

# Planning and Environment (Further Amendment) Bill

No.

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By Authority L. V. North, Government Printer Melbourne



# LEGISLATIVE ASSEMBLY

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Read 1° 29 April 1992

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

## A BILL

to further amend the **Planning and Environment Act 1987** and for other purposes.

### **Planning and Environment (Further Amendment) Act 1992**

The Parliament of Victoria enacts as follows:

#### 1. *Purpose*

The purpose of this Act is to amend the **Planning and Environment Act 1987**—

- 5           (a) to simplify procedures so as to expedite some amendments to planning schemes;
- (b) to empower the Minister to deal with applications relating to matters of State significance or State policy;
- 10           (c) to allow a planning scheme to exempt certain permit applications from the notice and appeal requirements of that Act;

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

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(d) generally to improve the administration and enforcement of that Act.

**2. Commencement**

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

**3. Exemption of application from notice or appeal** 5

(1) After section 6 (2) (*kb*) of the **Planning and Environment Act 1987** insert—

“(*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 section; 10

(*kd*) set out classes of applications the decisions on which are exempted from the requirements of section 64 (1), (2) and (3).”.

(2) In section 52 (1) (*a*) of the **Planning and Environment Act 1987** omit “the planning scheme exempts it or”. 15

(3) After section 52 (3) of the **Planning and Environment Act 1987** insert—

“(4) A planning scheme may exempt any class or classes of applications from all or any of the requirements of sub-section (1). 20

(5) An exemption may be made subject to such other requirements as to notice as may be set out in the planning scheme in respect of that class of application. 25

(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 application must be complied with.”.

(4) After section 64 (3) of the **Planning and Environment Act 1987** insert— 30

“(4) A planning scheme may set out classes of applications the decisions on which are exempted from the requirement of sub-sections (1), (2) and (3).

5 (5) If a planning scheme exempts a decision on an application from the requirements of sub-sections (1), (2) and (3), this Act (including sections 63 and 82) applies in respect of all matters arising after the decision on the permit as if no objection had been made to the grant of the permit.”.

**4. Exemption of amendment from notice**

(1) For section 20 (2) of the **Planning and Environment Act 1987** substitute—

10 “(2) The Minister may exempt a planning authority from any of those requirements if, after consultation with the responsible authority, the Minister considers that—

15 (a) the purpose of the amendment is solely to allow a permit to be granted for a purpose for which a permit could not be granted unless the amendment were made and that in the circumstances compliance with those requirements is not warranted; or

20 (b) compliance with any of those requirements is for any other reason not warranted; or

(c) the overriding interests of Victoria necessitate exemption.

25 (2A) The Minister may exempt a planning authority from the requirements of section 19 (1) (b) if the Minister considers that the number of persons involved makes it impracticable to notify them individually about the amendment.

30 (2B) The Minister may impose conditions on any exemption, including a condition which requires the planning authority to give notice of the amendment in any specified manner or to particular persons or to a particular class of persons.”.

35 (2) After section 20 (3) (c) of the **Planning and Environment Act 1987** insert—

“(d) under section 19, except section 19 (1) (b), if the purpose of the amendment is to set out—

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- (i) classes of applications exempted wholly or in part from section 52; or
  - (ii) classes of applications the decisions on which are exempted from the requirements of section 64 (1), (2) and (3).” 5
- (3) For section 20 (4) of the **Planning and Environment Act 1987** substitute—
  - “(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, after consultation with the responsible authority considers that— 10
    - (a) the purpose of the amendment is solely to allow a permit to be granted for a purpose for which a permit could not be granted unless the amendment were made and that in the circumstances compliance with any of those requirements is not warranted; or 15
    - (b) compliance with any of those requirements is for any other reason not warranted; or 20
    - (c) the overriding interests of Victoria necessitate exemption.
  - (4A) The Minister may exempt himself or herself from the requirements of section 19 (1) (b) if the Minister considers that the number of persons involved makes it impracticable to notify them individually about the amendment. 25
  - (4B) The Minister cannot exempt himself or herself from any of the requirements of section 17, 18 or 19 or the regulations (except section 19 (1) (b)) if the purpose of the amendment is to set out— 30
    - (a) classes of applications exempted wholly or in part from section 52; or
    - (b) classes of applications the decisions on which are exempted from the requirements of section 64 (1), (2) and (3).” 35
- (4) In section 21 of the **Planning and Environment Act 1987** for “section 20 (2) (b)” substitute “section 20 (2B)”.

