Planning and Environment Amendment (General) Act 2013

April 2013

A guide to the Planning and Environment Amendment (General) Act 2013
Minister’s foreword

The Planning and Environment Amendment (General) Act 2013 (the General Act) implements a number of government election commitments and introduces process improvements and red tape reductions to deliver a fair, consistent and transparent planning system for Victoria. It will reduce paperwork, simplify key planning processes and promote quick decision-making.

The General Act reaffirms the role of a council as the primary decision-maker on planning matters in their local area by abolishing Development Assessment Committees. Instead a new Planning Application Committee will be available on request to work with councils on specific planning permit applications.

The General Act also improves certainty, clarity and accountability in the planning system by:

- clarifying the role and responsibilities of a referral authority in the permit process
- enabling new reporting requirements that will apply to all planning decision-makers
- reducing red tape in the planning scheme amendment and planning permit processes

The net result of these reforms is that the community and applicants will benefit from processes that are more efficient and better match the impact of a proposal. Councils will be able to focus resources on their most important matters, spending less time on low risk, low impact matters and more time on high value proposals that deliver councils’ strategic objectives.

Matthew Guy MLC
Minister for Planning
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## Abbreviations

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<td>CEO</td>
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<td>DAC</td>
<td>Development Assessment Committee</td>
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<td>Department of Planning and Community Development</td>
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1. Introduction

The Planning and Environment Amendment (General) Act 2013 (the General Act) amends the Planning and Environment Act 1987 (PE Act) to implement a number of government election promises to deliver a fair, consistent, and transparent planning system for Victoria.

The General Act also makes consequential changes to the Local Government Act 1989 and amends the Subdivision Act 1988 to clarify public open space requirements.

The Planning and Environment Act 1987

The PE Act provides the legislative base for planning system processes and establishes a head of power for the key instruments of the Victorian planning system, including the Planning and Environment Regulations 2005 (PE Regulations), the Victoria Planning Provisions (VPP) and planning schemes. Much of the key content of Victoria’s planning system is set out in these subordinate instruments.

The statutory planning system is summarised in the diagram below.
The General Act

The PE Act has provided a solid framework for planning in Victoria and has generally worked well. However, users of the planning system have said that there is scope for improvement to reduce paperwork, simplify key planning processes and remove impediments to quick decision-making.

The General Act updates and refines existing provisions of the PE Act to improve the operation of existing processes. It also inserts new provisions for new processes. In some cases, flow-on changes to subordinate instruments will be needed before the change to the planning system can come into operation.

This guide

This guide explains the main reforms in the General Act, how existing processes will change, and how new processes will work. Where relevant, the guide also identifies the changes to subordinate planning instruments required before the reform can come into operation.

More information about the General Act

The General Act can be viewed online at www.legislation.vic.gov.au

The General Act comes from the Planning and Environment Amendment (General) Bill 2012 (General Bill) that was passed by the Parliament of Victoria on 7 February 2013 and received Royal Assent on 19 February 2013.

The Explanatory Memorandum for the General Bill sets out the scope of the Bill and contains a description of each clause of the Bill. This can also be viewed online at www.legislation.vic.gov.au
2. Key reforms in the General Act

The General Act is divided into 12 parts: part 1 sets out preliminary matters; parts 2 to 10 set out the changes to the PE Act, including transitional provisions; part 11 sets out the changes to the Subdivision Act 1988; and part 12 provides for the repeal of the General Act.

The key reforms in the General Act are:

2.1 Abolish Development Assessment Committees


See sections 3 to 7 of the General Act.

2.2 Introduce the Planning Application Committee

Part 3 of the General Act establishes a new body, the Planning Application Committee, to work with councils to deliver better local planning outcomes.

Councils maintain their role as the responsible authority for planning decisions within their municipality. However they will now have the option, with the consent of the Minister for Planning, to obtain advice from the Planning Application Committee. A council may also, with the Minister’s consent, delegate certain decision-making powers to the Planning Application Committee.

See sections 8 to 13 of the General Act.

2.3 Improve the planning permit process

Parts 4, 9 and 10 of the General Act introduce various reforms to make the planning permit application process more certain and efficient and to improve the on-going administration of permits. The General Act improves the referral process and provides more scope for councils to deal with applications for amendments to permits and extensions of expired permits.

See sections 14 to 41 of the General Act.

