

# AMENDMENTS

# 2

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## 2.1 Amending a planning scheme

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### 2.1.1 Who can amend a planning scheme?

PEA ss. 8, 8A, 8B, 9

The Minister for Planning (the Minister) may prepare amendments to any provision of a planning scheme (s. 8). The Minister may also authorise the preparation of an amendment by:

- another Minister (s. 9)
- a public authority (s. 9)
- a municipal council (ss. 8A and 8B).

PEA s. 201C

The Act also makes special provision for the Minister to amend a planning scheme following the restructuring of municipal boundaries.

PEA s. 10(3)

Only the Minister can prepare an amendment to exempt a class of land use or development from planning scheme requirements where the land is owned or controlled by a responsible authority.

#### **Municipal council**

PEA ss. 8A, 8B

A council is a planning authority for any planning scheme in force in its municipal district and for an area adjoining its municipal district for which it is authorised by the Minister to prepare an amendment.

A council cannot prepare an amendment unless it has been authorised to do so by the Minister under section 8A or 8B.

### 2.1.2 Why a planning scheme amendment may be required

There are many reasons why a planning scheme may need to be amended. Some of the more common reasons are:

- to enhance or implement the strategic vision of a scheme
- to implement new state, regional or local policy
- to update the scheme
- to correct mistakes
- to allow some use or development currently prohibited to take place
- to restrict use or development in a sensitive location
- to set aside land for acquisition for a public purpose or to remove such a reservation when it is no longer needed in the scheme

- to authorise the removal or variation of a restriction on title (for example, a registered restrictive covenant)
- to incorporate changes made to the *Victoria Planning Provisions* (VPP).

A planning scheme amendment cannot amend the terms of the VPP.

## 2.2 Requesting a planning scheme amendment

### 2.2.1 How is a planning scheme amendment requested?

It is a well-established practice that any person or body can request that the planning authority (usually a council) prepare an amendment. The Act does not include a procedure for making a request to a council for an amendment. If the council agrees to the request, it must apply to the Minister for authorisation to prepare the amendment.

### 2.2.2 Discuss with the council first

Before a formal request is made, the proponent should discuss the proposal with the council to determine:

- whether the amendment is necessary or if there are other ways of achieving the desired outcome
- whether the amendment will help to implement the objectives of the Act, the State Planning Policy Framework (SPPF) and the Local Planning Policy Framework (LPPF)
- the information the council requires to enable it to evaluate the request
- the appropriate form of amendment to achieve the objectives sought
- the documentation requirements for the amendment
- the likelihood of the amendment being supported.

### 2.2.3 Justification for the proposal

An amendment requires a council to begin a process to change the law, which is different to making a decision on a permit application in accordance with the existing planning scheme. In recognition of this, the Act requires a council to have regard to certain matters in preparing an amendment.

A proponent should provide sufficient information demonstrating how matters to be considered by the council have been addressed.

Key matters to consider include:

- *Planning Practice Note 46 – Strategic Assessment Guidelines for Preparing and Evaluating Planning Scheme Amendments*
- the VPP and any relevant planning practice notes on using and applying the VPP
- any relevant ministerial direction
- the Municipal Strategic Statement (MSS) and any strategic plan, code or guideline that forms part of the scheme
- the potential environmental, social and economic effects of the proposal
- the public benefits of the amendment.

Figure 2.1: Outline of the planning scheme amendment process

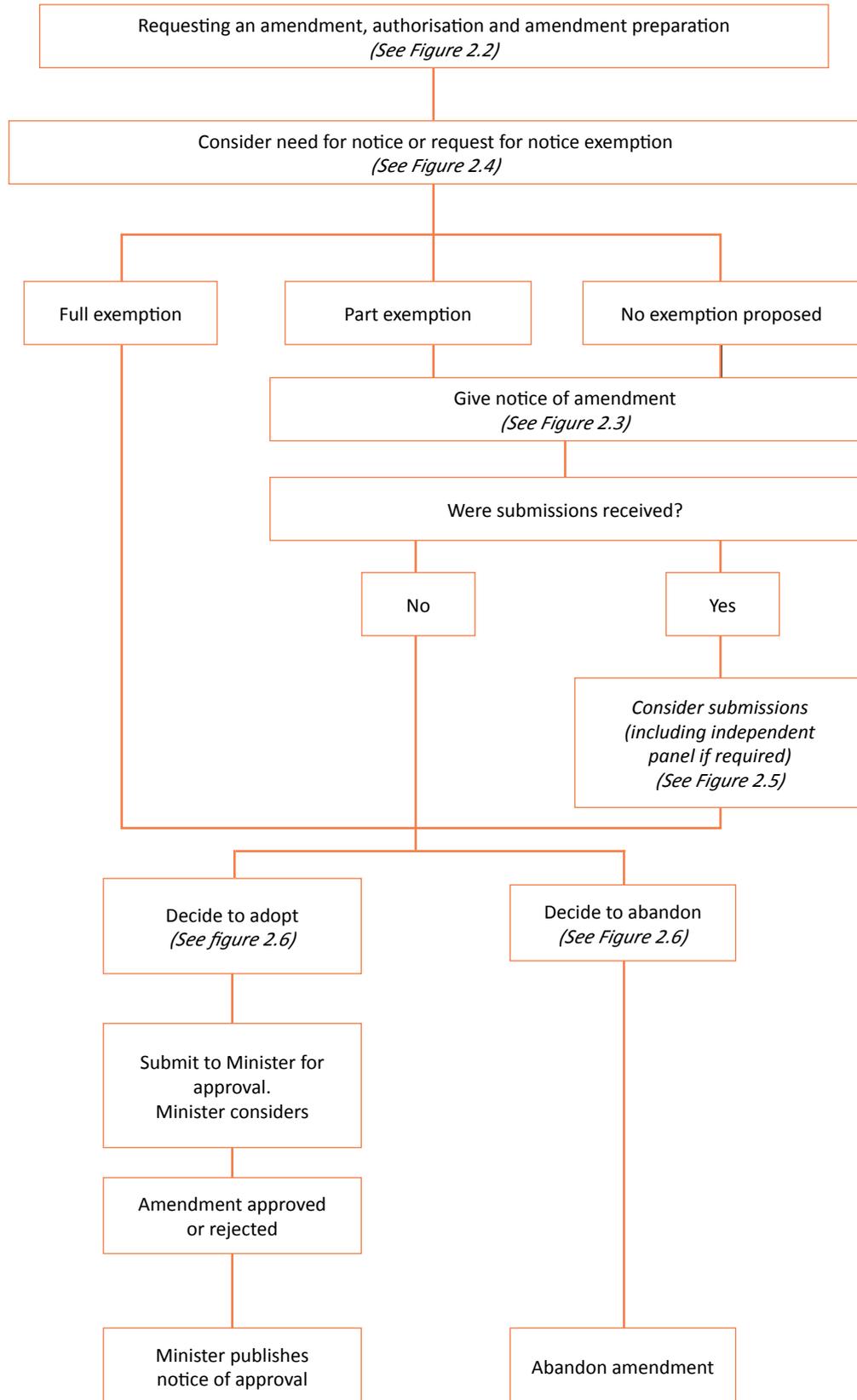
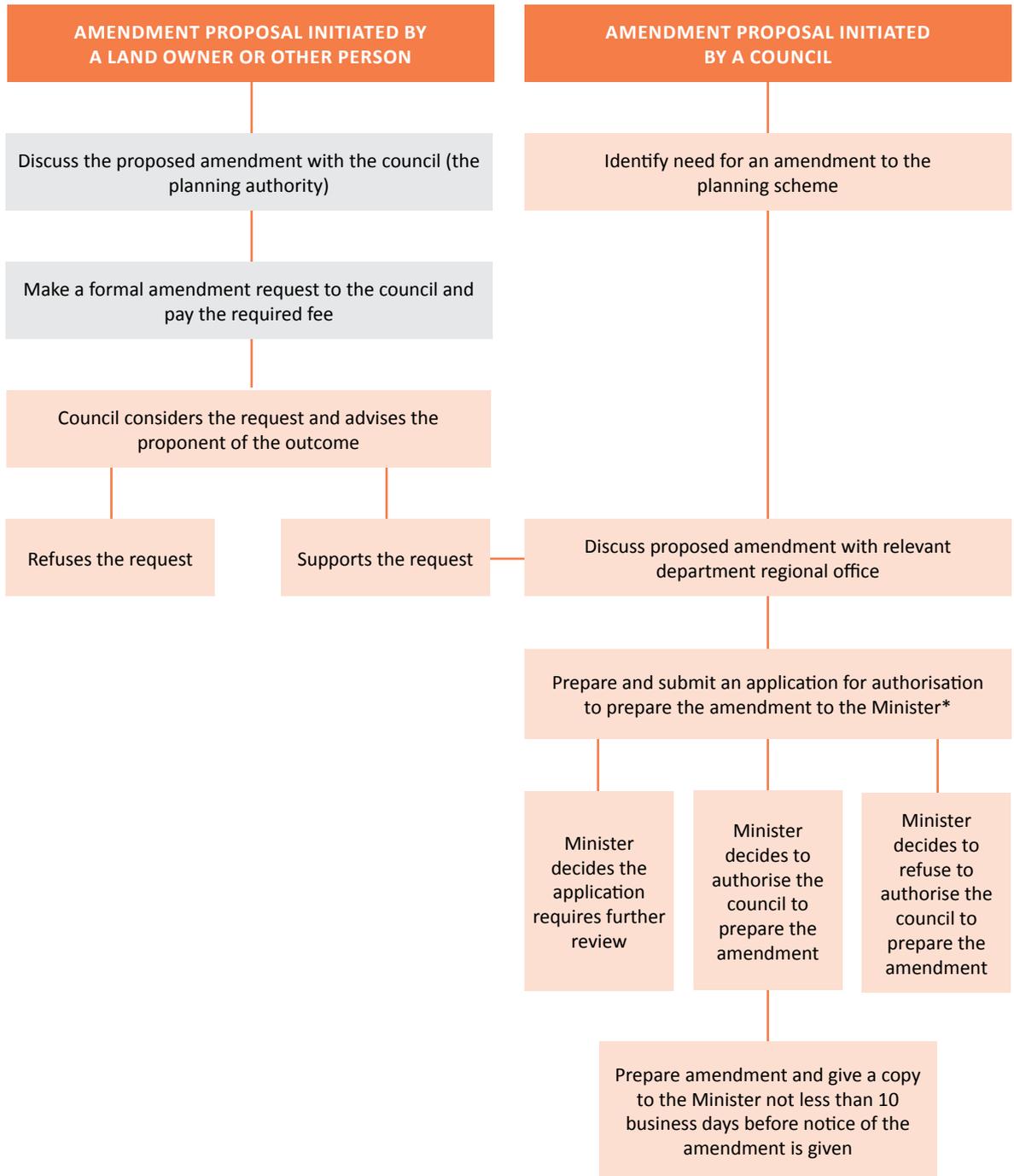


Figure 2.2: Requesting an amendment, authorisation and amendment preparation



■ Proponent  
 ■ Planning Authority

\*If the Minister does not notify the council of his or her decision within 10 business days, the council may prepare the amendment without authorisation.

## 2.2.4 Fees/costs

PEA ss.156,  
203(1)(c); PE  
(Fees) Regs r. 6

A fee for considering a request for an amendment applies. The fee is to be paid to the council by the proponent at the time the request is made. If a request is agreed to, fees are payable for later stages in the amendment process, including fees for the appointment of a panel.

A council can either require the proponent of an amendment to prepare the amendment documentation or it can prepare them in-house (possibly at the proponent's cost). This is a specialised area and the costs could be quite significant, especially if complex maps are required.

## 2.2.5 Right of review

There is no right of review of a council's decision not to support the preparation of an amendment.

If the council declines a request, the proponent may ask the Minister to amend the scheme. This is a separate action, not an appeal. A request to the Minister must be in writing and must identify the basis on which the Minister should be the planning authority for the amendment, addressing the criteria set out in *Planning Practice Note 29 – Ministerial Powers of Intervention in Planning and Heritage Matters*.

## 2.3 Applying for authorisation to prepare an amendment

### 2.3.1 Purpose of authorisation

PEA ss. 8A, 8B

A council must apply to the Minister for authorisation to prepare an amendment. The purpose of authorisation is to identify whether a proposed amendment is consistent with state policy or interests and to ensure it makes appropriate use of the VPP.

### 2.3.2 Discuss with the department first

To ensure timely consideration of an authorisation request, early consultation with the department's relevant regional office is desirable. This enables queries about the content and format of the amendment to be resolved and may avoid the need to make changes to the amendment at a later stage.

### 2.3.3 Preparing an application for authorisation

When preparing an application for authorisation, a council should have regard to:

#### Relevant Minister's directions

Any direction relating to the subject matter of the amendment or the form and content of the planning scheme should be followed. Failure to comply with a direction could result in the Minister's refusal to authorise the preparation of an amendment.

*Ministerial Direction No. 11 – Strategic Assessment of Amendments and the Ministerial Direction on the Form and Content of Planning Schemes* apply to most amendments and should be used to assess the appropriateness of the amendment.

#### The VPP

The amendment should use the appropriate VPP tools to achieve the intended outcome. For example, is an appropriate zone or overlay used? A number of the department's planning practice notes provide best practice guidance about using and applying particular VPP tools.

#### Planning scheme policies, codes and guidelines

An amendment should not seek to change the planning scheme in a manner that conflicts with the SPPF. An amendment should support or give effect to the SPPF.

There should always be a clear link between the objectives and policies set out in the LPPF and the planning scheme. An amendment should not be in conflict with the LPPF. If the amendment does not seek to implement the LPPF in some way, the council should consider whether the LPPF needs to be changed and the impact of doing so. Is there a strategic basis for the change?

