

# **Bayside Project (Further Amendment) Bill**

**No.**

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# LEGISLATIVE ASSEMBLY

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Read 1° 8 May 1991

*(Brought in by Mr Kennan and Mr Roper)*

## A BILL

to further amend the **Bayside Project Act 1988** and for other purposes

### **Bayside Project (Further Amendment) Act 1991**

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

**1. *Purpose***

The purpose of this Act is to make further provision about the subdivision and management of the Bayside land.

**5 2. *Commencement***

This Act comes into operation on a day or days to be proclaimed.

**3. *Principal Act***

**10** In this Act the **Bayside Project Act 1988** is called the Principal Act.

**N . 67/1988  
as am nd d  
by Nos 44/  
1989 and  
85/1989.**

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Section headings appear in bold italics and are not part of the Act (see **Interpretation of Legislation Act 1984**).

**4. Amendment of section 3—Definitions**

In section 3 (1) of the Principal Act for the definition of “Court” **substitute** “ “Court” means the Magistrates’ Court.”.

**5. Sale of Bayside land**

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For section 6 (5) of the Principal Act **substitute—**

- “(5) If the Governor in Council by Order published in the Government Gazette declares that this sub-section applies, the registered proprietor or a person who is entitled to be registered as proprietor, of the Bayside land or any part or parts of it may sell any part or parts of it even though that part is not, or those parts are not, a lot or the whole of a lot on a sealed, certified, registered or approved plan. 10
- (6) A contract for the sale of land under sub-section (5) must provide that the deposit money and all other money payable by the purchaser must be paid to a solicitor or a licensed estate agent named or specified in the contract. 15
- (7) The deposit and any other money paid by a purchaser of any part of the Bayside land before a plan on which the part is shown as a lot is registered or approved by the Registrar of Titles— 20
  - (a) must be paid to the solicitor or licensed estate agent named or specified in the contract; and 25
  - (b) must be held by that person on trust for the purchaser until that plan is registered or approved.
- (8) If sub-section (6) or (7) is not complied with, the purchaser may at any time before the plan has been registered or approved by the Registrar of Titles, avoid the sale. 30
- (9) If the plan is not registered or approved by the Registrar of Titles within the period of 18 months after the contract of sale is entered into or, if the contract specifies another period, before the end of that specified period, the purchaser may, at any 35

time after that period and before the plan is registered or approved, avoid the sale.

5 (10) If a purchaser avoids a sale under this section, all money paid by the purchaser under the contract is recoverable by the purchaser except for any money paid by the purchaser as an occupation fee for any period during which the purchaser was in actual occupation of the land.

10 (11) Sections 8A, 9AA, 9AB, 9AC, 9AD, 9AE, 9AF and 9AG of the **Sale of Land Act 1962** and section 7 of the **Strata Titles Act 1967** do not apply to a sale of land under this section.”.

#### **6. Amendment of section 7**

15 In section 7 (1) (a) of the Principal Act after “Port Melbourne” insert “or the Minister administering the **Planning and Environment Act 1987**”.

#### **7. Amendment of section 8**

(1) In section 8 (1) of the Principal Act—

20 (a) for the expression beginning “prevents” and ending “approving,” substitute “or the **Subdivision Act 1988** prevents the Minister administering the **Planning and Environment Act 1987** or the Council of the City of Port Melbourne from sealing or certifying, or the Registrar of Titles from approving or registering,”;

25 (b) after “allotments” insert “or lots”.

(2) In section 8 of the Principal Act for sub-sections (2), (3) and (4) substitute—

30 “(2) The Minister administering the **Planning and Environment Act 1987** or the Council of the City of Port Melbourne must not refuse to seal or certify, and the Registrar of Titles must not refuse to approve or register, a plan referred to in sub-section (1) because there are specified on the plan allotments or lots requiring easements referred to  
35 in that sub-section.

