrar of Titles may make any amendment in that description or folio which is in his or her opinion necessary or desirable.

S. 201Q(5)  
repealed by  
No. 85/1998  
s. 24(Sch.  
item 45.10).

\* \* \* \* \*

**PART 10—REGULATIONS**

**202. General regulation-making powers**

The Governor in Council may make regulations with respect to—

- (a) prescribing any manner or form of giving notice of a planning scheme or an amendment or an application for a permit; and
- (b) permitting any notice under this Act to be given jointly with or as part of any notice given under any other Act; and
- (c) prescribing—
  - (i) the time after which an application may be made to the Tribunal for review of a failure by a responsible authority to determine an application;
  - (ii) the times from which the periods for other applications for review begin to run;
  - (iii) the times within which applications to the Tribunal may be made under this Act;
  - (iv) different times under this paragraph for different classes of applications;

S. 202(c)  
substituted by  
No. 52/1998  
s. 191(13)(d).

\* \* \* \* \*

S. 202(ca)  
inserted by  
No. 62/1991  
s. 37,  
repealed by  
No. 52/1998  
s. 191(13)(d).

- (d) prescribing any event after which or any time within which anything for the purposes of this Act must or may be done; and

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*Act No. 45/1987*

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- (e) prescribing regions for the purposes of this Act; and
- (f) prescribing forms for the purposes of this Act; and
- (g) prescribing the information to be included in any application, notice, permit or request; and
- (h) prescribing the manner of keeping a register; and
- (i) requiring any information in a prescribed form or required to be given to a responsible authority to be verified by statutory declaration or otherwise; and
- (j) any other matter which is authorised or required to be prescribed or necessary to be prescribed to carry out this Act.

**203. Fees regulations**

- (1) The Governor in Council may make regulations prescribing fees for—
  - (a) planning certificates; and
  - (b) considering applications for permits; and
- (ba) considering applications for certificates of compliance; and
- (c) amendments to planning schemes including but not limited to—
  - (i) considering proposals for amendment; and
  - (ii) any stage in the amendment process; and
  - (iii) considering whether or not to approve the amendment; and

S. 203(1)(ba)  
inserted by  
No. 128/1993  
s. 36(a).

S. 203(1)(c)  
amended by  
No. 86/1989  
s. 21(2).

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- (d) giving notice of permit applications; and
  - (e) determining whether anything has been done to the satisfaction of a responsible authority, Minister, public authority, municipal council or a referral authority; and
  - (f) providing maps showing the location of boundaries in a planning scheme; and
  - (g) any other thing for which fees are authorised or required to be prescribed under this Act.
- (2) A regulation under sub-section (1) may—
- (a) prescribe different fees for different cases or classes of cases; and
  - (b) prescribe composite fees payable to the responsible authority for consideration of applications by responsible authorities and referral authorities; and
  - (c) require a responsible authority to give referral authorities the fees collected on their behalf; and
  - (d) empower the Minister, or a planning authority or responsible authority to waive or rebate the payment of a fee in specified circumstances.
- (3) Despite anything in the regulations a planning authority does not have to pay a fee to itself in relation to an amendment of a planning scheme.

S. 203(1)(e)  
amended by  
No. 128/1993  
s. 36(b).

S. 203(2)(a)  
amended by  
No. 86/1989  
s. 21(3)(a).

S. 203(2)(d)  
amended by  
No. 86/1989  
s. 21(3)(b).

S. 203(3)  
inserted by  
No. 86/1989  
s. 21(4).

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Part 11—Repeals, Transitional and Savings

s. 206

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**PART 11—REPEALS, TRANSITIONAL AND SAVINGS**

S. 204  
repealed by  
No. 86/1989  
s. 25(u).

\* \* \* \* \*

S. 205  
repealed by  
No. 86/1989  
s. 24.

\* \* \* \* \*

**206. Savings generally**

Except as in this Act expressly or by necessary implication provided all persons, things and circumstances appointed or created by or under any Act which is amended or repealed by this Act or existing or continuing under that Act immediately before the commencement of the item in the Schedule amending or repealing that Act continue under and subject to this Act to have the same status, operation and effect as they respectively would have had if that Act had not been so amended or repealed.

**207. Schemes and orders**

- (1) On the commencement of item 131 in the Schedule—
  - (a) all planning schemes and interim development orders under the **Town and Country Planning Act 1961**; and
  - (b) all orders under section 32(5) of that Act; and
  - (c) all by-laws made under section 197(1)(xxxviii)(a) of the **Local Government Act 1958**—

in force immediately before that commencement are revoked.