#### Environmental, social and economic effects

*Planning Practice Note 46 – Strategic Assessment Guidelines for Preparing and Evaluating Planning Scheme Amendments* should be used in evaluating the environmental, social and economic effects of a proposal.

#### Strategic Assessment Guidelines

*Ministerial Direction No. 11 – Strategic Assessment of Amendments* requires a council to evaluate and discuss how an amendment addresses a number of strategic considerations. *Planning Practice Note 46 – Strategic Assessment Guidelines for Preparing and Evaluating Planning Scheme Amendments* explains what should be considered as part of the Direction.

Under Direction No. 11, not all amendments require an assessment against the strategic considerations. The Strategic Assessment Guidelines outline how some minor amendments only require a brief assessment against the strategic considerations.

### Effect on registered restrictive covenants

A council should consider whether the amendment might authorise anything that would result in the breach of a registered restrictive covenant. If it will, the council may wish to consider whether the amendment should provide for the removal or variation of the covenant. Otherwise, a planning permit application that is made as a result of the planning scheme being amended may have to be refused under section 61(4) of the Act.

## 2.3.4 Submitting an application for authorisation

PEA ss. 8A(3),  
8B(4)

An application must be made in writing and contain the information required by the Minister. Councils must use the department's authorisation application form and provide a draft explanatory report. *Ministerial Direction No. 11 – Strategic Assessment of Amendments* sets out the strategic matters that must be covered in an explanatory report.

For more complex proposals, the department may require additional information to be submitted to enable it to properly assess the application.

The *Preparing Planning Scheme Amendment Documentation* guidelines set out more information about the requirements for preparing and submitting an application for authorisation.

## 2.3.5 Outcome of making an application

PEA s. 8A(4)

Once the Minister has received an application, the Minister may:

PEA s. 8A(4)(a)

- authorise the preparation of the amendment

PEA s. 8A(6)

- authorise the preparation of the amendment subject to conditions, including conditions relating to notice

PEA s. 8A(4)(b)

- require further review

PEA s. 8A(4)(c)

- refuse authorisation for preparation of an amendment.

PEA s. 8A(5)

The Minister must notify the council in writing of his or her decision within 10 business days of receiving the application.

PEA s. 8A(7)

If 10 business days elapse and the council has not been notified of the Minister's decision, the council may proceed to prepare the amendment without the Minister's authorisation.

If the amendment is inconsistent with state policy or interests, the Minister will not authorise the preparation of an amendment.

PEA s. 8A(7)

If the application requires further review, the council may be asked to provide additional information. The Minister may later decide to authorise the council or refuse the request.

The authorisation of the preparation of an amendment is not an indication of whether or not the amendment will ultimately be approved by the Minister.

## 2.4 Timelines for preparing and processing an amendment

*Ministerial Direction No. 15 – The planning scheme amendment process* sets times for completing key steps in the amendment process. It applies to the Minister, the Secretary of the department, a panel appointed under Part 8 of the Act and all planning authorities.

The Direction sets times for:

- preparing and giving notice of an amendment – 40 business days after authorisation
- considering submissions and requesting the appointment of a panel – 40 business days after the closing date for submissions
- commencement of the panel's functions – 20 business days after its appointment
- a panel to submit its report to the planning authority – 20 business days for a one person panel; 30 business days for a two person panel; and 40 business days if the panel consists of three or more members
- the planning authority to decide on the amendment – within 60 business days of the closing date for submissions or, if there is a panel, 40 business days after the date the planning authority receives the panel report
- the planning authority to submit an adopted amendment – 10 business days after adoption
- the Minister to decide on the amendment – within 40 business days of receiving the adopted amendment.

In circumstances where more time is required to complete one or more steps in the process, the Minister may exempt an amendment from the need to comply with one or more requirements of the Direction. An exemption may be granted subject to conditions.

An exemption may be sought at any time. *Planning Advisory Note 48: Ministerial Direction No. 15 – The planning scheme amendment process* provides more information about the Direction and the circumstances when an exemption may be granted.

## 2.5 Preparing a planning scheme amendment

### 2.5.1 The importance of following statutory procedures

Once a planning authority decides to proceed with a proposed amendment to the stage of public exhibition, detailed procedural requirements of the Act come into play. These requirements are designed to ensure that any person who may be affected by a proposed amendment (either as the owner or occupier of land which is to be the subject of changed planning scheme provisions) or who may be affected by changes on other land, is aware of the proposal and has the opportunity to make a submission about the proposal.

PEA s. 39

It is important that the requirements of the Act and the Planning and Environment Regulations 2015 (the Regulations) are followed carefully. *Ministerial Direction No. 15 – The planning scheme amendment process* also sets times for completing steps in the amendment process. Failure to do so may lead to challenges at VCAT by those seeking to protect rights or to otherwise oppose proposals. Such challenges will inevitably lead to delays in considering the merits of an amendment and add to the authority's costs. It is much better to take extra care in ensuring that the procedural requirements of the Act are correctly followed the first time, than risk such challenges and the possibility of being directed to repeat steps which were not followed correctly.

### 2.5.2 Planning the preparation of an amendment

If a council is authorised to prepare an amendment, it can proceed to finalise the amendment in readiness for commencing the formal steps in Part 3 of the Act. In some cases, the council may have already prepared a draft amendment to assist it in making an application to the Minister for authorisation.

PEA s. 12(2)

The Act sets out matters that must be considered by a planning authority in preparing an amendment. These issues should have already been addressed in the information required by the Minister as part of the request for authorisation.

If the Minister has authorised the amendment subject to conditions, the council should ensure the amendment is prepared in accordance with those conditions.

### 2.5.3 Drafting an amendment

When drafting an amendment the following principles should be considered.

#### **The amendment should not duplicate other provisions in the scheme**

When drafting an amendment, the other provisions (zones, overlays, particular provisions and general provisions) applying to the issue or area should be considered. If they contain controls that already meet the planning authority's objectives for the issue or area, the amendment should not duplicate these.

#### **The amendment should avoid introducing site-specific provisions**

Detailed and complex site-specific provisions are discouraged. If a planning authority's objectives can be achieved by applying a combination of the standard zones and overlays, with appropriate support from the MSS and local planning policies (LPPs), this should be done instead.

Using site-specific provisions to avoid the need for a planning permit is also not appropriate. The planning permit is the preferred form of development approval. If a planning authority believes that there would be benefit in expediting the exhibition and consideration of a use or development, it can agree to combine the planning scheme amendment and permit process (see Section 2.10 of this chapter for further details).

#### **The amendment should be clear and accurate**

The planning scheme is subordinate legislation, which affects property rights and care should be taken when drafting amendment documentation. The planning authority must ensure the amendment documentation gives effect to the purpose of the amendment.

The amendment documentation should be clear and accurate and be drafted using plain English principles (refer to Chapter 9 – Plain English). Particular care is required that the words and terms defined in the planning scheme or legislation are used as intended. Words and terms that are not defined by the planning scheme or legislation take their ordinary meanings. Always check that the dictionary meaning matches what is intended to be achieved.

Imprecise drafting or incorrect use of provisions can lead to the purpose of the amendment being misunderstood or misinterpreted. This can cause delay during the consideration of submissions, and lead to further action before the Victorian Civil and Administrative Tribunal (VCAT) and courts.

For specific guidance on how LPP and schedules should be written, refer to *Planning Practice Note 8: Writing a Local Planning Policy* and *Planning Practice Note 10: Writing Schedules*.

#### 2.5.4 The amendment documentation

The *Preparing Planning Scheme Amendment Documentation* guidelines provide detailed guidance on:

- preparing and drafting amendment documents
- documents to be submitted with an amendment
- submitting documents to the department
- making an application to the Minister for authorisation, an exemption from notice and approval of an adopted amendment.

The guidelines also contain checklists, helpful hints and links to other documents relevant to each stage of the amendment process.

The guidelines, together with the relevant template documents, can be accessed on the department's website.

A planning authority must prepare:

- an Explanatory Report
- an Amendment Instruction Sheet
- any new or replacement clauses and schedules (if applicable)
- any amendment map sheets (if applicable)
- any incorporated documents (if applicable)
- any supporting documentation.

#### The Explanatory Report

The Act requires an Explanatory Report to be prepared for every amendment. The Explanatory Report must explain the purpose, effect and strategic basis for the amendment and address the matters set out in *Ministerial Direction No. 11 – Strategic Assessment of Amendments*. More details about the purpose and content of the Explanatory Report can be found on the department's website.

The amendment clauses and schedules may be required in 'track change' format and should be attached to the Explanatory Report to enable all text changes to be easily identified and understood.

PEA s. 12(1)(e)

### The Amendment Instruction Sheet

The amendment Instruction Sheet is the front page of an amendment and sets out the instructions for amending the planning scheme. The Instruction Sheet and the attached maps and documents that it refers to, constitute the amendment and therefore must clearly state the instructions for executing the amendment. It is essential that these are drafted carefully and accurately. The Instruction Sheet must:

- identify the planning scheme being amended and the amendment number
- state the name of the planning authority
- list all planning scheme maps being amended, inserted or deleted. Any zoning maps should be listed first, followed by any overlay maps
- list all planning scheme clauses and schedules being amended, inserted or deleted. These should be listed in ascending numerical order.

### Amendment clauses and schedules

The amendment clauses and schedules are documents that form attachments to the Instruction Sheet and should always be presented in a final form.

The format of all attached documents must comply with the *Ministerial Direction on the Form and Content of Planning Schemes*, which outlines the format for all schedules including the font, paragraph, bullets, numbering and layout.

### Amendment map sheets

The amendment map sheets form attachments to the Instruction Sheet. The map sheets (usually A4 size) show the part of the overall planning scheme map being changed. If areas of a zone or an overlay are being removed, a deletion map needs to be prepared.

The Department's Mapping Services Team provides free assistance to planning authorities in the preparation of map sheets.

## 2.5.5 Identifying amendments

There are four types of amendment:

- a 'V' amendment – an amendment to the VPP only
- a 'VC' amendment – an amendment to the VPP and one or more planning schemes
- a 'C' amendment – an amendment to one planning scheme only
- a 'GC' amendment – an amendment to more than one planning scheme.

Each amendment must have an amendment number. 'V', 'VC' and 'GC' amendments are prepared by the Minister and the numbering is allocated by the department. The numbering for 'C' amendments is allocated by the relevant council.

## 2.6 The public exhibition stage

### 2.6.1 Who must receive copies of an amendment?

PEA s. 17(1) When an amendment is prepared, the planning authority must give copies to:

- a council where the amendment applies to its municipal district
- the Minister
- anyone else specified by the Minister.

PEA s. 17(3) The copy to the Minister must be given at least 10 business days before the planning authority first gives notice of the amendment under section 19 (unless the planning authority is not required to give notice under section 19 or the Minister is the planning authority for the amendment). The copy should be sent electronically to the department in accordance with the *Preparing the Documentation for a Planning Scheme Amendment* guidelines.

The copies given to other persons should be sent before notice is given under section 19 so the documents are available for public inspection when the exhibition period starts.

PEA s. 20(4) The Minister may exempt himself or herself from the requirement to provide copies of an amendment. A planning authority cannot be exempted from this requirement.

### 2.6.2 Where must copies be available for inspection?

PEA s. 18 The planning authority, the council and the Minister must make an amendment (together with its accompanying documents) available for public inspection until it is approved or lapses. Information about the progress of an amendment can be found on the department's website.

If sections 17 and 19 require a copy and notice to go to the same authority, it may be convenient for these to be sent simultaneously.

### 2.6.3 Requirement to give notice

PEA s. 19 A planning authority must give notice that it has prepared an amendment unless it has been exempted from this requirement.

The notice requirements are summarised in Figure 2.3.

*Ministerial Direction No. 15 – The planning scheme amendment process* requires a planning authority to give notice of an amendment within 40 business days of receiving authorisation to prepare an amendment. If the planning authority prepares the amendment without authorisation, notice of the amendment must be given within 40 business days of when the 10 business day period referred to in section 8A(7) lapses.

Before notice of an amendment is given, the planning authority must also, with the agreement of Planning Panels Victoria, set a date for a Directions hearing and a Panel hearing to consider any submissions that must be referred to a Panel under section 23(1)(b).

### Who is given notice?

Notice of preparation of an amendment must be given to:

- Every minister, public authority and municipal council that may be materially affected by the amendment. This might include local bodies such as water and sewerage boards, the Environment Protection Authority and, in many cases, adjoining municipalities.
- The owners and occupiers of land that may be materially affected by the amendment. This includes anyone whose land is subject to changed controls under the amendment and might include owners and occupiers of adjoining or nearby land.
- Any Minister, public authority, municipal council or person prescribed. Regulation 6 requires that the following bodies be notified:
  - any council if it is not the planning authority and the amendment affects land within the municipality
  - any minister, public authority or municipal council that the amendment designates as an acquiring authority
  - the Minister administering the *Conservation, Forests and Lands Act 1987*
  - the Minister administering the *Catchment and Land Protection Act 1994*
  - the Minister administering the *Sustainable Forests (Timber) Act 2004*
  - the Minister administering the *Mineral Resources (Sustainable Development) Act 1990*
  - the Minister administering the *Pipelines Act 2005*.
- The owners and occupiers of land benefited by a registered restrictive covenant being removed or varied by the amendment.
- The Minister administering the *Land Act 1958* if the amendment provides for the closure of a road wholly or partly on Crown land.

Under section 19(1) and (b), a planning authority must form an opinion as to whether or not the proposed amendment materially affects a specified person or body, and what notice should be given. This should be carefully recorded and included in documentation required to accompany the submission of an adopted amendment for the Minister's approval.

The administrative arrangements for the responsibility of Acts of Parliament change from time to time. The standing Order of the Governor in Council setting out the current administrative arrangements should be checked to determine the prescribed Ministers.