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- (3) The Minister administering the **Planning and Environment Act 1987** may in relation to the Bayside land—
  - (a) carry out any duties, powers and discretions of a Council or municipality under subdivision (3) of Division 9 of Part XIX of the **Local Government Act 1958**; or 5
  - (b) carry out any duties, powers and discretions of a Council under Part 1, 2 or 3 or sections 23, 25, 35, 36, 39 or 44 of the **Subdivision Act 1988**. 10
- (4) If the Minister administering the **Planning and Environment Act 1987** carries out a duty, power or discretion under Part 1, 2 or 3 or section 23, 25, 35, 36, 39 or 44 of the **Subdivision Act 1988**, any provision of that Act relating to the carrying out of that duty, power or discretion has effect as if it referred to the Minister instead of the Council. 15
- (5) If a plan of any part of the Bayside land is submitted to— 20
  - (a) the Council, the Minister administering the **Planning and Environment Act 1987** cannot in relation to that plan carry out any duty, power or discretion referred to in sub-section (3); or
  - (b) that Minister, a Council cannot in relation to that plan carry out any duty, power or discretion referred to in that sub-section.”. 25
- (3) The amendments made to the Principal Act by this section do not affect the status or operation of any plans sealed before the commencement of this section. 30

**8. Application of Strata Titles Act to Bayside land**

- (1) In section 16 (1) of the Principal Act—
  - (a) in paragraph (f) after “1967” insert “, the **Cluster Titles Act 1974**, the **Subdivision Act 1988** or this Act”; 35
  - (b) in paragraph (g) after “1967,” insert “the **Cluster Titles Act 1974**, the **Subdivision Act 1988** or this Act”;

(c) in paragraph (h) (i) after “1967” insert “, the **Cluster Titles Act 1974**, the **Subdivision Act 1988** or this Act”.

5 (2) In section 16 (1) (c) of the Principal Act for “unit entitlement or unit liability” (where secondly occurring) **substitute** “lot entitlement or lot liability”.

(3) In section 16 (2) (a) of the Principal Act—

(a) after sub-paragraph (i) **insert**—

10 “(ia) sections 4, 6, 7B and 7C have effect as if they referred to the Minister administering the **Planning and Environment Act 1987** as well as the Council or to the municipality;”;

15 (b) in sub-paragraph (iii) after “council” **insert** “or the Minister administering the **Planning and Environment Act 1987**”.

(4) After section 16 (2) (b) (i) of the Principal Act **insert**—

20 “(ia) sections 4, 6, 7, 8 and 11 included references to the Minister administering the **Planning and Environment Act 1987** as well as to the Council or to the municipality;

(ib) the provisions applied by section 11 have effect as if they included references to the Minister administering the **Planning and Environment Act 1987** as well as to the Council or to the municipality;

25 (ic) section 11 (1A) has effect as if it provided—

30 “(1A) Despite anything in the applied provisions, the Minister administering the **Planning and Environment Act 1987** or the Council need not refer the plan to any person or body mentioned in those applied provisions.”.

(5) In section 16 (2) (c) of the Principal Act for sub-paragraph (i) **substitute**—

“(i) section 569B (8) has effect as if it provided—

35 “(8) The Minister administering the **Planning and Environment Act 1987** or the Council need not refer a plan to any person or body mentioned in this Division.”;

(ia) subdivision (3) of Division 9 of Part XIX has effect as if it included references to the Minister administering the **Planning and Environment Act 1987** as well as to the Council or to the municipality”.

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(6) After section 16 (2) of the Principal Act insert—

‘(3) In a provision of an Act applying by virtue of sub-section (1) or (2) to—

(a) a body corporate in an item in Schedule 3; or

(b) a plan of any part of the Bayside land—

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a reference to “the Court” has effect for the purposes of this Act as if it were a reference to “the Magistrates’ Court”.

(4) In relation to an application or other proceeding relating to the Bayside land and brought before the Magistrates’ Court under a provision referred to in sub-section (3), section 38 (2) of the **Subdivision Act 1988** applies as if—

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(a) a reference to “a dispute or other matter to which sub-section (1) applies” were a reference to an application or proceeding referred to in this sub-section; and

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(b) a reference in paragraph (a) to “a dispute or other matter” were a reference to an application or proceeding referred to in this sub-section; and

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(c) for paragraph (b) there were substituted—

“(b) the **Bayside Project Act 1988**”.

### **9. Duties of body corporate**

In section 19 (1) and (2) of the Principal Act for “or the **Cluster Titles Act 1974**” substitute “, the **Cluster Titles Act 1974**, the **Subdivision Act 1988** or this Act”.

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### **10. Amendment of section 20**

In section 20 of the Principal Act—

(a) for “unit liability” substitute “lot liability”; and

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(b) for “units” **substitute** “lots”.