2.4 Improve the planning scheme amendment process

Parts 5 and 6 of the General Act introduce reforms that improve and streamline the process for amending a planning scheme.

The General Act amends the PE Act to do the following:

- Streamline the process for authorising a council to prepare a planning scheme amendment. Once a council applies for authorisation, the Minister has 10 business days to notify the council that the application has been authorised, refused or requires further review. If 10 business days elapse, and no notification has been given, the council can proceed to prepare the amendment.
Introduce a new process that allows the Minister to make straightforward, technical changes to planning schemes quickly and simply. The regulations will set out the types of amendments that may be prepared by the Minister using this process.

Require a planning authority to give the Minister a copy of an amendment 10 business days before it is exhibited. This step ensures the Department of Planning and Community Development (DPCD) has sufficient time to check the quality of amendment documentation before exhibition and that the amendment complies with any conditions imposed by the Minister at authorisation. It also ensures property certificates include up to date information about the proposed amendment.

Enable a standing directions panel to be set up to deal with preliminary panel matters more quickly.

See sections 42 to 45 and 82 and 83 of the General Act.

### 2.5 Improve the operation of agreements

Part 7 of the General Act makes various changes that improve the operation and administration of agreements entered into under section 173 of the PE Act.

The General Act amends the PE Act to provide two ways to amend or end an agreement:

- by agreement between the responsible authority and all persons who are bound by the agreement
- by making an application to the responsible authority, who can assess the proposal using a new process similar to the planning permit process.

The General Act requires all future agreements to be recorded on title (other than agreements relating to Crown land) and enables the Victorian Civil and Administrative Tribunal (VCAT) to make a declaration in relation to the interpretation of an agreement.

See sections 46 to 55 of the General Act.

### 2.6 Improve matters related to VCAT

VCAT plays an important role in the planning system. It also has a significant workload. Part 9 of the General Act makes changes that will reduce VCAT’s workload and provide more certainty to the parties to a review.

VCAT will be able to confine its review of a planning matter to the particular issues in dispute if all parties to the review agree. Currently, VCAT must consider a proposal ‘afresh’ even if only one element of the proposal is in dispute.

A responsible authority will be able to amend a planning permit issued at the direction of VCAT unless VCAT has specified that the permit, or a part of it, must not be amended by the responsible authority.
The rights that apply in relation to making a request for an extension of an expired permit are also being amended. The time within which an extension request can be made to the responsible authority is extended, however opportunities to seek an extension from VCAT after that time are removed.

See sections 60 to 68 of the General Act.

2.7 Make other improvements to the PE Act

Parts 8 and 10 of the General Act make various changes that update, refine and improve the PE Act.

See sections 56 to 59 and 69 to 85 of the General Act.

2.8 Make changes to the Subdivision Act 1988

Part 11 of the General Act amends sections 18 and 19 of the Subdivision Act 1988 to reaffirm that the existing ‘need’ test in section 18(1A) does not apply to a public open space requirement in a planning scheme.

See sections 86 to 91 of the General Act.
3. Implementation of the General Act

Section 2 of the General Act provides for the Act to come into operation on a day or days to be proclaimed. If a provision of the Act does not come into operation before 28 October 2013, it will come into operation on that day.

Proclamation will be done in stages as a number of the amendments require supporting actions. Changes to regulations and planning schemes will be required and new guidelines will need to be prepared. The timing of implementation will allow for these things to be done.

The General Act will be implemented in two stages:

- **Stage 1** – Amendments that can be implemented without the need for further action or consultation.
- **Stage 2** – Amendments that need further actions before they can become operational. This stage will be implemented by 28 October 2013.

The changes to planning agreements, planning scheme amendments and referral authorities will require changes to the PE Regulations.

Councils, DPCD, VCAT and referral authorities will need to prepare for the changeover from old provisions to new provisions.

To ensure that the various reforms are implemented efficiently and effectively, support and further information will be provided to stakeholders, including public advisory material, guidelines and training as required.
4. New Planning Application Committee

The General Act abolishes the Development Assessment Committee provisions and introduces the Planning Application Committee (PAC), a new body that will work with councils across Victoria to deliver better local planning permit decisions.

The existing provisions for Development Assessment Committees in Part 4AA of the PE Act are replaced with new provisions for the PAC.

What is the Planning Application Committee?