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s. 207

- (2) All acts, matters and things of a continuing nature made, done or commenced under or in relation to a revoked scheme or order that could have been made, done or commenced under or in relation to the relevant new planning scheme as in force on the commencement of item 131 in the Schedule, are to be taken, so far as relates to any period after that commencement, to have been made, done or commenced under or in relation to the new planning scheme.
- (3) On and from the commencement of item 131 in the Schedule—
- (a) all proceedings commenced by or against a responsible authority under or in relation to a revoked scheme or order may be continued by or against the responsible authority for the relevant new planning scheme; and
- (b) any arrangement, contract or agreement entered into by or on behalf of a responsible authority in relation to a revoked scheme or order that could be so entered into under this Act in relation to the relevant new planning scheme may be enforced by or against the responsible authority for the new planning scheme; and
- (c) all rights and liabilities existing under or in relation to a revoked scheme or order immediately before that commencement continue under or in relation to the relevant new planning scheme, insofar as the new scheme contains provisions to the like effect as provisions of the revoked scheme or order, and may be enforced by or against—
- (i) the Minister, if they were rights and liabilities of or enforceable against the Minister immediately before that commencement; or

S. 207(2)  
substituted by  
No. 5/1988  
s. 6.

S. 207(3)  
substituted by  
No. 5/1988  
s. 6.

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s. 208

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- (ii) the Geelong Regional Commission, if they were rights and liabilities of or enforceable against the Geelong Regional Commission immediately before that commencement; or
  - (iii) a person or body that was liable to pay compensation under section 42(5B) or section 43(4) of the **Town and Country Planning Act 1961** immediately before that commencement, in the case of that liability; or
  - (iv) the responsible authority for the new planning scheme, in any other case.
- (4) A notice in force under section 44 of the **Town and Country Planning Act 1961** before the commencement of item 131 in the Schedule in relation to a revoked scheme or order continues to have effect in relation to the relevant new planning scheme, insofar as the new scheme contains provisions to the like effect as provisions of the revoked scheme or order, as if it were an enforcement order made under Part 6 of this Act.

S. 207(4)  
inserted by  
No. 5/1988  
s. 6.

**208. Permits**

- (1) All permits in force under the **Town and Country Planning Act 1961** immediately before the commencement of item 131 in the Schedule continue in force under this Act and, subject to sub-sections (2) and (3), have the same effect and are subject to the same provisions as if they had been issued under this Act.

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- (2) A permit referred to in sub-section (1) is cancelled at the end of three years after the commencement of item 131 in the Schedule if no action was taken before that commencement or within that three year period to carry out the use or development for which the permit was granted unless—
- (a) the permit specifies a later time for carrying out the use or development; or
  - (b) the time for carrying out the use or development under the permit is extended under section 69 beyond that three-year period; or
  - (c) the permit specifies an earlier time for carrying out the use or development.
- (3) A permit referred to in sub-section (1)—
- (a) expires on the commencement of item 131 in the Schedule if the use for which it was issued was discontinued for the period of two years immediately preceding that commencement; or
  - (b) expires if the use for which it was issued was discontinued for any period of two years beginning within the period of two years immediately preceding the commencement of item 131 in the Schedule or beginning after that commencement.

\* \* \* \* \* S. 209  
amended by  
No. 5/1988  
s. 7(1)–(3),  
repealed by  
No. 52/1998  
s. 192.

\* \* \* \* \* S. 210  
amended by  
No. 5/1988  
s. 8(1)(2),  
repealed by  
No. 52/1998  
s. 192.



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S. 211  
inserted by  
No. 5/1988  
s. 10.

**211. Savings for permits issued in accordance with revoked scheme or order**

(1) If, on or after the commencement of item 131 in the Schedule and before the enactment of the **Planning and Environment (Amendment) Act 1988**, an application for a permit was determined—

(a) in accordance with the **Town and Country Planning Act 1961**; and

(b) a planning scheme or order in force before that commencement—

any permit issued as a result of such a determination that, if issued before that commencement, would have been a permit in force under the **Town and Country Planning Act 1961**—

(c) continues in force under this Act; and

(d) subject to section 208(2) and (3), has the same effect and is subject to the same provisions as if it had been issued under this Act.

(2) Section 208(2) and (3) has effect for the purposes of sub-section (1) as if a reference to the commencement of item 131 in the Schedule were a reference to the enactment of the **Planning and Environment (Amendment) Act 1988**.

S. 212  
inserted by  
No. 5/1988  
s. 10.

**212. Savings for appeals determined in accordance with revoked scheme or order**

If, on or after the commencement of item 131 in the Schedule and before the enactment of the **Planning and Environment (Amendment) Act 1988**, an appeal was determined by the Administrative Appeals Tribunal in accordance with the **Town and Country Planning Act 1961** and a planning scheme or order in force before

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that commencement, the determination, and any thing done as a result of the determination, is not invalid or ineffective by reason only that the determination was made in accordance with a revoked scheme or order.

**213. Transitional provisions**

S. 213  
inserted by  
No. 28/2000  
s. 11.

- (1) This Act as amended by the Planning and Environment (Amendment) Act 2000 applies to—
  - (a) a request or an application for an amendment to a permit that was lodged but not determined by the responsible authority or the Tribunal before the commencement day; and
  - (b) an application for review relating to a permit application that was made to the Tribunal but not determined before the commencement day; and
  - (c) an application for review made to the Tribunal after the commencement day in respect of a determination made before the commencement day by a responsible authority in respect of a permit application.
- (2) In this section "**commencement day**" means the date of commencement of section 11 of the **Planning and Environment (Amendment) Act 2000**.