**5. Exemption from referral to panel**

After section 23 (2) of the **Planning and Environment Act 1987** insert—

5 “(3) The Minister, at the request of a planning authority, may exempt the planning authority from the requirement under sub-section (1) (b) to refer the submission to a panel if the Minister is satisfied that—

10 (a) the submission proposes only a minor modification to the amendment; or

(b) the planning authority would be able to act impartially in the consideration of the submissions—

15 and that in the circumstances referring the submission to a panel is not warranted.

(4) Sub-section (3) does not apply in relation to an amendment—

20 (a) if the amendment directly relates to land owned by the planning authority; or

(b) if the planning authority has a direct pecuniary interest in the outcome of the amendment.

(5) If an exemption is granted under sub-section (3)—

25 (a) the planning authority must provide a reasonable opportunity to be heard by the authority to any person who would have been able to be heard by a panel if the exemption under sub-section (3) had not been given;

30 (b) Division 2 of Part 8 applies to a hearing by the planning authority as if the planning authority were a panel;

(c) the planning authority must prepare a report on the findings at any hearing;

(d) a report under paragraph (c) may include any recommendation the planning authority thinks fit;

35 (e) this Act and the regulations apply to a report under paragraph (c) as if it were a report of a panel.”

**6. *Objections to applications for permits***

(1) In section 57 (2) of the **Planning and Environment Act 1987** after “objection” (where secondly occurring) insert—

“including as the case requires—

(a) how the grant of the permit would adversely affect the objector personally; and 5

(b) how the grant of the permit would adversely affect the enjoyment, use or development of property owned or occupied by the objector; and 10

(c) how the objector believes the grant of the permit would adversely affect the community.”.

(2) Despite the amendment of section 57 (2) of the **Planning and Environment Act 1987** by this section, section 57 (2) as in force before the commencement of the **Planning and Environment (Further Amendment) Act 1992** applies in respect of any objection made within 3 months after that commencement as if that section had not been so amended. 15 20

**7. *Issue of permit***

In section 64 (3) (a) of the **Planning and Environment Act 1987** for “7 days after” substitute “the end of”.

**8. *Amendment to permit***

In section 73 of the **Planning and Environment Act 1987**— 25

(a) in paragraph (a) omit “or a referral authority”; and

(b) after paragraph (a) insert—

“(aa) does not change the effect of any condition required by a referral authority unless this is acceptable to the relevant referral authority; and” 30



**9. New Division 6**

After Division 5 of Part 4 of the **Planning and Environment Act 1987** insert—

**“Division 6—Call-in Powers**

5       **97A. Call in power**

- 10           (1) If, before a responsible authority (“the first responsible authority”) has made a decision in respect of an application for a permit in accordance with section 61, it appears to the Minister that the application raises a major issue of State significance or State policy, the Minister may direct the responsible authority to refer the application to the Minister.
- 15           (2) The responsible authority must comply with the direction without delay and must not proceed further with the application.
- 20           (3) 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.
- 25           (4) Division 1 (except sections 59, 61, 63 and 64) applies to any application referred to the Minister under this section as if—
- (a) the Minister were the responsible authority; and
- 30           (b) all steps taken under that Division by the first responsible authority had been taken by the Minister.

*Planning and Environment (Further Amendment)***97B. Panel**

- (1) 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 5
  - (b) may refer to a panel appointed under Part 8 any late objections and submissions. 10
- (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. 15
- (4) The panel must report its findings to the Minister setting out the panel's recommendations on the application.

