

# Planning and Environment (Amendment) Bill

No.

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By Authority L. V. North, Government Printer Melbourne



# LEGISLATIVE ASSEMBLY

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Read 1° 8 March 1995

*(Brought in by Mr Maclellan (Pakenham) and Mr McGrath  
(Wimmera))*

## A BILL

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

### **Planning and Environment (Amendment) Act 1995**

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

#### **1. Purpose**

The main purpose of this Act is to amend the **Planning and Environment Act 1987** in relation to compensation and to the purchase of land required for public purposes.

#### **2. Commencement**

(1) Section 1 and this section come into operation on the day on which it receives the Royal Assent.

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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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- (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day to be proclaimed.
- (3) If a provision referred to in sub-section (2) does not come into operation within the period of 12 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period.

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Act N .  
45/1987.  
R print d t  
Act  
N .128/1993.  
Subsequ ntly  
am nded by  
Act N .

**3. *Principal Act***

In this Act the **Planning and Environment Act 1987** is called the Principal Act.

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**4. *New Part 5 substituted***

For Part 5 of the Principal Act **substitute—**

**‘PART 5—LAND PURCHASE AND COMPENSATION**

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**Division 1—Introductory**

**98. *Definitions***

In this Part—

**“market value”** in relation to any land on a particular date, means the amount of money that would have been paid for that interest if it had been sold on that date by a willing but not anxious seller to a willing but not anxious purchaser;

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**“occupier”** does not include a committee of management;

**“owner”** includes occupier but does not include an owner within the meaning of paragraph (c) or (d) of

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the definition of “owner” in section 3;

“**relevant authority**” for the purchase of land means the relevant authority under section 100 for that land;

“**Tribunal**” means the Land Valuation division of the Administrative Appeals Tribunal.

### **Division 2—Purchase of affected interest**

#### **99. Application of Division**

(1) Subject to Division 4, this Division applies to land—

(a) which has been reserved for a public purpose under a planning scheme; or

(b) is 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) which the Minister administering the **Land Acquisition and Compensation Act 1986** has declared under section 113A is proposed to be reserved for a public purpose; or

(d) in respect of which the responsible authority has refused 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.

(2) A relevant authority may purchase land pursuant to this Division despite anything to the contrary in section 4 of

**the Land Acquisition and  
Compensation Act 1986.**

**100. Who is the relevant authority?**

- (1) Subject to sub-sections (2) and (3), in this Division the relevant authority for land is— 5
- (a) the planning authority, in the case of land referred to in section 99 (1) (a) (b) or (c); or
- (b) the responsible authority, in the case of land referred to in section 99 (1) (d). 10
- (2) If, in the case of land referred to in section 99 (1) (a) (b) or (c), a Minister or public authority had, in writing, requested— 15
- (a) the planning authority to prepare a planning scheme or amendment to reserve the land for a public purpose; or 20
- (b) the Minister administering the **Land Acquisition and Compensation Act 1986** to declare the land in accordance with section 113A to be proposed to be reserved for a public purpose— 25
- the Minister or public authority that made the request is the relevant authority for the purposes of this Division in relation to the land. 30
- (3) If, in the case of land referred to in section 99 (1) (d), the responsible authority refused to grant the permit because a referral authority objected, that referral authority is the relevant authority for the purposes of this Division in relation to the land. 35

5 (4) Despite anything to the contrary in any Act, a relevant authority may pay out of its funds any amount it is required to pay for the purchase of any land under this Division.

10 (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 deemed for the purposes of this section to have been reserved at the request of the Melbourne Water Corporation.

15 (6) The Minister and the Minister administering the **Water Act 1989** 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 Melbourne and Metropolitan Board of Works.

20 **101. Request for purchase**

25 (1) The owner of any land to which this Division applies may request the relevant authority to purchase that land.

30 (2) For the purposes of sub-section (1), the right of an occupier of any land to which this Division applies to request the relevant authority to purchase land is limited to any interest that the occupier has in the land.

