

Stage 2 of the *Planning and Environment Amendment (General) Act 2013*

This advisory note provides information about Stage 2 of the *Planning and Environment Amendment (General) Act 2013* (the General Act).

The General Act

The General Act implements a number of government election commitments and introduces process improvements to reduce paperwork, simplify key planning processes and promote quick decision making.

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

The *Guide to the Planning and Environment Amendment (General) Act 2013* explains the main reforms in the General Act, how existing processes are changed and how the new processes work.

Stage 1 of the General Act commenced on 22 July 2013. Advisory Note 51 provides information about this.

Both the Guide and Advisory note can be viewed at:

www.dtpli.vic.gov.au/planning

Decision makers and regular users of the planning system should familiarise themselves with all of the amendments made by the General Act.

What does Stage 2 include?

Stage 2 of the General Act includes:

- amendments to the *Planning and Environment Act 1987* (the PE Act) and the *Subdivision Act 1988* (the Subdivision Act)
- consequential amendments to:
 - the Planning and Environment Regulations 2005 (the Regulations) made by the proposed Planning and Environment Amendment Regulations 2013
 - the *Victoria Planning Provisions* (VPP) and all planning schemes made by Amendment VC102
 - the Ministerial Direction on the Form and Content of Planning Schemes
 - Minister's Direction No.11 - Strategic Assessment of Amendments
 - Minister's Direction No.15 - The Planning Scheme Amendment Process.

When did Stage 2 commence?

Stage 2 of the General Act, including the consequential amendments to the VPP, planning schemes and Minister's Directions No. 11 and No. 15 commenced on 28 October 2013.

The amendments to the Regulations commenced on 29 October 2013.

The amendment to the *Ministerial Direction on the Form and Content of Planning Schemes* commenced on 23 October 2013.

What changes are in Stage 2?

The key changes in Stage 2 are summarised below.

Part/section of the General Act	Changes relating to referral authorities
Part 4 (other than sections 15, 37 and 41 which commenced on 22 July 2013 in Stage 1)	<p>Changes to the PE Act</p> <p>Makes changes relating to referral authorities to:</p> <ul style="list-style-type: none">• introduce duties for referral authorities (section 14A)• require the responsible authority to give a referral authority certain information when referring a permit application (section 55(1))• enable planning schemes to specify whether a referral authority is a determining referral authority or a recommending referral authority (section 55(4))• require a referral authority to give to the applicant, without delay, a copy of any request for more information, and any decision and comments it gives to responsible authority (sections 55(3) and 56(3A))• require a referral authority to keep a register of all permit applications referred to it (section 56A)• enable a recommending referral authority to apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of a decision of the responsible authority in specified circumstances (section 82AAA). <p>Changes to the Regulations</p> <p>New regulations are introduced and existing regulations are amended to support these changes:</p> <ul style="list-style-type: none">• Regulation 20A prescribes the information that a responsible authority must give to a referral authority when referring a permit application• Regulation 23A prescribes the information that a referral authority must include in the register• Regulations 25, 26, 27 and 28 prescribe the form of notice to be given by the responsible authority to a recommending referral authority of its decision on a permit application• Regulation 34A prescribes the time within which a recommending referral authority may apply to VCAT for a review of a decision of the responsible authority.

Part/section of the General Act	Changes relating to referral authorities
Part 4 (other than sections 15, 37 and 41 which commenced on 22 July 2013 in Stage 1)	<p>Changes to the VPP and planning scheme</p> <p>Clause 66 and the schedule to Clause 66.04 are amended to:</p> <ul style="list-style-type: none"> • allow the two kinds of referral authority to be specified in planning schemes • designate catchment management authorities (CMAs) as a recommending referral authority for all permit applications referred to them under Clause 66.03 (flood provisions) and in relation to catchment management matters (specified in the schedule to Clause 66.04) • designate all other referral authorities as a determining referral authority. <p>Change to the <i>Ministerial Direction on the Form and Content of Planning Schemes</i></p> <p>The schedule to Clause 66.04 is amended to enable a referral authority to be specified as a determining or recommending referral authority.</p>
Part/section of the General Act	Changes relating to the planning scheme amendment process
Part 5	<p>Authorisation of municipal councils</p> <p>Change to the PE Act</p> <p>Introduces a 10 business day timeframe within which the Minister for Planning (the Minister) may consider an application from a municipal council for authorisation to prepare an amendment.</p> <p>If the Minister does not notify the municipal council of his or her decision within 10 business days after the application for authorisation is received, the municipal council may prepare the amendment without the authorisation (see section 8A(7)).</p> <p>Change to <i>Minister's Direction No. 15 – The Planning Scheme Amendment Process</i></p> <p>The direction now sets a time for the giving of notice of an amendment under section 19 of the PE Act where the amendment may be prepared without authorisation (see clause 4(1)(b)). Notice must be given within 40 business days after the Minister's 10 business day authorisation time elapses.</p>