**97C. Decision of Minister** 20

- (1) After considering the report of the panel, 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 25
  - (c) refuse to grant the permit on any ground he or she thinks fit.
- (2) Once he or she has decided in favour of an application, the Minister must issue the permit to the applicant. 30
- (3) The Minister must give the first responsible authority a copy of any permit which he or she decides to grant or a copy of a notice given under section 65.
- (4) The Minister must give notice of the decision 35

under sub-section (1) to the persons who made objections or submissions in respect of the application.

- 5 (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.
- 10 (6) The first responsible authority must note a decision under this section in the register kept by that responsible authority under section 49.
- 15 (7) The Minister and the first responsible authority must make a copy of every permit issued under this section available at their respective offices for inspection by any person during office hours free of charge.
- 20 (8) Once a permit is issued under this section, 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—
- 25 (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
- 30 (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
- 35 (f) the amendment of the permit under section 97D.

**97D. 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. 5
- (2) Sections 97A and 97B (with any necessary modifications) 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 97A (1). 10
- (3) After considering the report of a panel, 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; 15  
or
  - (c) refuse to amend the permit on any ground he or she thinks fit.
- (4) Nothing in this section prevents a person from applying under Division 1 for an amendment to a permit. 20
- (5) The Minister must give notice—
- (a) of the correction of a permit under section 71 or the amendment of a permit under this section or section 73 to the first responsible authority; and 25
  - (b) of the amendment of a permit under this section to any person who made objections or submissions in respect of the amendment to the permit. 30
- (6) The first responsible authority must note in the register kept by that responsible authority under section 49 any correction or amendment notified under sub-section (5) (a).
- (7) A notice under sub-section (5) (b) may be given by notice published in a newspaper circulating 35

generally in the area to which the relevant planning scheme applies.

**97E. Provisions of Act not to apply**

5 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
- 10 (c) an amendment of a permit issued under this Division.”.

**10. New section 185A inserted**

After section 185 of the **Planning and Environment Act 1987** insert—

**“185A. Expedition of planning process**

- 15 (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.
- 20 (2) If the planning authority fails to take the 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.
- 25 (3) For the purposes of sub-section (2)—
  - (a) the Minister becomes the planning authority in respect of the amendment;
  - 30 (b) anything done in respect of the amendment by the first planning authority is to be taken to have been done by the Minister.

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- (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 5
  - (b) the provision to the Minister of assistance with respect to any steps to be taken under Part 3 with respect to the amendment.”.

**11. Delegation**

- (1) In Division 4 of Part 9 of the **Planning and Environment Act 1987** before section 186 insert— 10

**“185AA. Interpretation**

- (1) In this Division, “Act” includes any regulation, planning scheme, permit or agreement made under an Act. 15
- (2) Nothing in sub-section (1) limits or affects the meaning of “Act” in any other provision of this Act (other than this Division).”.
- (2) In section 186 of the **Planning and Environment Act 1987**— 20
  - (a) in sub-section (2) for “Sub-section (1)” substitute “Subject to sub-section (3), sub-section (1)”; and
  - (b) after sub-section (2) insert—
    - “(3) Sub-section (1) does not include the Minister’s powers under section 35 in relation to an amendment if the purpose of the amendment is to set out classes of applications exempted wholly or in part from section 52 or classes of applications the decisions on which are exempted from the requirements of section 64 (1), (2) and (3).”.

**12. Planning certificates**

- (1) For section 199 (2) of the **Planning and Environment Act 1987** substitute—

“(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

(c) may be produced in any manner the responsible authority or nominated person considers appropriate.”.

(2) In section 200 (1) of the **Planning and Environment Act 1987** for “signed by” substitute “produced by authority of”.

**13. *New section 201B inserted***

After section 201A of the **Planning and Environment Act 1987** insert—

**“201B. *What if area of planning scheme changes?***

If because of—

(a) an amendment to a planning scheme; or

(b) the making of a new planning scheme—

the area or part of the area included in an existing planning scheme (the old scheme) is 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—

(c) 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

(d) anything of a continuing nature done or commenced under the 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.” 5

**14. Fees**

In section 203 (1) (e) of the **Planning and Environment Act 1987** after “responsible authority” insert “, Minister, public authority, municipal council” 10