35 (3) Despite anything to the contrary in this Division, a request to purchase land cannot be made under this section—

- (a) in the case of land which has been reserved for a public purpose under a planning scheme, after the reservation is removed;
- (b) in the case of land which is shown as reserved for a public purpose in a proposed amendment to a planning scheme, after the proposed amendment lapses; 5
- (c) in the case of land declared under section 113A, after the declaration is revoked; 10
- (d) in the case of land in respect of which a permit has been refused on the ground that the land is or will be needed for a public purpose, after the expiration of 2 years after the permit is refused; 15
- (e) if an offer or request to purchase in respect of the land has lapsed or has been withdrawn under this Division, until the expiration of 2 years after that lapsing or withdrawal; 20
- (f) if the relevant authority is exempted under section 106 from the requirement to make an offer in respect of the land, until the expiration of 2 years after the determination of the Tribunal under that section. 25 30

### **102. Form of request**

- (1) A request under section 101 must—
  - (a) be in writing; and
  - (b) specify the price requested for the land. 35



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- (2) A person making a request under section 101 must produce to the relevant authority all deeds and other documents relating to or evidence of his or her title to or interest in the land.

**103. Offer by relevant authority**

- (1) Subject to section 106, the relevant authority must make an offer to the owner to purchase the land—

10 (a) within 3 months after receiving a request under section 101; or

(b) within any further period—

(i) agreed between the owner and the relevant authority; or

15 (ii) in the absence of that agreement, determined by the Tribunal.

- 20 (2) The Tribunal, on the application of the relevant authority, may extend the period within which an offer must be made.

**104. Form of offer**

- (1) An offer under section 103 must—

(a) be in writing; and

25 (b) specify the amount offered by the relevant authority for the purchase of the land.

- 30 (2) If the amount offered for a purchase is different from the amount specified in the request to purchase, the offer must be accompanied by a copy of the certificate of valuation to which the relevant authority has had regard in making its offer.

**105. Amount of offer**

- (1) In determining the amount of an offer, the relevant authority must have regard only to—
  - (a) the market value of the land on the date of the receipt by the relevant authority of the request to purchase the land; and 5
  - (b) the amount of any reduction in the market value of any other interest of the owner in other land used in conjunction with the land which is caused by severance from the land; and 10
  - (c) the enhancement or depreciation in value of the interest of the owner in other land adjoining or severed from the land which is the subject of the offer by reason of the implementation of the purpose for which the land was reserved or proposed to be reserved or required. 15
- (2) In determining the market value of land under sub-section (1), the relevant authority must disregard— 20
  - (a) any increase or decrease in the market value of the land arising from the carrying out, or the proposal to carry out the purpose for which the land was reserved or proposed to be reserved or required; or 25
  - (b) if the land is reserved for a public purpose in a planning scheme, any restrictions on the use or development of that land which are imposed by, or are a consequence of, the reservation. 30

**106. Contaminated land**

5 (1) If a request is made under section 101 in respect of land which the relevant authority believes to be contaminated, the relevant authority may refer the request to the Tribunal.

(2) If the Tribunal determines that—

(a) the land is contaminated; and

10 (b) the cost of decontamination of the land would exceed the value of the land after decontamination—

the relevant authority is not required to make an offer under section 103 in respect of the land.

15 **107. Decision of owner on offer**

(1) If an offer is made under section 103, the owner of the land must—

(a) accept the offer; or

20 (b) withdraw the request to purchase; or

(c) refer any dispute on the amount of the offer to the Tribunal under section 108—

25 within 3 months after the receipt of the offer or within any further period agreed between the owner and the relevant authority.

30 (2) An offer lapses if the owner does not comply with sub-section (1) within the required period.

**108. Referral of matters to Tribunal**

(1) If the owner disputes the amount of the relevant authority's offer, the owner may refer the dispute to the Tribunal.

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- (2) If the relevant authority does not make an offer under section 103 within the required period, the owner may refer the matter to the Tribunal.

**109. Determination** 5

On the referral of a dispute or matter under section 108, the Tribunal must determine, in accordance with section 105, the amount that the relevant authority should offer for the purchase of the land. 10

**110. Costs**

- (1) In any proceedings under this Division, the Tribunal may award any costs that it thinks proper. 15
- (2) In making an order for costs, the Tribunal must, if it considers it appropriate to do so, take into consideration—
  - (a) the amount of purchase price determined by the Tribunal as compared with the amount offered by the relevant authority; and 20
  - (b) whether the matter was brought before the Tribunal because of the failure by the relevant authority to make an offer within the required period. 25
- (3) If the Tribunal makes an order for costs in favour of the owner of the land, that order must be made on condition that the sale of the land to the relevant authority is completed. 30
- (4) Sections 50 (3), 50 (4) and 50 (5) of the **Administrative Appeals Tribunal Act 1984**, with any necessary modifications, 35

apply to the award of costs under this section.