The PAC is an independent committee appointed by the Minister that will be available to provide advice to councils on specific kinds of permit applications. There is no obligation for a council to obtain the advice of the PAC, however if a council wants their advice, the Minister can make the PAC available.

The PAC can either provide advice or it can act as a delegate of the responsible authority and make the decision. In either case, the council remains the responsible authority for the permit application.

The PAC can also advise the Minister on any application for which the Minister is the responsible authority, in the same way as for a council.

There will be one, ongoing PAC. The PAC will consist of a chairperson and at least four other members. The members of the PAC must be appointed by the Minister, and the chairperson must be appointed from a list of nominees prepared in consultation with the Municipal Association of Victoria, the Victorian Local Governance Association, and two planning and development industry bodies.

The PAC can set up subcommittees to deal with a specific application or class of applications, and it may delegate to the subcommittees.

Criteria on the types of permit applications that can be referred to the PAC will be prepared.

The Planning Application Committee and the permit process

The PAC becomes involved in the permit process when a responsible authority asks for its advice, or wants to delegate a decision to the PAC and the Minister has consented to this. The Minister, as responsible authority, may also request the advice of or delegate to the PAC.

The normal steps in the permit process continue to apply. An application must be referred to any relevant referral authorities under section 55 of the PE Act, and the normal requirements for giving notice of an application under section 52 of the PE Act apply.
The PAC must give timely advice, having regard to existing section 79 of the PE Act. This section allows an applicant to seek a VCAT review if a decision on an application is not made in 60 days. Procedures to quickly establish a PAC subcommittee will be put in place to ensure this happens.

Administration of the Planning Application Committee

DPCD will manage the appointment and administration of the PAC. The fees and allowances for the PAC will be fixed by the Minister. The Minister may ask the responsible authority to contribute an amount towards the costs of the PAC or a PAC sub-committee.
5. Improvements to the planning permit process

About 55,000 planning permit applications were lodged in Victoria last year. Improvements to the permit process that reduce delays and paperwork and provide greater certainty will benefit all users of the planning system.

5.1 A simpler way to amend a permit issued by VCAT

Currently, if a planning permit is issued at the direction of VCAT it can only be amended by VCAT, and not the council. This applies even if the amendment is very minor. This is resource intensive for VCAT and can result in unnecessary delays for straightforward amendments.

The General Act amends section 72 of the PE Act so that a responsible authority can amend these permits using the ‘amendment of permit’ process set out in Division 1A of Part 4 of the PE Act.

The exception to this will be where VCAT has specifically stated that the permit (or a part of the permit) must not be amended by the responsible authority. If VCAT decides this, this information will be shown on the permit, and the permit (or that part) may only be amended by VCAT. The prescribed form for a permit in the PE Regulations will be modified so that this information is clearly shown.

5.2 More opportunities for councils to extend expired permits

Currently, a responsible authority can extend the time within which a use or development in a permit is to be started or completed. The extension request must be made before or within three months after the expiry of the permit. If a request is made after that time, the responsible authority must refuse the request even if it supports the extension. The permit holder can apply to VCAT to review the refusal in order to gain an extension.

Extensions requested within 12 months after a permit has expired are not usually contentious, and the role of VCAT becomes essentially administrative. This is inefficient and time consuming as these decisions can appropriately be made by the council.

The General Act amends section 69 of the PE Act to give the responsible authority greater scope to extend the life of a permit without the need to go to VCAT.

The amendments to section 69 will allow a permit holder to make a request to the responsible authority:

- within six months of the permit expiry date, where the use or development allowed by the permit has not yet started; and
- within 12 months of the permit expiry date, where the development has lawfully started before the permit expires.
If the request for the extension is not made before or within the new time limits set out in section 69, the responsible authority will not be able to extend the permit. Additionally, the General Act amends section 81 of the PE Act to clarify that a permit holder may only apply to VCAT for a review of a council decision to refuse an extension where the request to the responsible authority was made within the timeframe set out in section 69.

5.3 Improvements to the referral process

The General Act will improve the process of referring applications to referral authorities, and clarify the role of referral authorities. Referral authorities include some government departments and a number of statutory authorities such as VicRoads and the Country Fire Authority.