### Traditional owner groups

For the purposes of Part 3 of the Act, the owner of Crown land includes, if the land is agreement land within the meaning of the *Traditional Owner Settlement Act 2010*, the traditional owner group entity (as defined in the *Traditional Owner Settlement Act 2010*). This means that a traditional owner group is entitled to notice of preparation of an amendment under section 19(1)(b) of the Act where the planning authority forms an opinion that the amendment may materially affect the owner of the land.

To determine whether notice must be given to a traditional owner group, the planning authority must establish whether the land is agreement land. Agreement land is identified in a Land Use Activity Agreement (LUAA) entered into under the *Traditional Owner Settlement Act 2010*. Each LUAA is published on the Register of Land Use Activity Agreements, which is available on the Department of Justice website.

#### 2.6.4 How is notice of an amendment given?

PEA s.19 Notice must be given in writing to the individuals and organisations specified in section 19 of the Act. Templates for notices to individuals and ministers are provided on the department's website.

PEA s. 19(2) A planning authority must publish a notice of any amendment it prepares in a newspaper generally circulating in the area to which the amendment applies. If an amendment affects a region or the whole state, an appropriate regional or statewide newspaper should be used.

PEA s. 19(2A) A planning authority must cause a notice to be placed on the land which is the subject of an amendment that seeks to vary or remove a registered restrictive covenant on that land.

PEA s. 19(3) The planning authority must publish a notice of the preparation of an amendment in the *Victoria Government Gazette*. This can be on the same day, or after, the last of the notices has been provided and needs to be arranged in advance to allow enough time for the notice to be published on the chosen date.

PEA s. 19(7) A planning authority may take any other steps to provide notice. For example, additional newspaper notices, use of other media, displays in public places, notices on the land and public meetings. The extent of the notice will depend on how important or wide-ranging the effect of the amendment is likely to be.

A planning authority must make an individual decision for each amendment.

PEA s. 32 The Minister may, in any case, require additional notification to be given after an amendment has been adopted. Early consultation with the department's relevant regional office on the extent of notice for a particular amendment should reduce the likelihood that this has to be done.

#### What information is provided in the notice?

PEA s. 19(4); PE  
Regs r. 7

The notice must:

- state the name of the planning scheme proposed to be amended
- state the planning scheme amendment number
- include a description (which may be by map) to identify the land affected by the amendment
- briefly describe the effect of the amendment
- state that the amendment, any documents that support the amendment, and the explanatory report about the amendment, may be inspected at the office of the planning authority during office hours free of charge
- state the name of the planning authority and the address or addresses where the amendment and other documents may be inspected
- state that any person may make a submission to the planning authority about the amendment

- state the closing date for submissions and the address of the planning authority to which submissions may be sent
- state that the planning authority must make a copy of every submission available at its office for any person to inspect during office hours free of charge until the end of two months after the amendment comes into operation or lapses
- be signed on behalf of the planning authority.

PEA s. 19(4)(b)

The closing date for submissions must be not less than one calendar month after the date the notice is published in the Government Gazette. For example, if a notice is published in the Government Gazette on 4 September, the closing date for submissions must not be before 4 October or, if this day falls on a weekend, the following business day. This period of public exhibition is intended to enable interested or affected parties to consider changes to existing controls and to prepare and lodge submissions.

### 2.6.5 Exemption from giving notice

There are three situations in which a planning authority may be exempted from all or part of the normal notice requirements for an amendment:

PEA s. 19(1A)

- if the number of owners or occupiers affected makes it impractical for the planning authority to notify them individually

PEA s. 20(1),  
(2), (3)

- if the Minister exempts a planning authority from part of the notice requirements

PEA ss. 20(4) and  
20A

- if the Minister, as the planning authority for the amendment, exempts himself or herself from all or part of the notice requirements.

Processes related to an exemption from notice for certain amendments are set out in Figure 2.4.

#### Notice to large numbers of owners or occupiers

PEA ss. 19(1)(b),  
(1A) and (1B)

A planning authority is not required to give notice of an amendment to the owners and occupiers of affected land that it believes may be materially affected by an amendment if the number of owners or occupiers makes it impractical to notify them all individually. In this situation, the planning authority must take reasonable steps to ensure public knowledge of the amendment. Such steps might include extra display notices in local newspapers, news items or a sign on the site proposed for development.

PEA ss. 19(1C)  
and 19(2A)

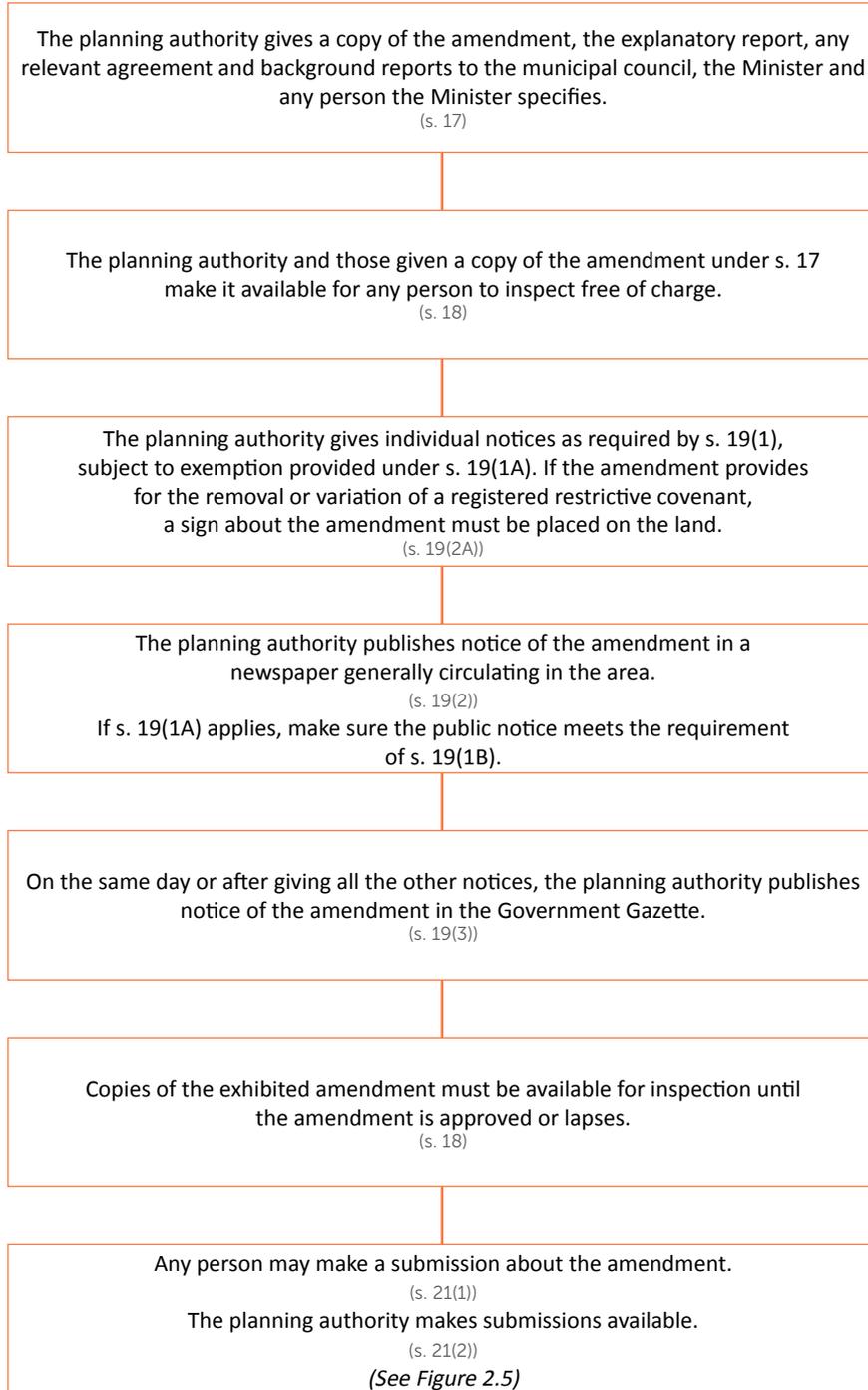
This exemption does not apply to the giving of notice to a landowner of an amendment that provides for any of the following:

- the reservation of that land for a public purpose
- the proposed closure of a road which gives access to that land
- the removal or variation of a registered restrictive covenant on the land.

PEA ss. 31(2)  
and 32

A planning authority does not need approval from the Minister before deciding to use section 19(1A). However, in submitting the amendment for approval, it must tell the Minister and give details of the steps taken to ensure knowledge of the amendment. If at this stage the Minister thinks the notice was in any way inadequate, the Minister can require that more notice be given. To avoid the inevitable cost and delay ensuing from this, the planning authority should confer with the department's relevant regional office if it proposes to use this procedure.

Figure 2.3: Giving notice of an amendment



### Notice exemption where the Minister is not the planning authority

- PEA s. 20(2) The Minister may exempt a planning authority from the requirements relating to notice of an amendment if the Minister considers that compliance with any of those requirements is not warranted or that the interests of Victoria, or any part of Victoria, make such an exemption appropriate.
- PEA s. 20(1) A planning authority must apply to the Minister to be exempted from the requirements of section 19 of the Act or from the Regulations. The request should be accompanied by a completed *Application Form – Request for an exemption under section 20(2) of the Act* and address the criteria set out in *Planning Practice Note 29 – Ministerial Powers of Intervention in Planning and Heritage Matters*. To avoid unnecessary delays in the amendment process, an exemption request should be made at the time authorisation is sought.
- A template of the application form can be found on the department’s website.
- PEA s. 20(3) The Minister cannot exempt a planning authority from the requirement to give notice:
- PEA s. 20(3)(a) • to the owner of land proposed to be reserved for acquisition for a public purpose or affected by the closure of a road which gives access to that land
- PEA s. 20(3)(b) • to any minister prescribed in the Regulations
- PEA s. 20(3)(ba) • if the amendment proposes a change to provisions relating to land set aside or reserved as public open space
- PEA s.20(3)(c) • to the minister administering the *Land Act 1958* if the amendment provides for the closure of a road wholly or partly on Crown land.
- PEA s. 20(5) The Minister can consult the responsible authority or any other person before giving an exemption and may grant the exemption outright or with conditions, for instance, that some other form of notice be given.

The Minister must decide on the exemption request before any notice is given under section 19 of the Act.

### Notice exemption where the Minister is the planning authority

- PEA s. 20(4) The Minister may exempt himself or herself from any of the requirements of sections 17, 18 and 19 of the Act, and the Regulations. The Minister must be the planning authority for the amendment and must consider that compliance with any of those requirements is not warranted or that the interests of Victoria, or a part of Victoria, make such an exemption appropriate.
- If a person, planning authority or responsible authority (other than the Minister) seeks the use of this power, they must apply to the Minister. The request should be accompanied by a completed *Application Form – Request for an exemption under section 20(4) of the Act* and address the criteria set out in *Planning Practice Note 29 Ministerial Powers of Intervention in Planning and Heritage Matters*.
- A template of the application form can be found on the department’s website.
- PEA s. 20(5) The Minister may consult the responsible authority or any other person before giving himself or herself an exemption.

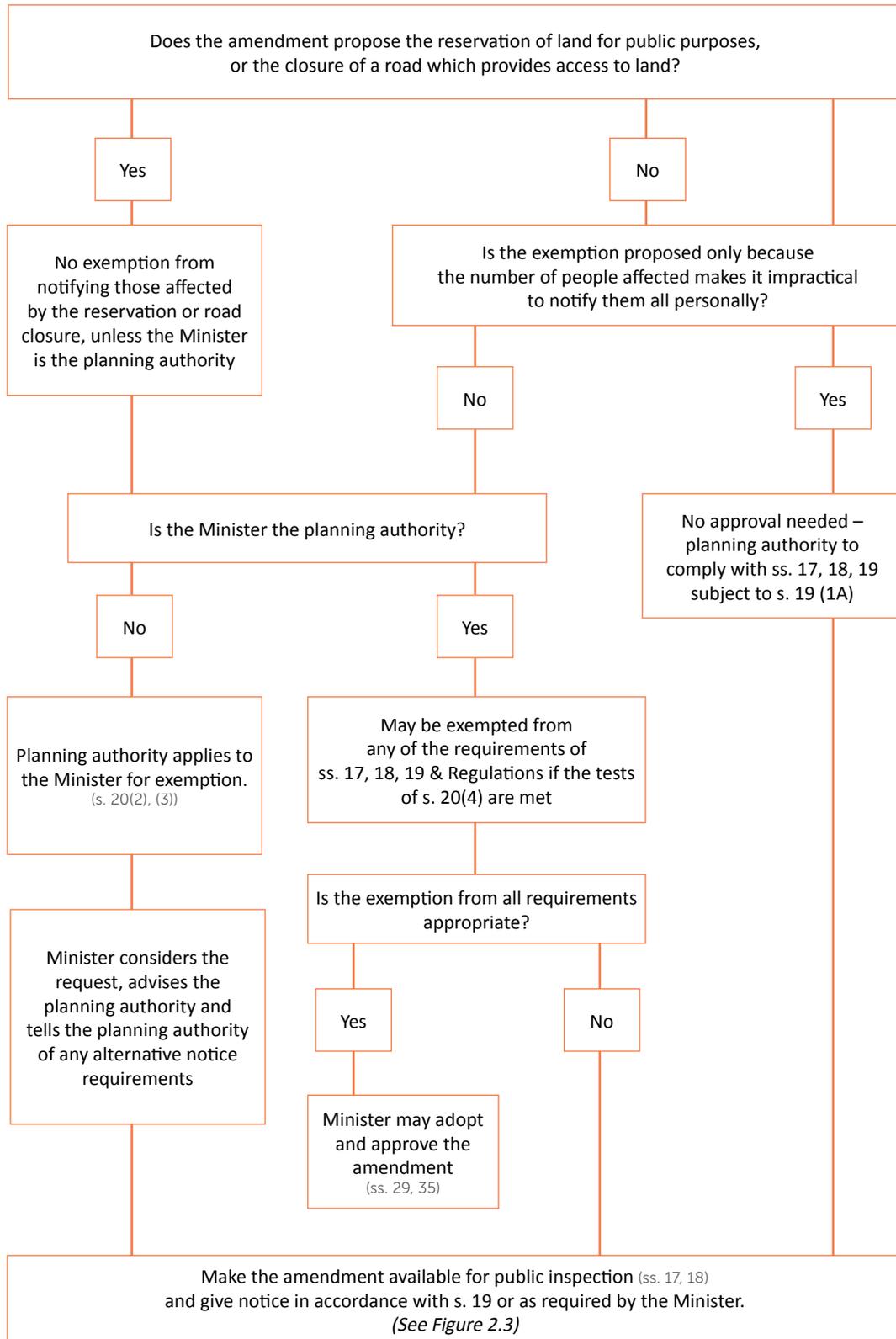
### Notice exemption for prescribed classes of amendment