**111. Offer following determination**

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- (1) The relevant authority must make an offer in writing to the owner within 30 days after the Tribunal has determined the amount of that offer.
  - (2) The offer must be not less than the amount of that determination.

10 **112. Action by owner on offer**

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- (1) The owner must, in writing, within 30 days after receiving an offer under section 111, accept or refuse to accept the offer.
  - (2) An offer under section 111 lapses if the owner refuses to accept the offer or fails to accept the offer within the required period.

**113. Notification to Registrars**

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- (1) The relevant authority, without delay after the lapsing of an offer or the withdrawal of a request to purchase or a determination under section 106, must lodge a statement with—
    - 25 (a) the Registrar of Titles, in relation to land under the **Transfer of Land Act 1958**; and
    - (b) the Registrar-General, in relation to any other land.
  - (2) The statement must in the prescribed manner—
    - 30 (a) describe the land concerned; and

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- (b) give the prescribed particulars of the lapsing of the offer, the withdrawal of the request or effect of the determination.
- (3) On receiving a statement— 5
- (a) the Registrar of Titles must make any recordings in the Register; and
- (b) the Registrar-General must make any entries on any memorials or other documents— 10
- which are necessary to bring the statement to the notice of anyone searching the title to the land.
- (4) At the end of 2 years after the lapsing of the offer, the withdrawal of the request or the determination— 15
- (a) the Registrar of Titles must delete from the Register a recording made under sub-section (3); and
- (b) the Registrar-General must cancel an entry made under sub-section (3). 20

**113A. Declaration of proposed reservation**

- (1) The Minister administering the **Land Acquisition and Compensation Act 1986** may by instrument declare land to be reserved for public purposes if the Minister— 25
- (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 30
- (b) considers that it is appropriate that the land should be so declared. 35

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- (2) The Minister administering the **Land Acquisition and Compensation Act 1986** may revoke a declaration under sub-section (1) if the land ceases to be subject to a proposal to reserve or which could lead to the reservation of the land for public purposes.

**Division 3—Compensation for restriction of access**

10 **113B. *Right to compensation***

- 15 (1) The owner of any land may claim compensation from the planning authority for financial loss suffered as the natural, direct and reasonable consequence of access to the land being restricted by the closure of a road by a planning scheme.
- 20 (2) A person cannot claim compensation under sub-section (1) if the planning authority has purchased or compulsorily acquired the land or part of the land.

**113C. *When does the right to compensation arise?***

25 A right to compensation and the liability of the planning authority to pay compensation under this Division arises on the coming into operation of the relevant provision of the planning scheme.

**113D. *Claim for expenses***

30 If compensation is payable under this Division, the owner of the land concerned may also claim from the planning authority any legal, valuation

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or other expenses reasonably incurred in preparing and submitting the claim.

**113E. *Small claims***

A planning authority may reject a claim for compensation under this Division if the financial loss is less than the greater of—

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(a) \$500 or any greater amount prescribed by the regulations; or

(b) 0.1% of the value that the land would have had if access to the land had not been restricted by the closure of a road by a planning scheme.

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**113F. *Maximum amount of compensation payable***

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The compensation payable for financial loss under this Division must not exceed the difference between—

(a) the value of the land at the date on which the liability to pay compensation arose; and

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(b) the value that the land would have had at the date if access to the land had not been restricted by the closure of a road by a planning scheme.

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**113G. *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 Division as if the claim were a claim under section 37 of that Act.

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**113H. *Persons who are not eligible to claim compensation***

5 A person does not have a claim for compensation under this Division in respect of any land if that person was not the owner of the land at the time the right to claim compensation arose.

**Division 4—Transitional**

**113I. *Transitional***

10 (1) Division 2 does not apply to land in respect of which compensation has been paid under Part 5 of this Act as in force immediately before the commencement of section 4 of the **Planning and Environment (Amendment) Act 1995** or under any corresponding previous enactment.

15 (2) Part 5 of this Act as in force immediately before the commencement of section 4 of the **Planning and Environment (Amendment) Act 1995** applies—

20 (a) in relation to any land or interest in land in respect of which compensation has been paid under that Part or any corresponding previous enactment; and

25 (b) in relation to any claim for compensation made under that Part but not determined before that commencement—

30 with the modification that section 111 (1) of that Part applies as if after “this Part” there were inserted the words “or any corresponding previous enactment”.’.