Two types of referral authority

Currently, the PE Act enables a planning scheme to specify that a person or body is a referral authority for certain kinds of permit applications. A referral authority must be given a copy of those applications under section 55 of the PE Act, and it may request information, object to or comment on the application within a prescribed time. A referral authority may also require conditions to be included on any permit granted. If a referral authority objects to the grant of a permit, the responsible authority must refuse the application. If a referral authority requires a condition to be included on the permit, the responsible authority must include that condition on any permit granted.

The General Act will enable planning schemes to provide for two types of referral authority:

- **A determining referral authority** – a referral authority that has power to require a permit application to be refused or for certain conditions to be included in a permit. This is the current referral authority.

- **A recommending referral authority** – a referral authority that can only comment on an application. Responsible authorities must consider these comments but are not obliged to refuse the application or to include any conditions required by the authority. A recommending referral authority will be able to seek a review at VCAT if it objects or it requests conditions that are not included by the responsible authority in the permit.
To provide for the two types of referral authority, the General Act inserts new definitions for a determining referral authority and a recommending referral authority. The General Act also makes various changes to sections 55, 61, 62, 63 and 64 of the PE Act.

The VPP and planning schemes will be amended to enable the two kinds of referral authority to be specified.

The PE regulations will be amended to prescribe a time within which a recommending referral authority may apply to VCAT for a review of the council’s decision.

DPCD will consult with referral authorities to ensure that the appropriate operational changes are in place before this reform comes into effect.

**New duties of a referral authority**

The General Act inserts a new section 14A into the PE Act which sets out the duties of a referral authority in relation to a matter referred to it under the PE Act. These duties apply to all referral authorities (whether a determining referral authority or a recommending referral authority).

Historically, referral authorities were public bodies. Now a private corporation may be a referral authority where it is responsible for a public service or utility. Given this change, it is important that all referral authorities are clear about their duties under the PE Act and carry out their responsibilities efficiently.
Under new section 14A, a referral authority must:

- have regard to the objectives of planning in Victoria when considering the matter
- have regard to the Minister’s directions
- comply with the PE Act
- have regard to the planning scheme
- report to the Minister on relevant performance and accountability matters.

**Reporting**

In new section 14A, one of the duties of a referral authority is to provide any information or report required by the Minister. As part of this duty, referral authorities will be required to report to the Minister on the performance of their referral. The format, timing and reporting requirements will be finalised in consultation with referral authorities.

**Expedition: section 197 to apply to referral authorities**

Existing section 197 applies to all planning bodies, except for referral authorities. It requires those bodies to undertake a required act, including forming opinions and making decisions, as promptly as is reasonably practicable.

The General Act amends section 197 to require referral authorities to also act promptly.

**Referral authority to keep a register**

Like a responsible authority, a referral authority will now be required to keep a register of all permit applications referred to it under sections 55 and 57C of the PE Act. The register will need to be made available during office hours for any person to inspect free of charge.

The information to be kept in the register will be prescribed in the PE Regulations. The information is proposed to include the application number, date received by referral authority, address of the land, date and details of request for more information, and date and decision or recommendation of referral authority. The final details of the register will be worked out in consultation with referral authorities.
Information to go to referral authority

A referral authority can respond more quickly and focus its response to a referral if it understands why the application has been referred.

The General Act amends section 55(1) of the PE Act to require the responsible authority to give standard information to the referral authority about why an application needs referral. The information will be prescribed in the PE Regulations and will specify why a permit is required and the relevant provisions of the planning scheme.

Referral authority to provide a copy of its response and information requests to the applicant

Currently, there is no requirement for a referral authority to give a copy to the applicant of any decision and comments it gives to the responsible authority about an application.

The General Act amends sections 55 and 56 so that a referral authority must advise an applicant of further information requirements, and its response to the referral, at the same time it notifies the responsible authority. By providing a copy of the comments or decision to the applicant directly, the applicant will be able to act earlier to address the comments or decision.

Referral authority may be liable for compensation

Currently, if a permit is cancelled or amended because of a material mistake in relation to the grant of the permit the responsible authority is liable to pay compensation even if that mistake arose from an act or omission of a referral authority.

The General Act amends section 94 of the PE Act so that a referral authority is now liable to pay compensation if the material mistake arose from an act or omission of that authority.
6. Improvements to the planning scheme amendment process

A planning scheme is a statutory document which sets out objectives, policies and provisions for land use and development. The procedure for amending planning schemes is set out in Part 3 of the PE Act. This procedure is regularly used by state and local government to implement new state, regional and local policy, modify or introduce provisions or allow particular development proposals.