**11. Amendment of section 24**

(1) In section 24 of the Principal Act—

- 5 (a) in sub-section (1) for “unit entitlement or unit liability” **substitute** “lot entitlement or lot liability”;
- (b) in sub-section (2) for “unit entitlement” **substitute** “lot entitlement”;
- (c) in sub-section (3) for “unit liability” **substitute** “lot liability”.

10 (2) After section 24 (4) of the Principal Act **insert**—

“(5) On the commencement of this sub-section—

- 15 (a) the unit entitlement or unit liability of a member of a body corporate in an item in Schedule 3 becomes lot entitlement or lot liability;
- (b) a plan in an item in Schedule 3 has effect as if it referred to—
  - 20 (i) lot entitlement instead of unit entitlement; and
  - (ii) lot liability instead of unit liability.”.

**12. Section 28A inserted**

After section 28 of the Principal Act **insert**—

**“28A. Amalgamation of bodies corporate on Schedule 3 plans and other plans**

- 25 (1) Two bodies corporate, one of which is specified in an item in Schedule 3 and the other is a body corporate under the **Strata Titles Act 1967**, the **Cluster Titles Act 1974** or the **Subdivision Act 1988**, may, by unanimous resolution of each body corporate recommend to the Governor in Council that—
  - 30 (a) the whole or part of a common allotment vested in one of those bodies corporate ceases to be so vested, ceases to be an

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- allotment and becomes common property affected by the other body corporate; or
  - (b) the whole or part of common property affected by one of those bodies corporate ceases to be common property so affected, ceases to be subject to any easements or rights affecting common property of that body corporate and becomes a common allotment vested in the other body corporate. 5 10
- (2) Two bodies corporate, one of which is specified in an item in Schedule 3 and the other is a body corporate under the **Strata Titles Act 1967**, the **Cluster Titles Act 1974** or the **Subdivision Act 1988**, may, by unanimous resolution, recommend to the Governor in Council that those bodies corporate amalgamate and form a new body corporate in which is vested the common allotments and common property of the amalgamating bodies corporate, and that a new item be added to Schedule 3 subject to and in accordance with the Order. 15 20
- (3) The Governor in Council may, by Order published in the Government Gazette, give effect to a recommendation under this section. 25
- (4) Without limiting what an Order under this section may contain, it may provide—
  - (a) for the vesting or divesting of an interest in land;
  - (b) for the extinguishment of easements or rights; 30
  - (c) that land ceases to be or becomes land affected by a body corporate;
  - (d) for any amendment of Schedule 3.
- (5) If an Order is made under this section, Schedule 3 is amended in accordance with the Order. 35
- (6) If, because of the making of an Order under this section, an item in Schedule 3 is deleted,

the body corporate in that item, and each body corporate that amalgamates with it, ceases to exist.

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- (7) A body corporate must forthwith give written notice to the Registrar of Titles that an Order has been made under this section.”.

**13. Sections 29A and 29B inserted**

After section 29 of the Principal Act insert—

**“29A. Further subdivision of Bayside land**

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- (1) If—

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(a) land in a plan in an item in Schedule 3 (“the original plan”) is further subdivided, whether or not the new plan of subdivision is also included as an item in that Schedule; and

(b) the item relating to the original plan is not deleted from the Schedule—

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the resubdivision, and the inclusion in that Schedule of any new item relating to it, do not affect the continuity or status or operation of the original plan, the primary allotments and common allotments on the original plan, a body corporate the name of which is included in the item relating to the original plan, or the by-laws or rules of that body corporate and those by-laws and rules continue to bind the body corporate in that item, its members, and if any of its members is a body corporate under the **Strata Titles Act 1967**, the **Cluster Titles Act 1974**, the **Subdivision Act 1988** or this Act, that body corporate and its members.

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- (2) The continuity of status of a primary allotment or common allotment on the original plan is not affected by the fact that, on resubdivision, any part of that allotment becomes common property, or becomes a primary allotment or

common allotment in another item in Schedule 3.