**214. Transitional provisions**

S. 214  
inserted by  
No. 100/2000  
s. 16.

- (1) This Act as amended by the **Planning and Environment (Restrictive Covenants) Act 2000** applies to—
  - (a) an application for a permit that was made but not determined by the responsible authority or planning authority or Minister before the commencement day; and

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- (b) a request or an application for an amendment to a permit that was made but not determined by the responsible authority or the Tribunal before the commencement day; and
  - (c) an application for review relating to a permit application that was made to the Tribunal but not determined before the commencement day; and
  - (d) an application for review made to the Tribunal on or after the commencement day in respect of a determination made before the commencement day by a responsible authority or planning authority or Minister in respect of a permit application.
- (2) In this section "**commencement day**" means the date of commencement of the **Planning and Environment (Restrictive Covenants) Act 2000**.
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Sch.

**SCHEDULE**

\* \* \* \* \*

Sch.  
amended by  
Nos 5/1988  
s. 9(a)-(c),  
53/1988  
s. 45(Sch. 3  
item 58) (as  
amended by  
No. 47/1989  
s. 23(2)),  
86/1989  
s. 29(B),  
repealed by  
No. 86/1989  
s. 24.

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**ENDNOTES**

**1. General Information**

*Minister's second reading speech—*

*Legislative Assembly: 26 February 1987*

*Legislative Council: 24 March 1987*

The long title for the Bill for this Act was "A Bill to establish a framework for planning the use and development of land in Victoria and for other purposes."

The **Planning and Environment Act 1987** was assented to on 27 May 1987 and came into operation as follows:

Part 1, section 204 on 27 May 1987: section 2(1); rest of Act (*except* Schedule items 118, 119) on 16 February 1988: Government Gazette 10 February 1988 page 218.

Schedule items 118, 119 were repealed unproclaimed by No. 86/1989.

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**Endnotes**

## 2. Table of Amendments

This Version incorporates amendments made to the **Planning and Environment Act 1987** by Acts and subordinate instruments

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### **Loddon–Campaspe Regional Planning Authority Act 1987, No. 59/1987**

*Assent Date:* 27.10.87  
*Commencement Date:* S. 14 on 16.2.88: s. 2(2); rest of Act on 15.2.88:  
Government Gazette 10.2.88 p. 218  
*Current State:* All of Act in operation

### **Liquor Control Act 1987, No. 97/1987** (as amended by No. 70/1988)

*Assent Date:* 1.12.87  
*Commencement Date:* S. 176(1)(2) on 3.5.88: Government Gazette 27.4.88  
p. 1044; s. 176(3) uncommenced, later repealed by  
No. 122/1993  
*Current State:* This information relates only to the provision/s  
amending the **Planning and Environment Act 1987**

### **Planning and Environment (Amendment) Act 1988, No. 5/1988**

*Assent Date:* 15.4.88  
*Commencement Date:* Ss 1–3, 5–9, 11 on 16.2.88: s. 2(1); ss 4, 10 on 15.4.88:  
s. 2(2)  
*Current State:* All of Act in operation

### **Subdivision Act 1988, No. 53/1988** (as amended by No. 47/1989)

*Assent Date:* 31.5.88  
*Commencement Date:* 30.10.89: Government Gazette 4.10.89 p. 2532  
*Current State:* All of Act in operation

### **Local Government (Consequential Provisions) Act 1989, No. 12/1989**

*Assent Date:* 9.5.89  
*Commencement Date:* S. 4(1)(Sch. 2 item 90.1) on 1.11.89: Government  
Gazette 1.11.89 p. 2798; s. 4(1)(Sch. 2 items 90.2,  
90.3) on 1.10.92: Government Gazette 23.9.92 p. 2789  
*Current State:* This information relates only to the provision/s  
amending the **Planning and Environment Act 1987**

### **Transfer of Land (Computer Register) Act 1989, No. 18/1989**

*Assent Date:* 16.5.89  
*Commencement Date:* 3.2.92: Government Gazette 18.12.91 p. 3488  
*Current State:* All of Act in operation

### **Extractive Industries (Amendment) Act 1989, No. 31/1989**

*Assent Date:* 6.6.89  
*Commencement Date:* S. 13(4) on 16.2.88: s. 2(4); s. 13(5) on 30.8.89:  
Government Gazette 30.8.89 p. 2211—See  
**Interpretation of Legislation Act 1984**  
*Current State:* This information relates only to the provision/s  
amending the **Planning and Environment Act 1987**

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**Transport (Amendment) Act 1989, No. 44/1989**

*Assent Date:* 6.6.89  
*Commencement Date:* S. 41(Sch. 2 item 31) on 1.7.89: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Planning and Environment Act 1987**

**Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989**

*Assent Date:* 14.6.89  
*Commencement Date:* S. 3(Sch. item 153) on 1.9.90: Government Gazette 25.7.90 p. 2217  
*Current State:* This information relates only to the provision/s amending the **Planning and Environment Act 1987**