The government has committed to improving planning processes and reducing delays. The following reforms are designed to improve the efficiency, effectiveness and transparency of the amendment process.

6.1 A new streamlined amendment process

All amendments generally follow the same process. Some steps can be shortened or omitted in certain circumstances, but it is not always clear when this should occur. As a result, time and resources can be spent on some amendments that are out of proportion to their impact.

About one third of current planning scheme amendments involve ‘housekeeping’ and low impact changes.

The General Act inserts a new section 20A into the PE Act to enable straightforward planning scheme amendments to be prepared and processed by the Minister quickly, simply and efficiently.

The PE Regulations will prescribe which amendments can be prepared under this new section. The prescribed criteria will be developed in consultation with local councils and other planning stakeholders. The criteria are likely to include updates, corrections and technical changes to planning schemes that have no policy impact.

The streamlined process will only be able to be used if all of the changes in the amendment meet one or more of the prescribed criteria.

Under the streamlined amendment process:

- Any person may ask the Minister to prepare an amendment under section 20A of the PE Act where the proposed change meets the criteria included in the PE Regulations. The Minister decides whether the amendment meets the criteria.

- The Minister prepares the amendment and consults with the relevant council unless the council has requested the amendment.

- The amendment is exempt from the formal notice and exhibition requirements in sections 17, 18 and 19 of the PE Act.
The Minister decides whether to approve the amendment.

If approved, a notice of the approval of the amendment will be published in the Government Gazette and a notice will be laid before Parliament in the normal way. The notice must state that the amendment has been prepared under section 20A of the PE Act.

Sections 17, 18 and 19 of the PE Act do not apply which means that the amendment is not exhibited and the submission and panel steps do not apply. A simplified explanatory report will be required.

**Figure 4: New streamlined amendment process**

The streamlined amendment process will have a number of benefits. Technical changes and corrections to planning schemes will be easier and quicker.

There will be less work for councils to make simple changes to planning schemes to keep them up to date. This will improve the operation of planning schemes.

Prescribing the criteria for streamlined amendments in the PE Regulations will provide transparency and certainty. Planning authorities will know up-front what kinds of planning scheme changes are suitable for the streamlined process.

### 6.2 Streamlined authorisation of amendments

The first step in the amendment process requires the council to obtain authorisation from the Minister before it prepares a planning scheme amendment.

This step enables the Minister and DPCD to identify amendments that might affect State policy or interests ‘up-front’ and provide early advice to the council before the amendment proceeds.

The changes to the PE Act will streamline this process. Once a council applies for authorisation, the Minister has 10 business days to notify the council that its application has been approved, refused or requires further review. If 10 business days elapse and no notification has been given, the council can proceed to prepare the amendment.
6.3 Remove approval of an amendment by a planning authority

The Minister’s power to authorise a planning authority to approve an amendment was introduced into the PE Act by the Planning and Environment (General Amendment) Act 2004. However, not many planning authorities have taken up this option. While the objective was to facilitate faster approval of certain amendments this objective has not been achieved. Amendment documentation submitted to the Secretary of DPCD for certification frequently needs to be changed before it can be certified and approved, which causes delay. Significant time saving will be achieved by the removal of this process.

6.4 Pre-exhibition check

The General Act inserts new section 17(3) that requires a copy of an amendment to be given to the Minister at least 10 business days before it is exhibited.

This will enable DPCD to check the quality of an amendment before it is exhibited, ensure it complies with any conditions that were imposed by the Minister at authorisation and update Planning Schemes Online and the property certificate database. It also provides an opportunity for the planning authority to obtain feedback from DPCD on the form of the amendment.

6.5 Improvements to the panel process

The General Act amends section 24 of the PE Act to require a panel appointed to consider submissions to a planning scheme amendment to give the proponent for the amendment an opportunity to be heard. This addresses a currently anomaly where other relevant parties must be given a reasonable opportunity to be heard, but not the proponent.
6.6 Directions panel

The General Act inserts a new Division 1A into Part 8 of the PE Act to enable a standing directions panel to be appointed to deal with preliminary matters for panel hearings.