**29B. Access routes**

- (1) The Minister administering the **Planning and Environment Act 1987** or, with that Minister's written consent, a person or body in which land is vested may submit for sealing or certification and lodge for approval or registration a plan— 5
- (a) specifying any part of the Bayside land as a road to which this section applies; or 10
- (b) specifying that this section no longer applies to land specified as a road to which this section applies.
- (2) On the approval or registration of a plan including a specification referred to in sub-section (1) (a), sections 203 (2), (3), (4) (b) and (5), 204 and 205 and Schedules 10 and 11 of the **Local Government Act 1989** do not apply to the road specified in the plan. 15
- (3) On the approval or registration of a plan including a specification referred to in sub-section (1) (b)— 20
- (a) this section ceases to apply to the road specified in the plan; and
- (b) sections 203 (2), (3), (4) (b), (5), 204 and 205 and Schedules 10 and 11 of the **Local Government Act 1989** apply to that road.” 25

**14. Amendment of section 31—Arbitration**

- (1) After section 31 (1) (e) of the Principal Act insert— 30
- “(ea) section 149A of the **Planning and Environment Act 1987**; or
- (eb) section 39 or 40 of the **Subdivision Act 1988**; or”.
- (2) After section 31 (1) of the Principal Act insert—
- “(1A) If an Act mentioned in sub-section (1) prescribes a period within which a person may make the 35

application, reference, appeal, objection or agreement mentioned in that sub-section, the person may refer the matter to arbitration under this section not later than the end of that prescribed period.

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- (1B) Unless sub-section (1A) applies, a person may refer a matter to arbitration under sub-section (1) not later than 30 days after the person becomes aware of the matter.”.

10 **15. *Open space requirements***

In section 34 (1) of the Principal Act after “provisions of” insert “section 569H of the **Local Government Act 1958** (in so far as they have any continuing application) and”.

15 **16. *Amendment of section 37—Building Control Act***

In section 37 of the Principal Act—

(a) after “37.” insert “(1)”;

(b) after “1981” insert “and the regulations under that Act”;

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(c) at the end of the section insert—

“(2) Without limiting sub-section (1) or the application of the **Building Control Act 1981** or the regulations under that Act, section 16 (3) of that Act applies to a person or body directed under this section to carry out the administration of that Act and the regulations under it as if the person or body were a Minister or a public authority to which that sub-section applies.”.

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30 **17. *Amendment of section 40A***

(1) In section 40A (3) of the Principal Act—

- (a) in paragraph (e) for ‘for section 16 (1) there were substituted—“(1)’ substitute ‘after section 16 (1) there were inserted—“(1A)’;

- (b) paragraphs (h), (i) and (r) are **repealed**.
- (2) In section 40A (4) of the Principal Act—
- (a) for paragraph (b) **substitute**—
- “(b) sections 6 (1) (c), (d) and (f) 9, 10 (5), (6) and (7) and 11 (2), (3), (4), (5), (6) and (10) did not form part of that Act; 5
- (ba) section 8 included a provision that the Minister or Council need not refer to a referral authority a plan to which section 40A (1) (b) of the **Bayside Project Act 1988** applies and need not give any referral authority a copy of that plan; 10
- (bb) section 11A did not include references to a referral authority;”;
- (b) in paragraph (f)—
- (i) after “18,” **insert** “22 (1) (f),”; 15
- (ii) for the expression beginning “31,” and ending “and (h)” **substitute** “31, 38 and 39”;
- (c) after paragraph (f) **insert**—
- “(fa) for section 32 there were substituted—
- “32. A body corporate in an item in Schedule 3 of the **Bayside Project Act 1988** must, if directed to do so by the Governor in Council, submit for certification and lodge for registration a plan to give effect to an amendment to that Schedule made or proposed to be made by the Governor in Council under that Act.”;’ 20 25
- (3) After section 40A (4) of the Principal Act **insert**—
- “(5) A body corporate on a plan referred to in subsection (1) (b) that is a member of a body corporate in an item in Schedule 3 has, in addition to its other powers, the power to develop any part of a common allotment in that item that is common property affected by that body corporate. 30
- (6) Despite section 22 (1) (f) of the **Subdivision Act 1988**, the Registrar of Titles may register a plan under that Act of any part of the Bayside land, that is not a plan in an item in Schedule 3, even though 35

any land in the plan is land affected by a body corporate in an item in that Schedule.”.

**18. *Miscellaneous amendments***

The Principal Act is amended as follows—

- 5
- (a) in sections 5 (1), 7 (1), 8 (1), 14 (1), 24 and 29 **omit** “of subdivision” (wherever occurring);
  - (b) in the heading to Schedule 3 **omit** “of Subdivision”;
  - (c) in Column 1 of Schedule 3 **omit** “*of Subdivision*”.