**Planning and Environment (Amendment) Act 1989, No. 86/1989** (as amended by No. 48/1991)

*Assent Date:* 5.12.89  
*Commencement Date:* S. 24 on 6.12.89: s. 2(1); s. 26(2) on 30.9.92: s. 2(2); s. 29(1)–(4)(6)(10) on 16.2.88: s. 2(3); s. 29(8) immediately before 16.2.88: s. 2(4); s. 29(9) on 3.5.88: s. 2(5); rest of Act on 5.12.89: s. 2(6)  
*Current State:* All of Act in operation

**Subdivision (Miscellaneous Amendments) Act 1991, No. 48/1991**

*Assent Date:* 25.6.91  
*Commencement Date:* Ss 59–66 on 25.6.91: s. 2(4)  
*Current State:* This information relates only to the provision/s amending the **Planning and Environment Act 1987**

**Administrative Appeals Tribunal (Planning) Act 1991, No. 62/1991**

*Assent Date:* 12.11.91  
*Commencement Date:* S. 39 on 29.5.90: s. 2(2); rest of Act on 8.1.92: Government Gazette 8.1.92 p. 2  
*Current State:* All of Act in operation

**Albury–Wodonga Agreement (Amendment) Act 1991, No. 88/1991**

*Assent Date:* 10.12.91  
*Commencement Date:* 17.2.92: Government Gazette 12.2.92 p. 314  
*Current State:* All of Act in operation

**City of Greater Geelong Act 1993, No. 16/1993**

*Assent Date:* 18.5.93  
*Commencement Date:* All of Act (*except* s. 24) on 18.5.93: s. 2(1); s. 24 on 3.12.93: Special Gazette (No. 92) 2.12.93 p. 2  
*Current State:* All of Act in operation

**Local Government (Miscellaneous Amendments) Act 1993, No. 125/1993**

*Assent Date:* 7.12.93  
*Commencement Date:* Ss 4(2), 6, 9 on 1.10.95: s. 2(1); s. 37(2) on 3.12.91: s. 2(2); s. 37(3) on 1.6.93: s. 2(3); rest of Act on 7.12.93: s. 2(4)  
*Current State:* All of Act in operation

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**Building Act 1993, No. 126/1993**

*Assent Date:* 14.12.93  
*Commencement Date:* S. 264(Sch. 5 items 17.1–17.3) on 1.7.94: Special Gazette (No. 42) 1.7.94 p. 1  
*Current State:* This information relates only to the provision/s amending the **Planning and Environment Act 1987**

**Planning and Environment (Amendment) Act 1993, No. 128/1993**

*Assent Date:* 14.12.93  
*Commencement Date:* 14.12.93  
*Current State:* All of Act in operation

**Planning Authorities Repeal Act 1994, No. 118/1994**

*Assent Date:* 20.12.94  
*Commencement Date:* S. 13 on 1.7.95: Special Gazette (No. 63) 29.6.95 p. 1  
*Current State:* This information relates only to the provision/s amending the **Planning and Environment Act 1987**

**Coastal Management Act 1995, No. 8/1995**

*Assent Date:* 26.4.95  
*Commencement Date:* Ss 43–45 on 26.4.97: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Planning and Environment Act 1987**

**Latrobe Regional Commission (Repeal) Act 1995, No. 16/1995**

*Assent Date:* 9.5.95  
*Commencement Date:* All of Act (*except* s. 7) on 9.5.95: s. 2(1); s. 7 on 15.8.95: Government Gazette 27.7.95 p. 1880  
*Current State:* All of Act in operation

**Planning and Environment (Miscellaneous Amendments) Act 1995, No. 35/1995**

*Assent Date:* 6.6.95  
*Commencement Date:* All of Act (*except* s. 4) on 6.6.95: s. 2(1); s. 4 on 6.12.95: s. 2(3)  
*Current State:* All of Act in operation

**Planning and Environment (Development Contributions) Act 1995, No. 50/1995**

*Assent Date:* 14.6.95  
*Commencement Date:* S. 3 on 30.11.95: Government Gazette 30.11.95 p. 3303; s. 4 on 30.5.97: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Planning and Environment Act 1987**

**Extractive Industries Development Act 1995, No. 67/1995**

*Assent Date:* 17.10.95  
*Commencement Date:* Pt 1 (ss 1–7), s. 60(1)(2) on 17.10.95: s. 2(1); rest of Act on 1.6.96: Special Gazette (No. 60) 31.5.96 p. 4  
*Current State:* All of Act in operation



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**Heritage Act 1995, No. 93/1995**

*Assent Date:* 5.12.95  
*Commencement Date:* S. 218(1)(Sch. 2 item 7) on 23.5.96: Government Gazette 23.5.96 p. 1248  
*Current State:* This information relates only to the provision/s amending the **Planning and Environment Act 1987**

**Miscellaneous Acts (Omnibus Amendments) Act 1996, No. 22/1996**

*Assent Date:* 2.7.96  
*Commencement Date:* S. 17 on 2.7.96: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Planning and Environment Act 1987**

**Planning and Environment (Planning Schemes) Act 1996, No. 77/1996**

*Assent Date:* 17.12.96  
*Commencement Date:* 17.12.96: s. 2  
*Current State:* All of Act in operation