The purpose of a directions hearing is to make arrangements for the panel hearing, and confirm any changes to the amendment made in response to submissions or the withdrawal of submissions. The Minister will be able to appoint a directions panel to give directions in relation to a panel hearing. The directions panel may be made up of persons who will not be conducting the panel hearing.
7. VCAT Matters

VCAT plays an important and valuable role in the planning system. It also has a significant workload. The General Act includes changes that promote efficient decision-making by VCAT and reduce unnecessary delays and paperwork for all parties.

The changes include:

- allowing a responsible authority to amend a planning permit issued at the direction of VCAT
- limiting the scope for VCAT to extend an expired permit well after the permit has expired, while providing more scope for a responsible authority to extend a permit that has only recently expired
- allowing VCAT, when reviewing a decision under the PE Act, to limit its review to the specific issues in dispute between the parties.

7.1 Amendments to permits

Currently, if a planning permit is issued at the direction of VCAT it can only be amended by VCAT and not the council. This applies even if the amendment is very minor. This is resource intensive for VCAT and can result in unnecessary delays for straightforward amendments.

The General Act amends section 72 of the PE Act so that responsible authorities can amend these permits using the ‘amendment of permit’ process set out in Division 1A of Part 4 of the PE Act.

The exception to this will be where VCAT has specifically decided that the permit (or a part of the permit) must not be amended by the responsible authority. If VCAT decides that certain conditions on the permit cannot be changed without its consent, this will be shown on the permit and the permit (or that part) may only be amended by VCAT. The prescribed form for a permit will be modified so that this information is clearly shown.

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<td>Section 60</td>
<td>Substitutes section 72(2) (a)</td>
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7.2 Extending expired permits

As explained in section 5.2 of this guide, the General Act amends section 69 of the PE Act to give the responsible authority greater scope to extend the time of operation of a permit. It also amends section 81 to clarify that a permit holder may only go to VCAT for a review of a responsible authority’s decision to refuse an extension where they have made their request to the responsible authority within the timeframe set out in section 69.

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<td>Section 61</td>
<td>Inserts new section 81(3)</td>
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7.3 VCAT can limit review to issues in dispute

Applications for review by VCAT may be made for a range of matters, including decisions by a responsible authority to grant or refuse to grant a permit and permit conditions.

In determining these applications, VCAT must take into account a range of matters set out in section 84B of the PE Act.

The effect of these requirements is that VCAT must review the matters afresh, and consider all elements of the proposal to determine whether the decision-maker came to a reasonable conclusion. This is to be done even if only certain elements of the proposal are in dispute.

The General Act inserts a new section 84AB into the PE Act which enables VCAT to confine a review to the particular matters in dispute if all the parties to the review agree.

7.4 Interpretation of agreements

The General Act inserts new section 149A(1A) to provide VCAT with a new jurisdiction to interpret agreements made under section 173 of the PE Act. A specified person, as defined in section 148 of the PE Act, or a party to an agreement will be able to apply to VCAT for a determination on matters relating to the interpretation of an agreement. This will enable disputes between parties on the meaning of requirements within an agreement to be more efficiently resolved.

7.5 Other matters

- The General Act amends Section 83B to provide VCAT with the added discretion to direct the applicant for a permit to give notice of an application for review.

- The General Act repeals section 90(1)(d), which means that VCAT will no longer need to notify the Minister each time a hearing of a request for the cancellation or amendment of a permit is held.

If VCAT considers that the Minister may have a material interest in the outcome of a request, it will still be able to give the Minister an opportunity to be heard at the hearing under section 90(2) of the PE Act.
8. Agreements

Section 173 of the PE Act allows a responsible authority to enter into an agreement with an owner of land. These agreements are commonly known as section 173 agreements. A section 173 agreement may set out conditions or restrictions on the use or development of land, or seek to achieve other planning objectives in relation to land. These agreements are a very useful planning tool, but can be complex to administer, costly to prepare, and difficult to amend or end.

The General Act makes various changes to improve the operation of section 173 agreements. The key changes include:

- removing the administrative burden of obtaining the Minister’s agreement to end or amend an agreement
- providing an alternative avenue for a party to an agreement to initiate the ending or amendment of an agreement
- expanding the jurisdiction of VCAT to deal with agreements.

8.1 Minister’s involvement in amending and ending an agreement

The Minister’s involvement in amending and ending a section 173 agreement will be removed. Currently, the Minister must approve any amendment of an agreement, and must approve the ending of an agreement if the responsible authority and all persons bound by the agreement do not reach agreement on this.