The Minister may determine to prepare an amendment in accordance with section 20A of the Act if the amendment is in a prescribed class. The prescribed classes are set out in Regulation 9A(1), including:

- an amendment to correct an obvious or technical error in the VPP or a planning scheme
- an amendment to delete an expired clause in the VPP or a planning scheme
- an amendment to clarify or improve the language or grammatical form of a clause in the VPP or a planning scheme, if the intended effect of that clause or any other clause in the VPP or a planning scheme is not changed by that amendment
- an amendment to remove a clause that duplicates another clause in the VPP or a planning scheme
- an amendment to the VPP or a planning scheme to insert or update a heading
- an amendment to the VPP or a planning scheme to update a reference to a clause in the Victoria Planning Provisions or a planning scheme
- an amendment to delete a reference to an incorporated document or a reference document in the VPP or a planning scheme if that document has expired or the reference is redundant
- an amendment to the schedule to the Heritage Overlay in a planning scheme to delete a reference to a heritage place being included on the Victorian Heritage Register under the *Heritage Act 1995* if the heritage place is not on that Register
- an amendment to a planning scheme to include land in the Road Zone if that land has been declared a freeway or an arterial road under the *Road Management Act 2004*
- an amendment to a planning scheme to delete a Road Closure Overlay from land
- an amendment to a planning scheme to delete a Public Acquisition Overlay from land if the person or body designated in the planning scheme as the acquiring authority for that land has acquired the land
- an amendment to a planning scheme to delete an Environmental Audit Overlay from land if a certificate of environmental audit has been issued for that land in accordance with Part IXD of the *Environment Protection Act 1970*
- an amendment to extend the expiry of a clause in the VPP or a planning scheme for a period of 12 months or less, beginning on the day the amendment takes effect, if notice has been published in accordance with section 19(3) of the Act of the preparation of an amendment to introduce a clause that is similar or substantially the same
- any combination of the above classes.

An amendment prepared by the Minister under section 20A is exempt from the requirements of sections 17, 18 and 19 of the Act.

Figure 2.4: Exemption from notice



PEA s. 20A(4)

The Minister must consult with the municipal council for the relevant planning scheme unless the council has requested the amendment or the amendment is exempted from this requirement by the Regulations. Regulation 8(2) exempts two classes of amendment from this consultation requirement:

- an amendment to the VPP
- an amendment to a planning scheme that is of a class prescribed in Regulation 9A(1) and that is made as a result of an amendment to the VPP prepared under section 20A.

Any person may ask the Minister to prepare an amendment in a prescribed class under section 20A. The request should be accompanied by a completed *Application Form – Request for an exemption under section 20A of the Act* and clearly identify the applicable prescribed class or classes.

An amendment prepared by the Minister under section 20A may be for one or more matters provided each matter falls within a prescribed class.

If a proposed amendment is not within a prescribed class, it cannot be dealt with under section 20A. However, depending on the particular circumstances, it may be appropriate for the amendment to be exempted from notice under section 20 of the Act.

To determine whether an exemption under section 20 or 20A may be appropriate, early consultation with the department’s relevant regional office is desirable.

### 2.6.6 Making a submission

PEA s. 21

Any person may make a submission to the planning authority about an amendment if notice of that amendment has been given. A submission may support, oppose or seek changes to an amendment. A submission must not request a change to the terms of any state standard provision to be included in a planning scheme by the amendment. A submission can, however, request that a state standard provision be included in or deleted from the scheme.

There are no specific requirements about the form a submission must take, but it should do the following:

- clearly identify the amendment it refers to, by citing the amendment number
- set out the submitter’s views on the amendment (for example why the submitter supports or opposes the amendment and how the amendment will materially affect the submitter)
- where appropriate, the submission should respond to the specific strategic planning basis for the amendment or clearly set out the relevant planning considerations upon which the submitter’s view is based
- set out what the submitter would like the planning authority to do (for example abandon the proposal completely, exclude certain land from its effect, include additional conditions on a proposed use or approve the amendment as exhibited)
- give the submitter’s name and address and contact details during office hours.

A person making a submission should ensure that it is received by the planning authority before the advertised closing date for submissions.

PEA s. 21(2) The planning authority must make a copy of every submission available at its office for any person to inspect for two months after the amendment comes into operation or lapses. *Planning Practice Note 74 – Availability of Planning Documents* gives further advice about making copies of planning documents, including submissions, available. *Victoria’s Information Privacy Act 2000* also sets standards for the collection and handling of personal information. More information can be obtained from the Privacy Victoria website.

PEA s. 21A Two or more people may make one submission to a planning authority. In the case of a submission made jointly by a number of people, the submission should nominate one person as the group’s representative for notices and representation at a panel hearing. In the case of joint submissions, the Act allows for notices to be sent to one of the signatories on a petition.

### 2.6.7 Late submissions

PEA s. 22(2) It is important that submissions be lodged within the public exhibition period, however a planning authority may consider a submission received after the period stated in the notice. A planning authority should consider a late submission if there are good reasons for it being late, and must do so if directed by the Minister. If the authority has not advanced very far in its considerations and a submission is received shortly after the closing date, the submission should normally be considered. A request for consideration of a late submission should be made in a letter to the planning authority or to the Minister if the person is seeking a direction from the Minister that a submission be considered. Any request must clearly identify the amendment referred to and, in the case of a request to the Minister, the planning authority for the amendment.

Generally a direction will be given only when there is reasonable time for the planning authority to consider the submission before a panel hearing. A direction is likely to be given in the following circumstances:

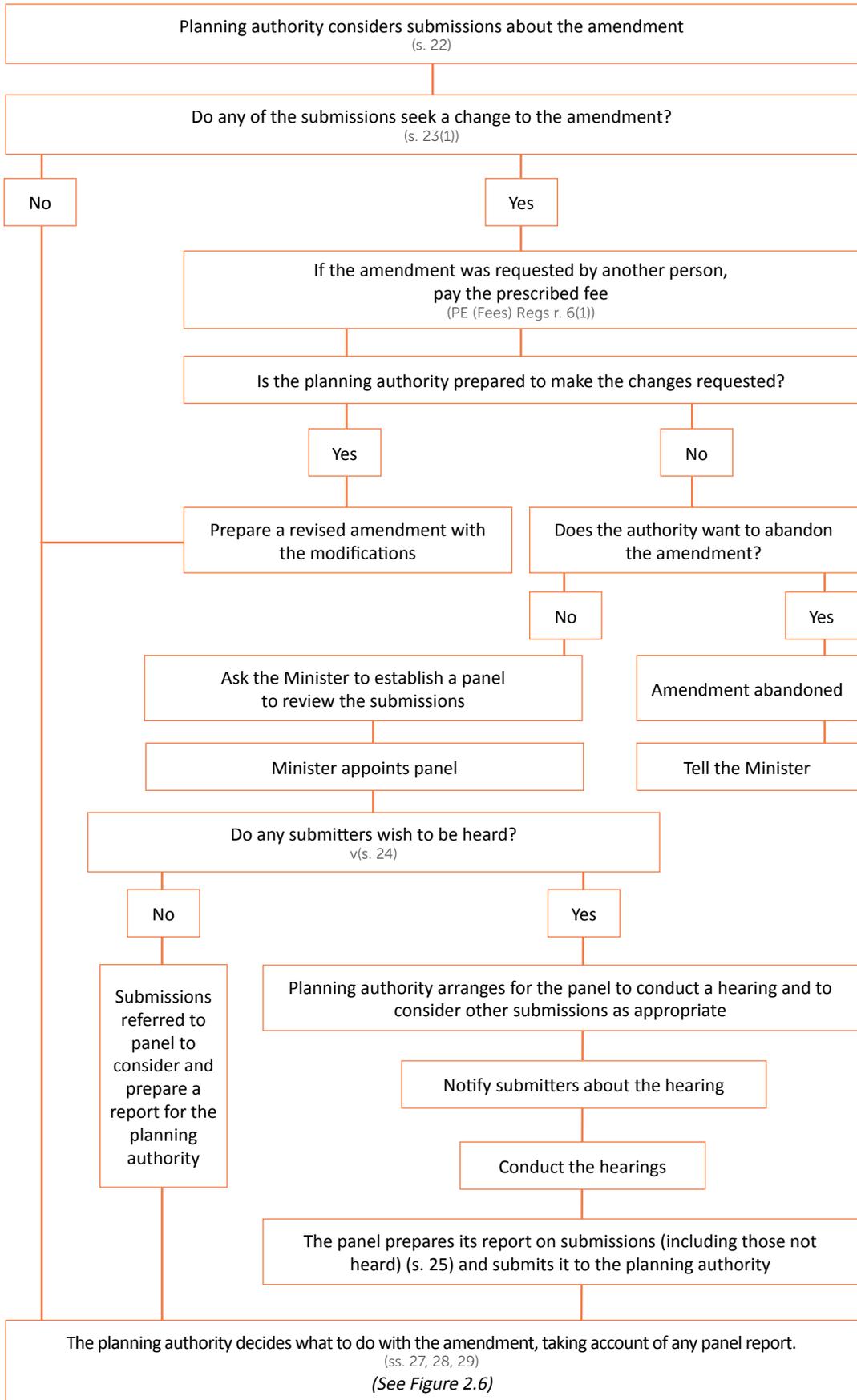
- if reasons are given for the late submission
- the submission raises a major issue of policy
- the submission is received less than a week after the closing of the exhibition period
- the request for consideration of a late submission was made before the planning authority had begun its deliberations
- if there is to be a panel hearing, that there is enough time before the hearing begins for the planning authority to consider the submission and form an opinion
- the submission was late owing to postal delays or exceptional circumstances beyond the control of the person lodging it.

### 2.6.8 Considering a submission

PEA ss. 22 and 23

A planning authority must consider each submission but must not consider a submission which requests a change to the terms of a state standard provision. It can, however, consider a submission which requests that a state standard provision be included in or deleted from the scheme.

Figure 2.5: Considering submissions about an amendment



PEA ss. 191 and 194	A planning authority may nominate a committee to hear any person to clarify a submission and make recommendations to the authority. A committee hearing is a more informal process than the panel process.
PEA s. 23(1)	After considering a submission which requests a change to an amendment, the planning authority must: <ul style="list-style-type: none"> <li>• change the amendment in the manner requested; or</li> <li>• refer the submission to a panel; or</li> <li>• abandon the amendment or part of the amendment.</li> </ul>
PEA s. 23(3)	This does not apply to a submission which requests a change to the terms of a state standard provision to be included in the scheme by the amendment.
PEA s. 23(2)	A planning authority may also refer submissions that do not require a change to the amendment to a panel.

## 2.7 The panel stage

PEA ss. 23(1)(b), 153 and 154	Submissions which seek a change to the amendment and are not accepted by the planning authority must be referred to an independent panel appointed by the Minister. A panel may consist of one or more persons. In most instances, although the Minister is responsible for appointing a panel, the panel members are chosen independently by Planning Panels Victoria. It is important to remember that the basic role of a panel is to: <ul style="list-style-type: none"> <li>• Give submitters the opportunity to be heard in an independent forum, in an informal, non-judicial manner. A panel is not a court of law.</li> <li>• Give independent advice to the planning authority and the Minister about an amendment and the submissions referred to it. A panel makes a recommendation to the planning authority. It does not formally decide whether the amendment is to be approved.</li> </ul>
PEA ss. 22 and 23	A panel will not be required if all submissions requesting changes are accepted, and the amendment is changed accordingly, or the amendment is abandoned. Otherwise, a panel will be required.
PEA ss. 151 and 152	In some cases, a panel may also be established as an advisory committee under section 151 of the Act to consider and report on additional planning matters relating to the amendment. If a panel is also appointed as an advisory committee, and it conducts a hearing in its capacity as an advisory committee, certain procedural requirements in Part 8 of the Act apply. The applicable requirements are set out in section 152 of the Act.

### 2.7.1 Appointment of a panel

The planning authority must make a written request to the Minister to appoint a panel. A request is usually made to Planning Panels Victoria, which has delegated authority from the Minister to appoint a panel. The information that should accompany a request is set out in *Planning Panel Victoria's Guide for Planning and Responsible Authorities*, which is available on the department's website.

The request should:

- summarise the nature of the proposal
- identify the applicant or proponent if not the council
- state the total number of submissions
- identify who the submissions are from
- identify the key issues raised in the submissions
- indicate how many days may be required for the panel hearing.

If the amendment has been prepared at the request of another person, an additional fee is payable to the planning authority for considering submissions which seek a change to the amendment and where necessary referring submissions to a panel. The current Fees Regulations should be checked to determine the fees payable.

*Ministerial Direction No. 15 – The planning scheme amendment process* requires a panel to commence carrying out its functions (that is, either conduct a directions hearing or, if no directions hearing is required, commence the panel hearing) within 20 business days of its appointment.

PEA s. 158

The planning authority must give a panel secretarial and other assistance before, during and after a hearing.