**Alpine Resorts (Management) Act 1997, No. 89/1997**

*Assent Date:* 9.12.97  
*Commencement Date:* S. 75 on 30.4.98: Government Gazette 30.4.98 p. 926  
*Current State:* This information relates only to the provision/s amending the **Planning and Environment Act 1987**

**Planning and Environment (Amendment) Act 1997, No. 103/1997**

*Assent Date:* 16.12.97  
*Commencement Date:* 16.12.97: s. 2  
*Current State:* All of Act in operation

**Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998**

*Assent Date:* 26.5.98  
*Commencement Date:* S. 7(Sch. 1) on 1.7.98: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Planning and Environment Act 1987**

**Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998**

*Assent Date:* 2.6.98  
*Commencement Date:* Ss 182–192 on 1.7.98: Government Gazette 18.6.98 p. 1512  
*Current State:* This information relates only to the provision/s amending the **Planning and Environment Act 1987**

**Planning and Environment (Amendment) Act 1998, No. 72/1998**

*Assent Date:* 4.11.98  
*Commencement Date:* Ss 3–8 on 3.12.98: Government Gazette 26.11.98 p. 2851  
*Current State:* This information relates only to the provision/s amending the **Planning and Environment Act 1987**

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**Transfer of Land (Single Register) Act 1998, No. 85/1998**

*Assent Date:* 17.11.98  
*Commencement Date:* S. 24(Sch. item 45) on 1.1.99: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Planning and Environment Act 1987**

**Liquor Control Reform Act 1998, No. 94/1998**

*Assent Date:* 24.11.98  
*Commencement Date:* S. 183(Sch. 4 item 3) on 17.2.99: Special Gazette (No. 22) 16.2.99 p. 3  
*Current State:* This information relates only to the provision/s amending the **Planning and Environment Act 1987**

**Licensing and Tribunal (Amendment) Act 1998, No. 101/1998**

*Assent Date:* 1.12.98  
*Commencement Date:* S. 27 on 1.2.99: Government Gazette 24.12.98 p. 3204  
*Current State:* This information relates only to the provision/s amending the **Planning and Environment Act 1987**

**Planning and Environment (Amendment) Act 2000, No. 28/2000**

*Assent Date:* 30.5.00  
*Commencement Date:* Ss 3–11 on 31.5.00: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Planning and Environment Act 1987**

**Planning and Environment (Restrictive Covenants) Act 2000, No. 100/2000**

*Assent Date:* 12.12.00  
*Commencement Date:* 13.12.00: s. 2  
*Current State:* All of Act in operation

**Planning and Environment (Metropolitan Green Wedge Protection) Act 2003, No. 43/2003**

*Assent Date:* 11.6.03  
*Commencement Date:* 12.6.03: s. 2  
*Current State:* All of Act in operation

**Planning and Environment (Port of Melbourne) Act 2003, No. 77/2003**

*Assent Date:* 21.10.03  
*Commencement Date:* 22.10.03: s. 2  
*Current State:* This information relates only to the provision/s amending the **Planning and Environment Act 1987**

**Road Management Act 2004, No. 12/2004**

*Assent Date:* 11.5.04  
*Commencement Date:* S. 166 on 1.7.04: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Planning and Environment Act 1987**

**Mitcham-Frankston Project Act 2004, No. 39/2004**

*Assent Date:* 8.6.04  
*Commencement Date:* S. 261 on 1.7.04: Special Gazette (No. 148) 25.6.04 p. 1  
*Current State:* This information relates only to the provision/s amending the **Planning and Environment Act 1987**

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**Sustainable Forests (Timber) Act 2004, No. 48/2004**

*Assent Date:* 16.6.04  
*Commencement Date:* S. 137 on 17.6.04: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Planning and Environment Act 1987**

**Planning and Environment (Development Contributions) Act 2004, No. 101/2004**

*Assent Date:* 14.12.04  
*Commencement Date:* Ss 3–10 on 15.12.04: s. 2  
*Current State:* This information relates only to the provision/s  
amending the **Planning and Environment Act 1987**

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### 3. Explanatory Details

<sup>i</sup> S. 3(1) def. of "Victoria Planning Provisions": Part 3 (ss 17–27) of the **Planning and Environment (Planning Schemes) Act 1996**, No. 77/1996 reads as follows:

#### **PART 3—TRANSITIONAL**

##### **17. Existing Act to continue to apply to existing schemes**

Despite the amendment of the Principal Act by this Act, the Principal Act as in force immediately before the commencement of this Act continues to apply in relation to—

- (a) any planning scheme existing immediately before that commencement; and
- (b) any amendment to a planning scheme of which notice was given under section 19 of the Principal Act but which had not been approved before that commencement; and
- (c) any amendment to a planning scheme referred to in paragraph (a) prepared on or after that commencement.

##### **18. Municipal councils to prepare new schemes**

- (1) As soon as practicable after the commencement of this Act, each municipal council must prepare a planning scheme for its municipal district and for any area adjoining its municipal district for which it is a planning authority.
- (2) Subject to this Part, the Principal Act as amended by this Act and the regulations under the Principal Act apply to the preparation of a planning scheme under this section as if it were an amendment to a planning scheme and the municipal council were the planning authority.
- (3) Sections 96A to 96D do not apply in respect of a planning scheme prepared under this section.