The involvement of the Minister in these processes is unnecessary as the Minister is not a party to most agreements. Removing this requirement will not affect the efficient operation of agreements.

8.2 Amending or ending an agreement

Currently, if a person wishes to amend an agreement they must have the support of the responsible authority, which must then proceed to obtain the agreement of all persons bound by the agreement and the approval of the Minister. If the agreement is being ended, the responsible authority must either obtain the agreement of all persons bound by the agreement or obtain the Minister’s approval. Obtaining the agreement of all persons can take considerable time and may be impossible to achieve if there is opposition to the proposal or a large number of parties are involved.
The General Act introduces a new process to amend or end an agreement. The process is designed to be used in circumstances where the responsible authority agrees in principle to a proposal to amend or end an agreement but the agreement of all persons bound by the agreement cannot be obtained.

The new process is similar to the process for making an application for a permit. An owner of land, or a person who has entered into an agreement in anticipation of becoming the owner of the land, may apply to the responsible authority for agreement to a proposal to amend or end the agreement. The responsible authority may also initiate the process of its own accord.

If the responsible authority decides that it does not agree in principle to the proposal, then that is the end of the matter. The applicant cannot apply to VCAT for a review of the responsible authority’s decision.

If the responsible authority agrees in principle to the proposal, then it must proceed to process the proposal by giving notice to all parties to the agreement and any other person to whom the responsible authority considers the proposal may cause material detriment. The responsible authority can require the applicant to pay for the costs associated with giving the required notice and preparing the amended agreement.

At the end of the process the responsible authority may decide to amend or end the agreement or it may refuse to amend or end the agreement.

An applicant may apply to VCAT for review if the responsible authority fails to give notice or fails to make a final decision on the proposal within the prescribed time. The applicant may also apply for a review of the responsible authority’s final decision.

VCAT may direct the responsible authority to amend or end the agreement, or it may determine that the agreement should not end or be amended.

The new process replaces existing provisions in section 184(3) and (4) of the PE Act which currently allow VCAT to amend an agreement in limited circumstances.
8.3 Copy of agreement to be kept

The responsible authority will no longer need to lodge a copy of an agreement with the Minister under section 179(1) of the PE Act. The responsible authority must continue to keep a copy of each agreement and any amendments to the agreement. Lodging agreements with the Minister is unnecessary as agreements are available through the responsible authority and by registration on title.

8.4 Recording an agreement

Sections 173 and 181 to 183 of the PE Act inconsistently refer to an agreement being ‘registered’ or ‘recorded’. The Registrar of Titles ‘records’ an agreement. Section 51 of the General Act updates these sections accordingly.

Under section 181 of the PE Act a responsible authority may apply to the Registrar of Titles to record a section 173 agreement relating to land other than Crown land, however this is not mandatory. The purpose of recording an agreement is to ensure the obligations in the agreement run with the land and therefore bind all future owners of the land.

The General Act amends section 181(1) so that all future agreements, other than agreements relating to Crown land or agreements made for the purposes of the Subdivision Act 1988, must be recorded on title. The exception for Subdivision Act agreements is set out in section 86 of the General Act.

Existing agreements will also not be subject to this requirement unless the agreement is amended after the new provisions commence.

8.5 New parties to an agreement

After an agreement has been entered into, parts of the land which are subject to the agreement may pass into separate ownership through subdivision or by sale of separate lots. Currently, there is some confusion about whether there is one agreement to which all new owners are a party or several separate agreements between each new owner and the responsible authority.

The General Act clarifies this by inserting a new section 182A that provides that if land which is subject to an agreement is transferred to another person, the new owner becomes an additional party to that agreement. This means that obligations under an agreement will be assigned to subsequent owners of separate holdings.
8.6 Interpretation of agreements by VCAT

VCAT is provided with a new jurisdiction to interpret section 173 agreements. A specified person, as defined in section 148 of the PE Act, or a party to an agreement will be able to apply to VCAT for a determination on matters relating to the interpretation of an agreement. This will enable disputes between parties on the meaning of certain requirements in an agreement to be more efficiently resolved.