As soon as a panel is appointed, the planning authority should give each member of the panel the following documents:

- a copy of the exhibited amendment, explanatory report and any supporting documents. A note of any changes the planning authority has agreed to make to the amendment since it was exhibited. a copy of all submissions referred to the panel (including late submissions)
- a copy of all other submissions
- a copy of any reports that may assist the panel.

### 2.7.2 Directions panel

PEA s. 159

A panel can hold a 'directions hearing' before any submissions are heard so that preliminary matters can be decided. A panel may give directions about the time and place of a hearing, any preliminary hearing matters and the conduct of hearings.

PEA ss. 155 to 159

Alternatively, the Minister may appoint a directions panel in respect of hearings to be conducted by a panel. Members of the directions panel do not need to be members of the appointed panel. A directions panel may give any directions in relation to a hearing that a panel may give under section 159. The procedural requirements for a panel relating to the chairperson, costs and expenses, panels with more than one member and the assistance required from planning authorities will also apply to a directions panel.

The benefit of a directions panel is that it can provide directions in preliminary hearing matters and the conduct of hearings, allowing councils, parties and their advocates to better prepare for the panel process and ensure that panel hearings start without unnecessary delays.

Any person who fails to comply with the directions of a panel or directions panel can be refused their opportunity to be heard.

### 2.7.3 Regulation of panel proceedings

PEA ss. 160(1),  
(2) and 169

A panel must conduct its hearings in public unless a person requests that their submission be made in private and the panel is satisfied that the submission is of a confidential nature. A panel may exclude a person from a panel hearing who is misbehaving. This can include insulting panel members or other people, repeatedly interrupting, or disobeying a direction of the panel.

PEA ss. 161 and  
167

A panel can regulate its own proceedings. A hearing is not required to be conducted in a formal manner.

However, in hearing submissions a panel must act according to equity and good conscience without regard to technicalities or legal forms. A panel is bound by the rules of natural justice but not by the laws of evidence. A panel may inform itself in any way it thinks fit without notice to any person who has made a submission.

PEA s. 161(3)  
and (4)

A panel may hear evidence and submissions from any person whom this Act requires it to hear. If a submitter wants to have a witness inform the panel, the panel can decide if there should be any cross-examination of that witness. Submitters are not cross-examined but may be asked questions by the panel to clarify their submission.

### 2.7.4 Panel hearing procedures

The panel will prepare a draft hearing timetable. The timetable should include the expected time for presentation of submissions. The order of submitters may be based on items within the amendment or on topics of the submissions. A copy of the timetable should be given to each submitter who wishes to be heard. Submitters should be invited to attend all presentations.

Usually the procedure for a hearing is:

- the chairperson commences the hearing, describes the amendment and introduces the members of the panel
- an officer of the planning authority outlines the background to and purpose of the amendment, what changes (if any) are proposed to the amendment as a result of considering submissions, and the planning authority's attitude to the referred submissions
- if the council or the responsible authority is not the planning authority, a representative of the council or responsible authority outlines its view of the amendment
- if someone asked the planning authority to prepare the amendment (the proponent), that person presents a submission (and usually evidence) to support the request
- submitters are heard in the order set out in the timetable or decided by the chairperson.

Typically, the panel will give the planning authority and the proponent a right of reply on matters raised by submitters.

PEA ss. 161(2)  
and 165

The panel may require a planning authority or other body or person to produce documents relating to a matter being considered by the panel. The panel can adjourn the hearing to other dates if it considers this necessary and may inspect relevant sites.

PEA s. 166

A failure to give proper notice of an amendment, or to comply with any other requirement of the Act in relation to preparing the amendment, does not prevent a panel from hearing and considering any submissions referred to it and making its report and recommendations. On these occasions the panel report may include a recommendation that certain things be done, or that further notice be given.

### Costs and expenses

PEA s. 156

The Minister directs planning authorities to pay fees and allowances on a case by case basis. It is normal practice for a direction to be given. If a planning authority believes there is good reason why a direction to pay the costs should not be given, it should ask that no direction be given, or that a direction to meet only some of the costs be given.

If a planning authority has been directed to pay the panel fees and allowances, it can ask any person who has requested the amendment to contribute to the cost. A refusal to contribute could lead to the abandonment of the amendment by the planning authority.

## 2.7.5 Submissions to a panel

PEA s. 161(5)

Submissions and evidence may be given to the panel orally or in writing or both.

PEA s. 24

A panel must consider all submissions referred to it and give a reasonable opportunity to be heard to:

- any person who has made a submission referred to the panel
- the planning authority
- any responsible authority or municipal council concerned
- any person who asked the planning authority to prepare the amendment
- any person whom the Minister or the planning authority directs the panel to hear. This could be someone who supports the amendment (without change).

Even if a person does not wish to present their submission at the hearing, the panel must still consider their written submission.

Submitters should usually be given at least three weeks notice of the hearing date so that oral and written submissions can be prepared.

### Presentation of submissions to the panel

PEA s. 162

People are encouraged to represent themselves at a panel hearing however they may be represented by any other person. If a submitter is to be represented by another person, that person must have written authority to do so. People not wishing to present a submission at the hearing are still welcome to attend.

Submitters should:

- refer to the main arguments in their oral submission and make it as brief as possible, particularly if the matters have been covered in their written submission
- avoid repeating points made by previous speakers
- ensure that the submission relates to the matters under discussion and is based on fact
- provide the panel at the hearing with copies of documents referred to in the submission

- if possible, use visual aids such as photographs and plans to highlight the main points.

Planning Panel Victoria's *Guide to the Public Hearing* provides more information about making submissions at a hearing. It is available on the department's website.

### 2.7.6 What issues does a panel need to consider?

PEA ss. 161 and 168

The key function of a panel is to consider the issues raised in submissions. However a panel may inform itself on any matter as it sees fit and without notice to anyone making a submission. A panel may take into account any matter it thinks relevant in making its report and recommendation.

When considering an amendment a panel will address:

- the merits of the amendment
- the issues raised in submissions
- the strategic context and implications of the amendment
- the matters identified in *Planning Practice Note 46 – Strategic Assessment Guidelines for Planning Scheme Amendments*
- any other relevant matters.

To assist the panel in considering these issues, the following matters should be specifically addressed by the planning authority in its submission to the panel.

#### Description

- What does the amendment propose to do?
- If land is affected by the amendment, where is it located? What does it look like? Who owns it?
- Is the land affected by any specific locational, architectural, environmental, topographic, servicing, social or other features, or constraints which require a special planning response?
- What existing planning provisions apply to the land or the proposal?
- If the amendment has been modified since exhibition, what are the modifications?

#### Strategic justification

- What aspects (if any) of the SPPF are relevant?
- How does the amendment support or give effect to the SPPF? Is it consistent?
- How does the amendment support or implement the LPPF and, specifically, the MSS?
- Does the amendment seek to change the objectives or strategies of the MSS?
- What effect will any change to the MSS have on the rest of the MSS, either in its own right or cumulatively with other changes that may have been made to the MSS or other amendments?
- What LPPs will the amendment affect or be affected by?

### Statutory justification

- Is the form of the amendment appropriate? Will it achieve the desired result?
- Is the form and content of any LPP consistent with the advice given in *Planning Practice Note 8 – Writing a Local Planning Policy*?
- Does the amendment comply with the requirements of the *Ministerial Direction on the Form and Content of Planning Schemes*?
- Do any other Minister’s directions apply to the amendment and, if so, have these been complied with?
- What notice was given of the amendment?
- How many submissions were received and from whom? What issues do they raise?

If any of the matters are not relevant, this should be stated and the reasons why, rather than the matter simply being ignored.

### 2.7.7 Panel reports

PEA s. 25

The panel must report its findings to the planning authority and, except as noted below, can make any recommendations it thinks fit.

PEA ss. 25(3), (4) and 25A

A panel must not recommend that an amendment be adopted that includes changes to the terms of any state standard provision. A panel may, however, recommend to the Minister that an amendment be prepared to the VPP, where the Minister is not the planning authority for the amendment. A panel may also recommend that an amendment provide for a state standard provision to be included in or removed from the planning scheme.

*Ministerial Direction No. 15 – The planning scheme amendment process* sets times for preparing panel reports. Once a hearing is completed and all supplementary submissions to the panel have been received, a panel must submit its report to the planning authority as follows:

- within 20 business days – for a one-person panel
- within 30 business days – for a two-person panel
- within 40 business days – for a panel with three or more persons.

PEA s. 27

The planning authority must consider the report, decide what alterations should be made to the amendment and whether to adopt or abandon it. The Minister can exempt an authority from the need to consider a report from a panel, if the panel has not reported within six months from its appointment or within three months from the completion of its hearings.

PEA s. 26

The panel’s report must be made public 28 days after receipt by the planning authority or earlier if the planning authority has made a decision about the amendment. A planning authority may also make the report available before this if it wishes.

PEA s. 31; PE Regs r. 9(e)

If a planning authority decides not to accept a panel’s recommendation, it must give its reasons for this when it submits the adopted amendment to the Minister under section 31 of the Act.

## 2.7.8 Abandonment or lapsing of an amendment

PEA ss. 30(1)(a) and (b)

Amendments automatically lapse if they have not been adopted by the planning authority within two years from the date the notice of exhibition was published in the Government Gazette. The two-year period may be extended by the Minister. Requests for an extension should be made at least one month before the lapse date. An extension cannot be granted after the amendment has lapsed. The amendment will lapse if the amendment is not adopted within the extended period. In this case, the Minister must publish a notice in the Government Gazette setting out the date on which the amendment (or part) lapsed.

PEA ss. 28, 30(1)(c), 30(2) and 188(2)

The planning authority must tell the Minister in writing if it decides to abandon an amendment or part of an amendment. Abandonment of an amendment must be by resolution of the planning authority and recorded in its minutes or reports. An amendment will lapse once the Minister has been notified that the amendment or part of an amendment has been abandoned. The Minister must publish a notice in the Government Gazette setting out the date on which the amendment (or part) lapsed.

PEA s. 30(1)(d) and (2)

An amendment or part of an amendment will also lapse if the Minister refuses to approve it. The Minister must publish a notice in the Government Gazette setting out the date on which the amendment (or part) lapsed.

## 2.8 The amendment adoption stage

PEA s. 29

A planning authority can adopt an amendment, or part of it, with or without changes. Changes may be made as a result of the authority's initial consideration of submissions, the panel's recommendations or for other reasons considered relevant.

*Ministerial Direction No. 15 – The planning scheme amendment process* sets times within which a planning authority must decide to either adopt or abandon an amendment. If no submissions have been referred to a panel, the planning authority must make a decision within 60 business days of the closing date for submissions. If a panel was appointed, the planning authority must decide within 40 business days of receiving the panel's report.

If an amendment is adopted in part, with other parts to be resolved later, the amendment should be split and each part (Parts 1, 2, 3 and so on) progressively adopted as outstanding issues are resolved.

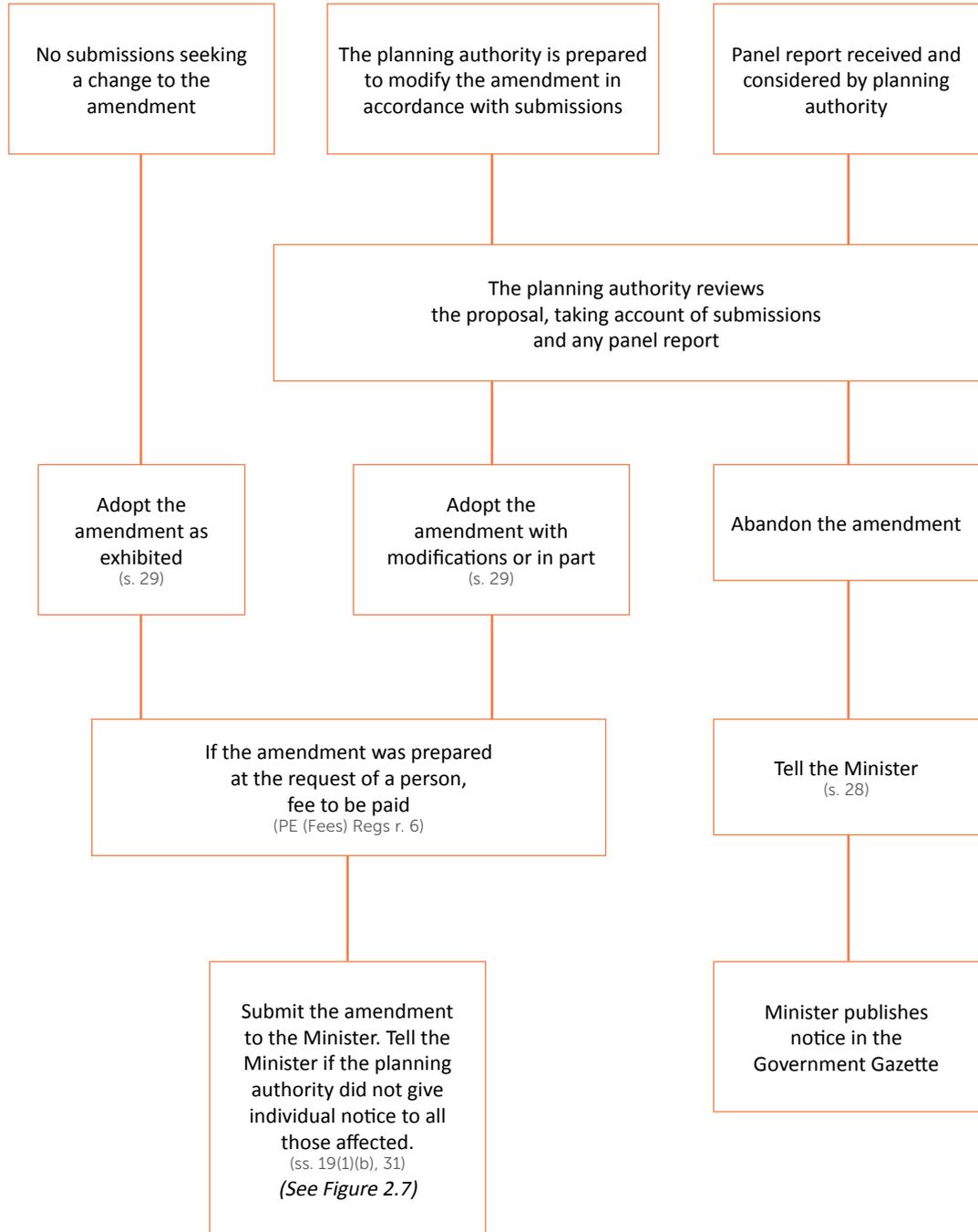
PEA s. 188(2)(a)

Adoption of an amendment cannot be delegated to officers. It must be by resolution of the planning authority and recorded in its minutes or reports. A copy of the resolution, or evidence of it, should be attached to the adopted amendment.