**19. Municipal councils to prepare municipal strategic statements**

- (1) The municipal council must prepare a municipal strategic statement for inclusion in the planning scheme prepared under section 18 on or before the date specified by the Minister in respect of that planning scheme.
- (2) If a municipal council has not prepared a municipal strategic statement for inclusion in a planning scheme on or before the date specified by the Minister under sub-section (1), the Minister may prepare a municipal strategic statement for inclusion in that planning scheme.
- (3) Section 12A of the Principal Act as amended by this Act applies to the preparation of a municipal strategic statement under this section.

**20. Submission of planning scheme for approval**

- (1) The municipal council must submit a planning scheme prepared under section 18 to the Minister for approval under section 31 of the Principal Act on or before the date specified by the Minister in respect of that planning scheme.
- (2) If the municipal council does not submit a planning scheme by the date specified by the Minister, the Minister may prepare and approve a planning scheme for that municipal district.
- (3) The Principal Act (except sections 12(1)(a) and (e), 12(2), 12(3), Divisions 1 and 2 of Part 3 and section 39 and any regulations made for the purpose of those provisions) applies to the preparation and approval of a planning scheme by the Minister under sub-section (2).
- (4) A planning scheme approved under this section is deemed to be approved under the Principal Act.

- (5) The municipal council must pay to the Crown the costs determined by the Governor in Council to be incurred by the Minister in preparing a planning scheme under this section for the council's municipal district.

#### **21. Minister may prepare planning scheme**

- (1) The Minister may prepare and approve a planning scheme under this Part for any part of Victoria outside a municipal district.
- (2) Subject to this Part, the Principal Act as amended by this Act and the regulations under the Principal Act apply to the preparation of a planning scheme under this section as if it were an amendment to a planning scheme and the Minister were the planning authority.
- (3) Sections 96A to 96D do not apply in respect of a planning scheme prepared under this section.

#### **22. Validity of schemes**

- (1) A planning scheme prepared under this Part and approved or purporting to have been approved is deemed to have been duly approved in accordance with all of the requirements of this Part and the Principal Act and to be valid and effective in all respects.
- (2) A planning scheme referred to in sub-section (1) must not be called into question in any proceeding in any court or tribunal or in any proceeding by way of review under the Principal Act or this Part.
- (3) Nothing in this section applies to an amendment to a planning scheme referred to in sub-section (1).

### **23. Issue of permits with schemes**

(1) If—

- (a) a municipal council prepares a planning scheme under this Part for an area; and
- (b) the municipal council determines under section 96G(1)(c) of the Principal Act to recommend to the Minister that a permit be granted under Division 5 of Part 4 of the Principal Act—

the municipal council must give the owner and the occupier of land to which the proposed permit would apply at least 30 days notice of its intention to recommend to the Minister that a permit be granted under that Division in respect of the land.

- (2) The notice must be accompanied by a copy of the proposed permit.
- (3) The Principal Act applies in relation to a planning scheme prepared under this Part as if—
  - (a) in section 96E(1)(a) the words "as amended by the proposed amendment" were **omitted**; and
  - (b) for section 96G(1)(c) there were **substituted**—
    - "(c) the planning authority considers it appropriate that a permit be granted under this Division for any purpose for which the planning scheme would require a permit to be obtained."
- (4) Section 96I of the Principal Act applies in relation to a planning scheme prepared under this Part as if that section permitted the Minister—

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- (a) to grant a permit subject to any conditions the Minister thinks fit, if the Minister considers that it is appropriate that a permit be granted under that section for any purpose for which the planning scheme would require the permit to be obtained; and
- (b) to grant any permit under that section within 3 months after the date of approval of the planning scheme.

**S. 23(5) inserted by No. 72/1998 s. 10.**

- (5) If, in relation to a planning scheme prepared under this Part, the Minister grants a permit under section 96I of the Principal Act for the use of land or the development and use of land for an extractive industry, the permit may specify that the permit expires if the use is discontinued for a period (being not less than 2 years) specified in the permit.

**S. 23(6) inserted by No. 72/1998 s. 10.**

- (6) If a permit specifies a period for expiry in accordance with sub-section (5)—
  - (a) the permit expires if the use is discontinued for the period specified in the permit; and
  - (b) sections 68(2)(b) and 68(3)(d) of the Principal Act do not apply to that permit.

**24. Effect of new scheme**

- (1) On the commencement of a new planning scheme prepared under this Part in respect of an area, any planning scheme in force in that area immediately before that commencement is revoked.
- (2) All acts matters or things of a continuing nature made, done or commenced under or in relation to a revoked scheme that could have been made, done or commenced under or in relation to the new planning scheme are to be taken, so far as



relates to any period after the commencement of the new planning scheme, to have been made, done or commenced in relation to the new planning scheme.