8.7 Bonds and guarantees

The General Act amends section 175 of the PE Act to clarify that a condition to secure a bond or guarantee may be included in an agreement involving a Minister provided that the condition does not require the Minister to provide that bond or guarantee.
9. **Other improvements to the PE Act**

Parts 8 and 10 of the General Act make various changes to the operation of the PE Act.

9.1 **Acquiring authorities and compensation**

The General Act amends section 6 of the PE Act to specify that a planning scheme may designate the acquiring authority for land reserved for a public purpose. Planning schemes commonly make such designations relying on the general power of section 6(1)(b) which enables a planning scheme to make any provision relating to the use, development, protection or conservation of any land in the area. New section 6(2)(fa) makes it clear that a planning scheme can designate acquiring authorities.

Sections 106 and 109 of the PE Act are also amended to clarify that if a planning scheme designates a Minister, public authority or municipal council as the acquiring authority for land reserved for a public purpose, that designated authority is liable for the compensation payable arising from that reservation.

9.2 **New definitions**

A definition of ‘permit’ is inserted into section 3 of the PE Act. The definition makes it clear that a planning permit issued under any part of the PE Act includes any plans, drawings or other documents approved under the permit.

A definition of ‘business days’ is also being inserted. A business day means a day other than a Saturday, a Sunday or a public holiday.

9.3 **Reporting by decision-makers**

Accurate, up to date reporting on the planning system is vital for informing planning decisions and improving the system.

Regular reporting is also essential to having an open and transparent planning system.

Victoria has good reporting for some parts of the planning system (such as planning permits) but improvements can be made elsewhere.
The General Act inserts provisions to facilitate regular reporting by decision-makers (planning authorities, responsible authorities and referral authorities) to the Minister on specified performance and accountability matters. The purpose of this reporting is to help the government and councils track trends in planning processes, identify problems and allocate resources efficiently and effectively.

Decision-makers will be consulted on the nature and format of reporting that will be required before this proposal is implemented. The government is conscious of the need to avoid duplication and resource intensive reporting requirements, particularly for local government.

9.4 Consideration of social, economic and environmental effects

Section 12 of the Act currently provides that in preparing an amendment to a planning scheme, a planning authority must take into account significant environmental effects and may take into account social and economic effects. The General Act amends this section to require a planning authority to take all three effects into account.

The General Act also amends section 60 to require a responsible authority to consider significant environmental, social and economic effects before deciding on a permit application.

9.5 Advisory committees

The General Act inserts a new section 152 into the PE Act so that certain procedural requirements which apply to a panel appointed under Part 8 of the PE Act, will also apply to an advisory committee appointed under Part 7 of the PE Act, if the committee conducts a hearing into a matter.
10. Improvements to the *Subdivision Act 1988*

Part 11 of the General Act amends sections 18 and 19 of the *Subdivision Act 1988* to clarify how these provisions apply to a public open space requirement specified in a planning scheme.

The amendments make it clear that the existing ‘need’ test in section 18(1A) does not apply to a public open space requirement in a planning scheme.

**The current situation**

Section 18(1A) currently sets out a ‘need’ test that a council must consider before it imposes a public open space requirement on the subdivision of land. The test includes six criteria relating to the existing and future use of the land, changes in population and open space use, and other policy considerations. Until 2009 it was understood that this test applied only to a public open space requirement to be imposed under section 18(1) of the Subdivision Act and did not apply to a public open space requirement specified in a planning scheme. However, the Supreme Court of Victoria Court of Appeal decision in *Maroondah City Council v Fletcher* [2009] VSCA 250 reversed this position. The Court found that sections 18, 19 and 20 of the Subdivision Act, including the ‘need’ test, apply to a public open space requirement in a planning scheme.

This decision has created uncertainty about the public open space requirements in planning schemes and potentially leaves councils underfunded for public open space. Even if a council has investigated public open space needs for its municipality, prepared a public open space policy, prepared an amendment to the planning scheme to specify a public open space amount, and the amendment is approved, a public open space requirement would still be subject to a case-by-case merits review under the ‘need’ test in section 18(1A).

The test in section 18(1A) was not designed for this purpose. It was designed to apply to a public open space requirement imposed under section 18(1), where there has been no previous council public open space planning for subdivision and the need for public open space is being assessed for the first time. This case-by-case assessment is unnecessary if a public open space amount is specified in the planning scheme because the ‘need’ for public open space is one of the key factors that a council must have assessed and justified before the amendment to specify that amount in the scheme is approved.