PE (Fees) Regs r. 6(3)

If the amendment was requested by another person, the planning authority can charge a fee for adopting it and submitting it for approval. Refer to the current Fees Regulations to check the fee payable.

Figure 2.6: Adopting or abandoning an amendment



## 2.9 The amendment approval stage

Once the planning authority has adopted the amendment, it must be submitted to the Minister for Planning for approval.

### 2.9.1 Amendments to be submitted to the Minister for approval

PEA s. 31

*Ministerial Direction No. 15 – The planning scheme amendment process* requires an amendment to be submitted to the Minister within 10 business days of when the amendment was adopted.

PE Regs r. 9 PE  
(Fees) Regs  
r. 6(4)

The adopted amendment must be submitted with:

- the following prescribed information:
  - the reasons for the amendment
  - a list of the notices given under section 19(1) of the Act
  - a summary of action taken under section 19(1B) (if applicable), 19(2), 19(2A), 19(3) and 19(7) of the Act
  - copies of submissions or reports received on the amendment
  - the reasons why any recommendations of a panel appointed under Part 8 of the Act were not adopted
  - a report on submissions not referred to a panel
  - a description of and the reasons for any changes made to the amendment before adoption
- a completed application form for requesting the approval of the amendment. A template of this form is available on the department's website
- a copy of the planning authority resolution to adopt the amendment
- the prescribed fee.

A planning authority may submit other supporting information with the application form if it thinks that this will help to explain the amendment. The amendment and accompanying information should be sent electronically in accordance with the *Preparing Planning Scheme Amendment Documentation* guidelines.

If the planning authority decided in accordance with section 19(1A) of the Act not to give notice to all owners and occupiers, the planning authority must inform the Minister of this and provide details of steps that were taken to ensure people were aware of the proposal.

Any other supporting information (letters, reports, plans, photos and so on) may be provided to further amplify 'why', 'where' and 'how' changes are being proposed. Department officers will examine all this information and report the amendment to the Minister. Inadequate information will cause delays in the processing of a proposed amendment.

PEA s. 19(5)

A partial failure to give notice does not prevent a planning authority from adopting and submitting an amendment, but this will be considered by the Minister who can require further notice to be given.

PEA s. 60(1A)(h)

An amendment which has been adopted by the planning authority but not yet approved by the Minister should be considered by a responsible authority before it makes a decision about a permit application, if the circumstances make it appropriate to do so.

### 2.9.2 The Minister's consideration of an amendment

*Ministerial Direction No. 15 – The planning scheme amendment process* requires the Minister to make a decision on an adopted amendment within 40 business days of receiving it from the planning authority.

Figure 2.7 summarises the Minister's consideration of an amendment submitted by a planning authority.

### 2.9.3 Approving an amendment

PEA s. 35(1)

The Minister can approve an amendment, or a part of it, with or without changes and subject to conditions.

PEA s. 35(4)(a),  
(b); PE Regs r. 10

If an amendment unreasonably prejudices the objectives or operations of a prescribed government department or public authority, the Minister may need to consult with the relevant Minister and obtain his or her consent before approving an amendment. The Minister must consult with the Minister administering the *Road Management Act 2004* if the amendment provides for the closure of a freeway or an arterial road.

### 2.9.4 Refusing an amendment

PEA ss. 30(1)(d),  
30(2)

When the Minister refuses to approve an amendment, the amendment lapses and the Minister must publish a notice in the Government Gazette setting out the date on which the amendment lapsed.

### 2.9.5 Additional notice of an amendment

PEA s. 32

If the Minister thinks the initial notice given of an amendment was inadequate, the Minister can defer making a final decision on the amendment and direct the planning authority to give additional notice and go through the process of considering submissions, appointing a panel, adoption and submission again.

PEA ss. 33, 34

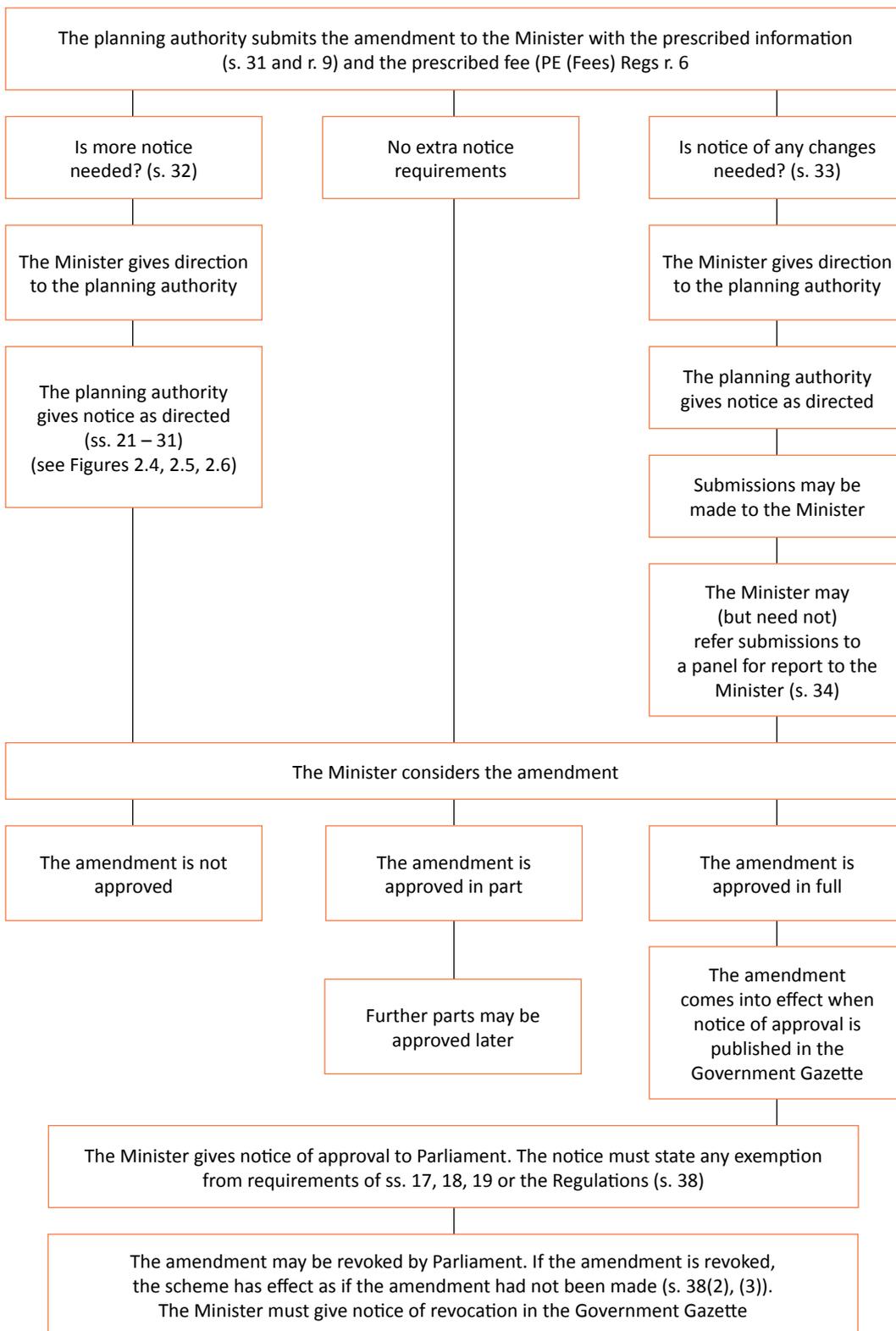
The Minister can also direct a planning authority to give notice of any changes it has made to the amendment after exhibition and of any changes the Minister proposes to make. The Minister can specify what form that notice will take and can refer submissions to a panel (which the Minister appoints) before making a final decision.

### 2.9.6 Notification of an approved amendment

PEA s. 36

The Minister publishes notice of approval of an amendment in the Government Gazette. The Minister may also require the planning authority to give notice of the amendment's approval. This is usually the publication of a notice in a local newspaper. The planning authority should promptly advise the Minister that the required notice has been given.

Figure 2.7: Approving an amendment



PEA s. 40(1), (3);  
PE Regs r. 12

### Lodging of amendments

If the Minister approves an amendment, the Minister, or if the Minister directs, the planning authority, must lodge the prescribed documents and a copy of the approved amendment with:

- the responsible authority
- the council to which the planning scheme applies if the council is not the responsible authority
- any other person specified by the Minister.

The prescribed documents are:

- an explanatory report relating to the approved amendment
- any document applied, adopted or incorporated in the planning scheme or the VPP by the amendment
- any section 173 agreement that comes into operation when the amendment comes into operation.

PEA s. 40(2)

The lodging process must be completed before the notice of approval is published in the Government Gazette. If a planning authority is required to carry out the lodging process, it should promptly advise the Minister in writing when this has been done.

The amendment comes into effect when notice of approval is published in the Government Gazette.

### 2.9.7 Who keeps a copy?

PEA ss. 41, 42

A copy of an approved amendment and an up-to-date copy of the affected planning scheme must be kept by the Minister, the responsible authority and the council (if it is not the responsible authority). A copy of an approved amendment must also be kept by the planning authority. If the planning authority is also the responsible authority, only one copy of the approved amendment and updated planning scheme needs to be kept. Any person can inspect these documents during office hours free of charge for two months after the amendment comes into operation and after that time, on payment of the prescribed fee.

### 2.10 Defects in procedure

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PEA s. 39

A person who is substantially or materially disadvantaged by a failure of the Minister, a planning authority or a panel to comply with the procedural requirements for an amendment can refer the matter to VCAT by lodging a notice with the Registrar.

This must be done before an amendment is approved and within one month of the person taking such action becoming aware of the failure.

Although VCAT cannot change or substitute a decision if it finds the procedures have not been properly followed, it can require that remedial action take place before the amendment can be adopted or approved.

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## 2.11 Revocation of an amendment

PEA s. 38(1), (2);  
PE Regs r. 11

All or part of an approved amendment may be revoked by either House of Parliament within 10 sitting days after notice of the approval of the amendment has been laid before that House.

PEA s. 38(3), (4)

If an amendment is revoked, the scheme has effect as if the amendment had not been made. Notice of the revocation of part or all of an amendment must be published in the Government Gazette.

## 2.12 Ratification of amendments

### 2.12.1 Ratification of an amendment

PEA s. 46AF

Under section 46AF of the Act, the following amendments to a metropolitan planning scheme require ratification after they are approved by the Minister:

- an amendment to or the insertion of an urban growth boundary; or
- an amendment that has the effect of altering or removing the controls over the subdivision of any green wedge land to allow for the land to be subdivided into more lots or into smaller lots than allowed for in the scheme.

PEA ss. 46AA  
and 46AC

The terms ‘metropolitan fringe planning scheme’, ‘urban growth boundary’ and ‘green wedge’ are defined in Part 3AA of the Act. The provisions were included in the Act in 2003 to safeguard Melbourne’s green wedges and protect rural areas from inappropriate development.

### 2.12.2 Procedure for ratification

PEA s. 46AH(1)

After the Minister has approved the amendment, the Minister must cause the amendment to be laid before each House of Parliament. This must be done within seven sitting days after the amendment is approved.

PEA s. 46AG

The amendment does not take effect unless ratified by each House of Parliament within 10 sitting days after it is laid before that House.

### 2.12.3 Ratification of a combined amendment and permit

PEA s. 46AH(2)

If a permit has been granted under section 96I in respect of an amendment that requires ratification, the Minister must cause a notice of the grant of the permit to be laid before each House of Parliament. This must be done at the same time that the amendment is laid before that House.

### 2.12.4 When does a ratified amendment commence?

PEA ss. 40, 46AI,  
46AJ

After an amendment is ratified, the Minister must publish a notice of the ratification in the Government Gazette and lodge the amendment with the relevant authorities as required by section 40 of the Act. The amendment comes into operation on the date the notice is published in the Gazette or any later date specified in the notice.

### 2.12.5 When does an amendment lapse?

PEA s. 46AK

An amendment that has not been ratified by Parliament within the specified time lapses on the day immediately after the last day on which it could have been ratified. The Minister must publish a notice in the Government Gazette setting out the date on which the amendment lapsed. This Gazette notice is conclusive proof of the date on which the amendment lapsed.

## 2.13 Amendments in special circumstances

### 2.13.1 Amendments to reserve land for public purposes

PEA s. 3

In the VPP, the Public Acquisition Overlay (PAO) is the tool used to reserve land for a public purpose either immediately or in the future. The use of land for a public purpose is defined by the Act as any purpose for which land may be compulsorily acquired under any Act to which the *Land Acquisition and Compensation Act 1986* applies.

It is necessary to ensure that changes to the use and development of the land do not prejudice the purpose for which it is to be acquired. In preparing an amendment to apply the PAO, a planning authority should keep several important points in mind:

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- In administering the *Land Acquisition and Compensation Act 1986* or any Act or regulation dealing with land acquisition or compensation, any land included in a PAO is reserved for a public purpose.