- (3) On and from the commencement of the new planning scheme—
- (a) all proceedings commenced by or against a responsible authority under or in relation to the revoked scheme may be continued by or against the responsible authority for the new planning scheme; and
  - (b) any arrangement, contract or agreement entered into by or on behalf of a responsible authority in relation to the revoked scheme that could be entered into under the Principal Act in relation to the new planning scheme may be enforced by or against the responsible authority for the new planning scheme; and
  - (c) all rights and liabilities existing under or in relation to the revoked scheme immediately before the commencement of the new planning scheme continue under or in relation to the new planning scheme, to the extent that the new planning scheme has provisions to the like effect as provisions of the revoked scheme, and may be enforced by or against—
    - (i) the Minister, if they were rights and liabilities of or enforceable against the Minister immediately before that commencement; or

- (ii) the responsible authority for the new planning scheme, if they were rights and liabilities of or enforceable against the responsible authority under or in relation to the revoked scheme immediately before that commencement.

## **25. Applications for permits**

- (1) Any application for a permit in respect of land which was made under the Principal Act but which had not been decided before the commencement of a new planning scheme prepared under this Part and applying to that land must be decided in accordance with the provisions of the new planning scheme as in force at the date of the decision.
- (2) Subject to sub-section (3), Part 4 of the Principal Act as amended by this Act applies to an application referred to in sub-section (1) as if a reference in that Part to a planning scheme were a reference to the new planning scheme.
- (3) If notice had been given of an application under section 52 of the Principal Act before the commencement of the new planning scheme—
  - (a) any exemption in the new planning scheme from the giving of that notice does not apply; and
  - (b) any additional requirements for notice in the new planning scheme do not apply.

## **26. Appeals**

- (1) If before the commencement of a new planning scheme prepared under this Part—
  - (a) the responsible authority had decided an application for a permit under the Principal Act in respect of land to which the new planning scheme applies; and
  - (b) an appeal against the decision had not been lodged before that commencement and the time for lodging had not expired; and
  - (c) an appeal is made to the Administrative Appeals Tribunal against that decision after that commencement—

the new planning scheme as in force at the date of the determination by the Tribunal applies to the hearing and determination of the appeal.

- (2) If before the commencement of a new planning scheme prepared under this Part—
  - (a) the responsible authority had decided an application for a permit under the Principal Act in respect of land to which the new planning scheme applies; and
  - (b) an appeal had been lodged but not determined before that commencement—

the new planning scheme as in force at the date of the determination by the Tribunal applies to the hearing and determination of the appeal.

- (3) If on an appeal referred to in this section, the Tribunal determines that a permit should be granted, the new planning scheme as in force for the time being applies to the grant of the permit and anything done under or in relation to the permit.

## **27. Supreme Court—limitation of jurisdiction**

It is the intention of section 22(2) to alter or vary section 85 of the **Constitution Act 1975**.

<sup>ii</sup> Pt 1A (ss 4A–4J): See note 1.

<sup>iii</sup> S. 6(1)(aa): See note 1.

<sup>iv</sup> S. 6(2)(d): See note 1.

<sup>v</sup> S. 6(2)(g): Sections 64, 65 of the **Subdivision (Miscellaneous Amendments) Act 1991**, No. 48/1991 read as follows:

### **64. Amendment of planning schemes concerning easements, restrictions etc.**

- (1) In addition to any other powers to prepare or approve amendments to any planning scheme, the Minister may prepare and approve an amendment to any planning scheme to incorporate any of the provisions authorised by section 6(2)(g), (ga) or (gb) of the **Planning and Environment Act 1987**.
- (2) Sub-section (1) authorises the preparation of only one amendment to each existing planning scheme.
- (3) The **Planning and Environment Act 1987**, except for section 12 and Divisions 1 and 2 of Part 3, applies to the preparation and approval of an amendment under sub-section (1).
- (4) An amendment under sub-section (1) must not itself create, vary or remove an easement or restriction within the meaning of the **Subdivision Act 1988**.
- (5) As soon as possible after the commencement of this section the Minister must prepare and approve an amendment to each planning scheme to provide that a permit is required to use or develop land in

a residential zone for two dwellings, if there is a restriction prohibiting that use or development.

- (6) Sub-clause (5) only applies to restrictions registered or lodged for registration prior to October 30 1989.
- (7) The **Planning and Environment Act 1987**, except for section 12 and Divisions 1 and 2 of Part 3, applies to the preparation and approval of an amendment under sub-section (5).

**65. Transitional provision: permits**

- (1) If on or after 30 October 1989 but before the date of commencement of an amendment approved under section 64 a decision is made to grant a permit, or a permit is issued, that (by condition or otherwise) requires, provides for, directs or authorises the creation, variation or removal of an easement or restriction (within the meaning of the **Subdivision Act 1988**), that requirement, provision, direction or authorisation must for all purposes be taken to be and always to have been valid and effective, and its inclusion in the decision or permit must be taken not to invalidate and never to have invalidated the decision or permit or anything in it.
- (2) Anything done in giving effect to a requirement, provision, direction or authorisation validated by sub-section (1) must, if done in accordance with it, be taken for all purposes to be and always to have been validly done.
- (3) This section applies to—
  - (a) a permit issued on or after the date of commencement of an amendment referred to in sub-section (1), as the result of a decision made before that commencement; and

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- (b) anything done in relation to a permit or a decision referred to in sub-section (1) whether before or after the date of commencement of that amendment.
- (4) On the date of commencement of an amendment to a planning scheme approved under section 64, an application for a permit authorised by the amendment and made before the amendment commenced (whether before or after the commencement of this section) may be dealt with as if the amendment had been in operation when the application was made.
- (5) Expressions used in this section have the same meanings as in the **Planning and Environment Act 1987**.

<sup>vi</sup> S. 6(2)(ga): See note 5.

<sup>vii</sup> S. 6(2)(gb): See note 5.

<sup>viii</sup> S. 7: See note 1.

<sup>ix</sup> S. 8: See note 1.

<sup>x</sup> S. 11(b): See note 1.

<sup>xi</sup> S. 12(2)(aa): See note 1.

<sup>xii</sup> S. 12(2)(ab): See note 1.

<sup>xiii</sup> S. 12(2)(b): Section 32(8) of the **Planning and Environment (Amendment) Act 1989**, No. 86/1989 reads as follows:

**32. Transitional provisions: Amendment to planning schemes**

- (8) The amendment made to the Principal Act by section 25(d) applies only to an amendment of a planning scheme prepared on or after the date of commencement of this section.

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<sup>xiv</sup> S. 12A: See note 1.

<sup>xv</sup> S. 19(3): Section 32(3) of the **Planning and Environment (Amendment) Act 1989**, No. 86/1989 reads as follows:

**32. Transitional provisions: Amendment to planning schemes**

- (3) The amendment made to the Principal Act by section 25(e) of this Act applies whether any notice required by section 19 of the Principal Act is given before on or after the date of commencement of this section.

<sup>xvi</sup> S. 21: Section 32(4) of the **Planning and Environment (Amendment) Act 1989**, No. 86/1989 reads as follows:

**32. Transitional provisions: Amendment to planning schemes**

- (4) The amendment made to the Principal Act by section 25(f) of this Act applies only where a condition requiring notice is imposed under the Principal Act on or after the date of commencement of this section.

<sup>xvii</sup> S. 21: See note 1.

<sup>xviii</sup> S. 21A: Section 32(5) of the **Planning and Environment (Amendment) Act 1989**, No. 86/1989 reads as follows:

**32. Transitional provisions: Amendment to planning schemes**

- (5) The amendments made to the Principal Act by section 8 of this Act apply to—
- (a) a submission received on or after the date of commencement of this section; and

- (b) a submission received before that date of commencement if at that date of commencement—
  - (i) the submission has not been referred to a panel; and
  - (ii) no notice under the Principal Act has been given to the makers of the submission.

<sup>xix</sup> S. 22: See note 1.

<sup>xx</sup> S. 23: Section 32(6) of the **Planning and Environment (Amendment) Act 1989**, No. 86/1989 reads as follows:

**32. Transitional provisions: Amendment to planning schemes**

- (6) The amendment made to the Principal Act by section 25(h) of this Act applies to a submission whether received before on or after the date of commencement of this section.

<sup>xxi</sup> S. 23: See note 1.

<sup>xxii</sup> S. 25: See note 1.

<sup>xxiii</sup> S. 25A: See note 1.

<sup>xxiv</sup> S. 52(1A): Section 33(1) of the **Planning and Environment (Amendment) Act 1989**, No. 86/1989 reads as follows:

**33. Transitional provisions: Application for permits**

- (1) The amendment made to the Principal Act by section 13 of this Act applies only to an application for a permit received on or after the date of commencement of this section.



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<sup>xxv</sup> S. 52(1B): See note 24.

<sup>xxvi</sup> S. 52(1C): See note 24.

<sup>xxvii</sup> Pt 4 Div. 5 (ss 96A–96N): See note 1.

<sup>xxviii</sup> S. 97 (*repealed*): See Schedule 2 of the **Extractive Industries Development Act 1995**, No. 67/1995 for savings and transitionals.

<sup>xxix</sup> S. 97 (*repealed*): Section 29(6) of the **Planning and Environment (Amendment) Act 1989**, No. 86/1989 reads as follows:

**29. Statute law revision**

- (6) On and from 16 February 1988 until the coming into operation of section 43 of the **Extractive Industries Act 1966**, section 97(2)(a) of the Principal Act has effect and must be taken always to have had effect as if it referred to the Extractive Industries Advisory Committee instead of to the Extractive Industries Board.

<sup>xxx</sup> S. 161(2): See note 1.

<sup>xxxi</sup> Pt 9 Div. 2: Section 31(3) of the **Planning and Environment (Amendment) Act 1989**, No. 86/1989 reads as follows:

**31. Transitional provisions: Crown land owners and occupiers**

- (3) Division 2 of Part 9 of the Principal Act continues to apply to an agreement entered into between a responsible authority and the occupier of Crown land before the date of commencement of this section, as if section 4 of this Act had not been enacted.

<sup>xxxii</sup> S. 201D: See note 1.

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