PEA ss. 19, 20

- Reserving land is a serious step towards depriving the present owners and occupiers of that land. It is important that owners and occupiers of land to be reserved are fully informed at all stages.

PEA ss. 19(1C),  
20(3)

- The planning authority must give individual notice to the owners and occupiers of affected land under section 19(1A) the Act. Exemptions to individual notice under section 19(1A) do not apply to the reservation of land for a public purpose.

PEA s. 19(1)(c);  
PE Regs r. 6

- The planning authority must give notice to any Minister, public authority or municipal council that the amendment designates as an acquiring authority.

PEA s. 20(3)

- The Minister cannot exempt a planning authority (other than the Minister) from the requirement to give notice to the owner of land to be reserved.

PEA s. 19(6)

- Failure to give the necessary notice to an owner is fatal to the amendment.

PEA ss. 98(1),  
109

- The schedule to the PAO requires that the acquiring authority and the reason for acquiring the land be specified. Before giving notice of an amendment to include land in a PAO, the planning authority should ensure that the acquiring authority (which may or may not be the planning authority) is prepared to meet any compensation claims that may arise.

### 2.13.2 Rezoning of potentially contaminated land

*Ministerial Direction No. 1 – Potentially Contaminated Land* seeks to ‘ensure that potentially contaminated land is suitable for a use which is proposed to be allowed under an amendment to a planning scheme and which could be significantly adversely affected by any contamination’.

In preparing an amendment which would have the effect of allowing (whether or not subject to the grant of a permit) potentially contaminated land to be used for a sensitive use, agriculture or public open space, a planning authority must satisfy itself that the environmental conditions of that land are or will be suitable for that use. Before preparing an amendment, the planning authority should seek advice from the department if there is doubt about how a particular situation should be addressed.

Consult *Ministerial Direction No. 1 – Potentially Contaminated Land* for the specific requirements of the Direction.

*Planning Practice Note 30 – Potentially Contaminated Land* provides guidance about how to identify potentially contaminated land, the appropriate level of assessment of contamination for an amendment or planning permit and the application of the Environmental Audit Overlay.

### 2.13.3 Amendments relating to notice requirements

PEA s. 6(2)(kc),  
(kd)

A planning scheme can set out classes of applications for permits exempted wholly or in part from section 52(1) of the Act (requirement to give notice of an application) and set out notice requirements, if any, to apply in place of those requirements. The scheme can also set out classes of applications the decisions on which are exempted from section 64(1), (2) and (3) (notice of decision to be given to objectors), and section 82(1) (objector may apply for a review to VCAT against a decision to grant a permit).

PEA s. 4(2)(i), (j)

There are no particular requirements about the types of applications that can be exempted. A planning authority should note the objectives of the planning framework 'to ensure that those affected by proposals for the use, development or protection of land or changes in planning policy or requirements receive appropriate notice' and 'to provide an accessible process for just and timely review of decisions without unnecessary formality'.

Exemption provisions can apply to a class of use or development generally (wherever it occurs) or to a class in a particular zone or overlay. An exemption class could also be related to a specific set of planning controls (such as development which is in accordance with a detailed plan incorporated in the scheme). Classes can be defined in whatever way is appropriate to the outcome being sought.

In planning schemes, exemption provisions typically apply to a class of use or development and can either be a state standard provision or a local provision inserted in a schedule to a zone or overlay. If the exemption provision is a state standard provision it can only be amended by amending the VPP. If the exemption provision is a local provision to be inserted in a schedule, care must be taken when drafting the exemption to ensure that it only exempts classes of applications defined by its 'parent provision'. For example, the schedule to the Design and Development Overlay cannot be used to exempt an application for use from the notice, decision and review requirements of the Act, because its 'parent provisions' only control buildings and works. The Special Use Zone however, contains 'parent provisions' that enable its schedule to regulate use and development. The key to drafting exemptions is to read the 'parent provision' carefully to identify those parts of it which define the scope of the exemption and to ensure that the schedule responds to those requirements.

An exemption relates only to the clause in which it is included. If some other part of the planning scheme also requires a planning permit to be obtained, the exemption will not apply to that.

### 2.13.4 Amendments to vary or remove a restriction on title

PEA ss. 6(2)(g),  
(ga), (gb) and 6A

A planning scheme can regulate or provide for the creation, variation or removal of easements or restrictions under section 23 of the *Subdivision Act 1988* and related matters.

An amendment may authorise a plan to be certified and lodged at the Land Titles Office to vary or remove the specified restriction. It is important that the amendment to authorise this be in a legally effective form.

The appropriate location in a planning scheme to insert provisions relating to easements, restrictions and reserves is the schedule to Clause 52.02.

PEA s. 19(1)(ca),  
(2A)

If the effect of an amendment would be to remove or vary a registered restrictive covenant, notice of the amendment must be given to the owners and occupiers of land benefited by the covenant and a sign about the amendment must be placed on the land.

PEA s. 19(1A)

Giving notice of an amendment in alternative ways if the 'number of owners and occupiers affected makes it impractical to notify them all individually' does not apply to an amendment to remove or vary a registered restrictive covenant.

### 2.13.5 Amendments to control demolition

Section 29A of the *Building Act 1993* requires that certain building applications involving demolition be referred to the responsible authority for report and consent. The requirements for a responsible authority in responding to such referrals are set out in the section on building permit applications for demolition of buildings.

If a planning permit is not required for the demolition, and the responsible authority considers that a planning permit should be required for the proposed demolition, the planning authority can:

- prepare an amendment which in effect directs that a permit is required to carry out the demolition, and ask the Minister for an exemption from certain notice requirements, in accordance with section 20(1) of the Act; or
- make a request to the Minister to prepare an amendment to the effect that a permit is required to carry out the demolition, and for the Minister to exempt himself or herself from certain requirements in preparing that amendment, in accordance with section 20(4) of the Act.

If such a request is made within the prescribed time, which is 15 working days starting from the day the application for demolition is received, the responsible authority must give notice to the building surveyor to suspend consideration of the building permit application.

Either request should be submitted to the Minister through the regional office of the Department. The request should include a draft of the amendment proposed and be quite clear whether it is a request by the planning authority for exemption from notice, or a request to the Minister to make the amendment.

A request to the Minister to prepare an amendment should take account of the Planning Practice Note *Ministerial Powers of Intervention in Planning and Heritage Matters*. It should also be accompanied by the prescribed fee for requesting a planning authority to make an amendment. These requirements do not apply to a planning authority seeking exemption from giving notice of an amendment. Nevertheless, the reasons why such exemption should be given will need to be clearly set out in the request.

## 2.14 The combined amendment and permit process

- PEA s. 96A(1), (2) To avoid the necessity for a two-stage process where a planning proposal requires both an amendment to a planning scheme and a planning permit, Division 5 in Part 4 of the Act makes provision for a combined amendment and permit process. This process allows a planning authority, if requested to do so by a person, to simultaneously prepare and give notice of a proposed amendment to a scheme and notice of an application for a permit.
- PEA s. 96A(5) The combined amendment and permit process must not be used after notice of the proposed scheme amendment has been given under section 19 of the Act. However, in certain circumstances, a panel or the planning authority can still recommend that a permit be granted as part of an amendment process even if the permit was not applied for at the time of exhibition of the amendment.
- The combined process should not be used for proposals for which a planning permit application can be made under the current provisions of the planning scheme.
- PEA s. 96A(3) Under the combined process, a permit application can be for any purpose for which the planning scheme, as amended, will require a permit to be obtained. This includes a use, development or any other purpose which may be prohibited under the existing scheme.
- PEA s. 96M Where the combined process is used, the component of the process relating to the permit application is dealt with in similar fashion to the amendment, and is quite different to the normal permit process under Divisions 1 and 2 in Part 4 of the Act. In particular:
- there are no formal referral requirements
  - the requirements for giving notice of the application are different
  - the Minister makes the final decision about whether a permit is granted, with no further right of review.

### 2.14.1 Overview of the combined amendment and permit application process

- PEA ss. 96A(1), (2), (6), 96G The planning authority is the authority responsible for preparing an amendment and considering an application under the combined amendment and permit process. It is responsible for accepting and registering the application, amending it (if necessary), exhibiting the amendment and proposed permit (if applicable) and complying with all other requirements of the Act leading up to and including making a recommendation to the Minister about whether the amendment should be adopted and a permit granted.

PEA s. 96I(1) The Minister is responsible for deciding whether or not a permit should be granted, with or without changes, and subject to conditions.

PEA s. 96N If a permit is granted, the responsible authority under the planning scheme becomes the responsible authority for the permit.

### Making a request

PEA s. 96A(4);  
PE Regs r. 40 The application for the permit must be made in writing to the planning authority in accordance with regulation 40 and accompanied by the prescribed fee, together with any information required by the planning scheme. It must be completed and signed in accordance with the requirements of section 48 of the Act.

PEA s. 96A(4)(c) If the permit application affects land subject to a registered restrictive covenant, a copy of the covenant must accompany the application. If the application is for a permit to allow the removal or variation of a registered restrictive covenant or if the grant of the permit would allow anything which would breach a registered restrictive covenant, the application must also be accompanied by:

- information clearly identifying each lot benefited by the registered restrictive covenant; and
- any information required by the regulations.

PE (Fees) Regs.  
r. 6(1) The amendment request must also be accompanied by the prescribed fee.

### Considering a request to combine the amendment and permit process

The procedure for considering a request to combine the amendment and permit process under Division 5, is the same as for an amendment under Part 3 of the Act, which is set out in Section 2.2 of this chapter.

There is no right of review of a planning authority's decision not to combine the preparation of an amendment with the consideration of a permit application. It is therefore important for the applicant/proponent to discuss any issues with the planning authority before making a formal request.

PEA s. 96A(6) If a planning authority agrees to combine the amendment and permit process, the requirements of sections 49, 50 and 50A in relation to registering and making changes to the permit application apply.

### Public exhibition

PEA s. 96C(10) Notice of a combined permit application and amendment must be given in accordance with the requirements of section 96C, and not section 19. Under section 96C notice must include:

PEA s. 96C(1)(a) • Notice to every Minister, public authority and council that the planning authority believes could be materially affected by the amendment or application.

PEA s. 96C(1)(b) • Notice to the owners and occupiers of land that the planning authority believes could be materially affected by the amendment or application.

PEA s. 96C(1)(c);  
PE Regs r. 42 • Notice to any Minister, public authority, council and person prescribed by the regulations.

PEA s. 96C(1)(d) • Notice to the Minister administering the *Land Act 1958* if the amendment provides for the closure of a road wholly or partly on Crown land.

PEA s. 96C(1)(e) • Notice to the responsible authority, if it is not the planning authority.

PEA s. 96C(1)(f)	<ul style="list-style-type: none"> <li>• Notice to the owners and occupiers of land adjoining the site to which the permit application applies unless the planning authority is satisfied that the grant of a permit would not cause material detriment to any person.</li> </ul>
PEA s. 96C(1)(g)	<ul style="list-style-type: none"> <li>• Notice to the owners and occupiers of land benefited by a registered restrictive covenant if the amendment or the permit would allow the variation or removal of the covenant, or anything allowed by the permit would be in breach of the covenant. An owner for this purpose excludes an owner to be registered as a proprietor of an estate in fee simple.</li> </ul>
PEA s. 96C(2)	<ul style="list-style-type: none"> <li>• A notice in a newspaper circulating in the affected area.</li> </ul>
PEA s. 96C(2A), (2B)	<ul style="list-style-type: none"> <li>• If the amendment would allow the variation or removal of a registered restrictive covenant, a sign on the land which is the subject of the amendment. The sign must state where a copy of the proposed permit may be inspected.</li> </ul>
PEA s. 96C(3)	<ul style="list-style-type: none"> <li>• A notice published in the Government Gazette, which can be on the same day as the last of the other notices.</li> </ul>
PEA s. 96A(6)(b)	<p>Apart from this, all other requirements for the exhibition, consideration of public submissions, adoption and approval of an amendment prepared under Part 3 of the Act apply to the combined amendment and permit process as if the permit application were a planning scheme amendment. These requirements are described in Section 2.6 of this chapter.</p>
PEA s. 96C(4); PE Regs r. 41(1)	<p>The notice of a combined permit application and amendment must include the prescribed information and include the last date for submissions – which must not be less than one month after the date that the notice is published in the Government Gazette.</p>
PEA s. 96C(8); PE Regs r. 41(2)	<p>The notice must be accompanied by a copy of an explanatory report about the amendment, a copy of the application and a copy of the proposed permit.</p>
PEA s. 96M	<p>Any specific requirements for notice or referral of a particular type or class of application set out in a planning scheme do not apply to an application made under the combined amendment and permit process. However, when deciding what notice should be given under section 96C, a planning authority should consider whether the interests of any individual or body that would normally receive notice of (or be a referral authority for) a permit application under Part 3 of the Act could be affected.</p> <p>In each case, the planning authority should take care in forming an opinion about what notice should be given and to whom and ensure that this is carefully recorded.</p> <p>The fact that the matter is controversial should not be taken as a conclusive test that a person may be materially affected. Careful judgement of the situation by the planning authority is necessary.</p>
PEA s. 96C(9)	<p>The applicant for a permit under this Division must pay the cost of any notice of the amendment and permit application.</p>
	<p><b>Can a combined amendment and permit application be exempted from notice?</b></p>
PEA s. 96B(1)	<p>Under section 96C of the Act, a planning authority cannot exempt itself from the requirement to give individual notice of an amendment where the number of owners and occupiers affected makes it impractical to do so. However, the Minister may grant an exemption from this, or any other requirement relating to notice, if the Minister</p>

considers that an exemption is warranted. The steps that a planning authority should follow if it wishes to be exempted from notification are described in Section 2.6.6 of this chapter.

PEA ss. 20(3) and 96B(1)

The Minister cannot grant an exemption from giving individual notice to the owner of land which is either proposed to be reserved for acquisition for a public purpose or affected by the proposed closure of a road which gives access to that land.

PEA s. 96C(6)

Failure to give notice to a land owner affected by a proposed reservation or a road closure will mean that the amendment cannot be adopted and a permit cannot be issued.

### When does the proposed permit need to be prepared?

PEA s. 96C(8)

A copy of the proposed permit must be given to all persons and individuals who receive a notice of amendment and the application.

PEA s. 96C(8A);  
PE Regs r. 43

The proposed permit must be in the prescribed form and the planning authority must make a copy of it available for public inspection until the amendment is approved or lapses.

While it is not a requirement of the Act, where a planning authority has formed an opinion about whether it is likely to grant a permit and what the conditions of the permit should be, it should make a copy of the proposed permit available at the same time the amendment and application are exhibited.

Giving a copy of the proposed permit to the relevant persons and individuals at the same time the notice of amendment and application is given, enables affected people to make submissions about the general change to the scheme, the specific application and the draft permit and conditions.

If a planning authority has any doubts about what should be included in the permit and the extent to which it can be easily understood and enforced, consultation with the responsible authority (if it is not the planning authority) should occur.

Under the combined permit application and amendment process, there are no referral authorities to whom a copy of the application must be given. However, if a planning authority considers that an individual or body who would normally be a referral authority under Division 1 of Part 4 of the Act could be affected by the proposal, or if it considers that specific conditions may need to be included on the proposed permit to address their particular interests, it should consider consulting with and giving notice to that individual or body.

The proposed permit should contain any conditions that the planning scheme requires that it include.

## 2.14.2 Considering submissions

PEA s. 96B

The process for making and considering submissions to a combined amendment and application under Division 5 is the same as for an amendment prepared under Part 3 of the Act.

PEA s. 96B(1)  
(a)(iii)

If a planning authority receives a submission which seeks a change to a proposed permit, it must make a decision about the submission as if it were seeking a change to the amendment.

The Act does not specify what matters can be taken into account by the planning authority in deciding whether a person or body could be materially affected by an

amendment and application under this Division. Each proposal must be considered on its merits. As a basic rule, it should be possible to link the effect to specific matters such as restriction of access, visual intrusion, unreasonable noise or overshadowing. General terms such as ‘amenity’ and ‘nuisance’ are not specific enough.

The process for making and considering submissions is described in Sections 2.6.6 to 2.6.8.

### 2.14.3 Panel hearing

PEA s. 96D	If a panel is appointed to consider submissions, it must give the applicant and any other person specified in section 24 of the Act an opportunity to be heard.
PEA s. 96E	If a panel recommends that an amendment or part of an amendment be adopted, with or without changes, it can also recommend that a permit be granted for any purpose for which the amended planning scheme would require a permit to be obtained (with or without conditions). This applies even if the panel was appointed to consider submissions to amendments prepared under Part 3, and not under the combined permit application and amendment process.
PEA s. 96E(2)	The permit recommended by the panel could be for a purpose which was applied for and for which notice of the proposed permit was given under section 96C (if applicable). It could also be for an entirely new purpose for which no permit application under Division 5 was made.
PEA s. 96F	The planning authority must consider the panel’s report before deciding whether or not to recommend that a permit be granted.

### 2.14.4 Decision by the planning authority

PEA s. 96G(1)	<p>After complying with the notice requirements and following the submission stages, a planning authority may decide to recommend to the Minister that a permit be granted with or without changes if:</p> <ul style="list-style-type: none"> <li>• the permit application has been made under Division 5 of Part 4 and the relevant sections of that division have been complied with; or</li> <li>• the panel (where appointed) has recommended the grant of the permit; or</li> <li>• the planning authority considers it appropriate that a permit be issued for a purpose, that as a result of changes made to an amendment during the amendment process, a permit is required to be obtained. This applies even if no application has previously been made under section 96A of the Act.</li> </ul>
PEA s. 96G(2)	This decision can only be made if the amendment, or the part of the amendment to which the permit applies, has been adopted first.
PEA ss. 31, 96B(1), 96B(6) and 96H(1)	The recommendation and proposed permit must be submitted to the Minister at the same time as the adopted amendment is submitted, with additional copies for lodging after approval. The adopted amendment must be accompanied by the prescribed information and information described in Section 2.9.1 of this chapter.
PEA ss. 28, 96B(1), 96G(4)	The planning authority can decide to abandon the amendment or refuse to recommend that a permit be granted. If so, the proponent/applicant and the Minister must be notified in writing of the decision and the reasons for it.
PEA s. 96G(3)	If an amendment lapses, or the part of the amendment to which the permit application applies lapses, the application also lapses.

## 2.14.5 Decision by the Minister

### Approving a combined amendment and permit

PEA ss. 35,  
96B(1)(b),  
96I(1),(5),  
60(2),(4),(5)

The Minister can approve the amendment, or part of it, and can grant a permit, with or without changes and subject to conditions. However, if the grant of a permit would result in the breach of a registered restrictive covenant, the Minister must refuse to grant the permit unless:

- the amendment to which the permit applies provides for the variation or removal of the covenant; or
- a permit has been issued, or a decision has been made to grant a permit to allow the removal or variation of the covenant.

PEA s. 96I(2)

Even if no permit has been applied for, or even if a panel has not recommended the grant of a permit, the Minister may still grant a permit if the Minister considers it appropriate as a result of any changes made to the amendment during the amendment process. The permit granted can be for a purpose recommended by the planning authority or it can be for an entirely new purpose for which the planning scheme, as amended by the proposed amendment, would require a permit to be obtained.

PEA s. 96I(3), (4)

The permit must be granted at the same time as the amendment to which the permit applies is approved. The permit must state a day that it operates from, which is either the day on or after the day on which the amendment comes into operation.

PEA s. 96I(6)

The conditions included on a permit granted by the Minister can be ones recommended by the planning authority or panel (if applicable), or they can be new conditions that the Minister considers appropriate and necessary. Sections 62(2) to (6) of the Act specify the types of conditions that a permit granted under Division 5 can include.

### Registered covenants

PEA s. 96I(1A)

If the grant of a permit would result in the breach of a registered restrictive covenant, the Minister must refuse to grant the permit unless:

- the amendment to which the permit applies provides for the variation or removal of the covenant; or
- a permit has been issued, or a decision has been made to grant a permit, to allow the removal or variation of the covenant.

PEA s. 96I(1B)

If the permit granted would allow anything that would breach a registered restrictive covenant, the permit must be granted subject to a condition that the permit does not come into effect until the covenant is removed or varied.

PEA ss. 60(2),  
(4), (5), 96I(5)

The Minister must not grant a permit that allows the removal or variation of a restriction, unless he or she is satisfied that no loss or other material detriment specified will be suffered.

### Can additional notice of an amendment and application be required?

PEA ss. 32,  
96H(2), (3)

If the Minister thinks that the initial notice given of the amendment or permit application is inadequate, the Minister may direct a planning authority to give additional notice and go through the process of considering submissions, panel, appointing a panel, adoption and submission again.

### Adopting and approving an amendment

PEA s. 96M(5)

The process for adopting and approving an amendment prepared under Division 5 is generally the same as that described in Section 2.9 of this chapter. The main difference is that the notice of approval of the amendment published in the Government Gazette and given to Parliament must also specify if a permit has been granted under this Division.

### Issuing a permit

PEA s. 96J(1), (2), (4)

A permit is issued by the responsible authority at the direction of the Minister. The permit must be in the prescribed form (PE Reg r 43; PE Regs Form 9) and:

- be issued to the applicant or, if there was no application, to the owner of the land (section 96J(4));
- be issued by the responsible authority within seven days after the direction by the Minister (section 96J(2));
- must state the date the permit is issued by the responsible authority, and
- must state a date the permit comes into operation. If no date is specified, the permit comes into operation on the same day as the associated amendment.

Where a permit issues as a result of the combined process, there is no opportunity for review by VCAT under Division 2 of Part 4 of the Act. It is important, therefore, that conditions on the proposed permit are carefully drafted, the ordinary referral requirements of other authorities are included, and that any other potentially affected parties clearly indicate their grounds of objection in any submission.

### Refusing a combined amendment and permit application

PEA ss. 96I(1)(c), 96K; PE Regs r. 44 Form 10

The Minister can refuse to approve a permit and, if so, can direct the responsible authority to give notice of the refusal of the permit.

The direction given by the Minister and the notice by the responsible authority must set out the specific grounds on which the permit is refused.

PEA s. 96M

The applicant may not apply to VCAT for a review of this decision.

### Administering a permit

PEA s. 96N

Once a permit is granted the responsible authority under the planning scheme becomes the responsible authority for the permit.

PEA s. 96M(1),(2)

The provisions of the Act apply in relation to permit expiry, extension of time, availability, mistakes, amendments and review of decisions to refuse or extend a permit.

## 2.15 Amendments to the *Victoria Planning Provisions*

PEA s. 4A(2)

The VPP are state standard planning provisions that were approved by the Minister on 9 July 1998. The VPP can provide for any matter that a planning scheme can provide for.

PEA s. 4B(1)

The Minister can prepare an amendment to the VPP at any time. VPP amendments may be a small change to one provision, or major changes or additions.

PEA s. 4B(2)

Section 4B of the Act enables the Minister to give consent or authorisation for a public authority, another Minister or a municipal council to prepare an amendment to the VPP. This power would only be used in unusual circumstances.

The process for preparing an amendment to the VPP is the same as that for a scheme amendment, except for making and considering submissions which request a change to the terms of a state standard provision. Unlike a planning scheme amendment, an amendment to the VPP will always involve making changes to the terms of a state standard provision.

The Act includes special provisions for making an amendment to one or more planning schemes at the same time an amendment to the VPP comes into operation. These provisions are discussed in Section 2.15.3 of this chapter.

PEA ss. 4H, 4I

The Minister, each responsible authority and any person the Minister specifies, must keep an up-to-date copy of the VPP (incorporating all its amendments and any documents lodged with those amendments) and make it available for public inspection during office hours.

### 2.15.1 Preparing an amendment

PEA s. 4B(3), (4)

Unlike a planning scheme amendment, if notice of an amendment to the VPP is given, the Minister or the body or person authorised to prepare the amendment can receive and consider submissions which seek a change to the terms of a state standard provision. The change may be made as requested or the submissions may be referred to a panel for consideration. The panel can recommend that an amendment be adopted with changes to the terms of the VPP.

PEA s. 4B(3)

Apart from these differences, the requirements for the exhibition, consideration of submissions (if any), adoption and approval of a VPP amendment are generally the same as for a planning scheme amendment.

### 2.15.2 Approving an amendment

PEA s. 4C(1)

The Minister may approve an amendment to the VPP (or part of it) with or without changes and subject to conditions. The Minister may also refuse to approve an amendment or part of it.

PEA ss. 4D, 4E

If an amendment is approved, notice of the approval must be published in the Government Gazette. The amendment comes into operation when the notice is published in the Gazette, or on any later day or days specified in the notice.

PEA s. 4G

A copy of every approved amendment to the VPP must be lodged with each responsible authority, each council and any other person or persons nominated by the Minister. An amendment must be lodged before notice of approval of the amendment is published in the Government Gazette.

### 2.15.3 Amendment of planning schemes by the *Victoria Planning Provisions*

PEA s. 4J

An amendment to provisions of the VPP can also amend specified planning schemes that include those provisions. When the amendment to the VPP is approved, the amendment to the planning scheme is also approved under Part 3 of the Act. An amendment to a planning scheme comes into operation when the amendment to the VPP comes into operation, or on any later date specified in the notice of approval of the amendment to the VPP.

## 2.16 Advisory committees

Before making a decision about a proposal or policy or before preparing an amendment or permit application, it is sometimes necessary to evaluate all of the options to be sure about what is to be achieved and to determine the best way of achieving it.

PEA s. 151(1), (2)

One method by which this can be done is through the establishment of an advisory committee. Advisory committees are established by the Minister to consider any matter which the Minister refers to them. An advisory committee may consist of one or more persons.

The Act does not include a procedure for making a request to the Minister for the establishment of an advisory committee. However, it is an established practice that planning authorities do make such requests where the proposal raises a major issue of policy, or where it may have a substantial effect on the achievement of the objectives of planning in Victoria as set out in section 4 of the Act.

Advisory committees may invite submissions on the options being considered and it may conduct a hearing into a matter. If a hearing is held, certain sections in Part 8 of the Act apply.

PEA ss. 152(2)  
(a), 159

An advisory committee may give directions about the times and places of hearings, matters preliminary to hearings and the conduct of hearings. The advisory committee may refuse to hear any person who fails to comply with a direction.

PEA s. 152(2)(b),  
(c), 161(1), (2),  
(3), (5)

Most of the general procedures which apply to a panel appointed under Part 8 of the Act, will also apply to an advisory committee. The advisory committee:

- must act according to equity and good conscience without regard to technicalities or legal forms
- is bound by the rules of natural justice
- is not required to conduct the hearing in a formal manner
- is not bound by the rules of evidence but may inform itself on any matter in any way it thinks fit and without notice to any person who has made a submission
- may require a planning authority or other body or person to produce any documents relating to any matter being considered
- may prohibit or regulate cross-examination in any hearing,

PEA ss. 152(2)  
(d), 162 to 165,  
169

Procedures relating to adjournments, submissions (including who may appear before a panel, the effect of failure to attend a hearing) and offences will also apply.

The advisory committee usually prepares a report to the Minister outlining its response to the matters referred to it.

PEA s. 151(8),  
VCATA Sch. 1,  
Cl. 58

If a matter in a proceeding before VCAT is referred to the Governor in Council for determination, the Minister may decide to establish an advisory committee to provide advice about the matter.

PEA s. 189(1)

The Minister can delegate to an advisory committee any of his or her powers or functions under a planning scheme in relation to applications for permits for which the Minister is the responsible authority or a referral authority.