Part/section of the General Act	Changes relating to the planning scheme amendment process
Part 6	<p>Streamlined process for prescribed amendments</p> <p>Change to the PE Act</p> <p>Inserts section 20A to enable straightforward planning scheme amendments to be prepared and processed by the Minister quickly, simply and efficiently.</p> <p>Changes to the Regulations</p> <p>Regulation 9A prescribes the classes of amendment that:</p> <ul style="list-style-type: none"> • may be prepared by the Minister under section 20A • are exempt from the requirement for the Minister to consult with the relevant municipal council when preparing the amendment. <p>Change to <i>Minister's Direction No.11 – Strategic Assessment of Amendments</i></p> <p>The direction is amended to exempt the classes of amendments prescribed in regulation 9A from the application of the direction.</p>
Section 70	<p>Removal of power to authorise planning authorities to approve amendments</p> <p>Change to the PE Act</p> <p>Section 11 and other related sections have been repealed. The Minister is no longer able to authorise a planning authority to approve a planning scheme amendment.</p>
Sections 71(2) and 76(2)	<p>Consideration of social, economic and environmental effects</p> <p>Change to the PE Act</p> <p>Section 12 currently provides that, in preparing an amendment to a planning scheme, a planning authority must take into account significant environmental effects and may take into account social and economic effects. The General Act amends this section to require a planning authority to take all three effects into account.</p> <p>Similarly, section 60 is also amended to require a responsible authority to consider significant environmental, social and economic effects before deciding on a permit application.</p>
Section 73	<p>Pre-exhibition lodgement of amendment</p> <p>Change to the PE Act</p> <p>Inserts section 17(3) that requires a planning authority to give a copy of an amendment to the Minister at least 10 business days before it is exhibited.</p>

Part/section of the General Act	Changes relating to section 173 agreements
Part 7 (other than sections 47 and 50 which commenced on 22 July 2013 in Stage 1)	<p>Changes to the PE Act</p> <p>Makes various changes relating to agreements made under section 173 to:</p> <ul style="list-style-type: none"> • introduce a new alternative process to amend or end an agreement (sections 178A to 178I and 184A to 184D) • remove the requirement for the Minister to approve an amendment to an agreement • amend section 181(1) so that all future agreements, other than agreements relating to Crown land or agreements made for the purposes of the Subdivision Act, must be recorded on title (the exception for Subdivision Act agreements is set out in Part 11 of the General Act) • clarify that if land which is subject to an agreement is transferred to another person, the new owner becomes a party to that agreement (section 182A) • remove the ability for a land purchaser to apply to VCAT to remove land from the application of an agreement. <p>Changes to the Regulations</p> <p>New regulations are introduced to support the new process to amend or end an agreement:</p> <ul style="list-style-type: none"> • Regulation 53A sets out how an application to amend or end an agreement must be made and the information that must be included • Regulation 53B prescribes the information that must be included in a notice of a proposal to amend or end an agreement • Regulations 56A, 56B and 56C set the times within which applications for review may be made in relation to some decisions or a failure to make a decision by the responsible authority on an application to amend or end an agreement.
Part/section of the General Act	Changes relating to public open space requirements
Part 11	<p>Change to the <i>Subdivision Act 1988</i></p> <p>Part 11 of the General Act amends sections 18 and 19 of the Subdivision Act to clarify how these provisions apply to a public open space requirement specified in a planning scheme.</p> <p>The amendments make it clear that the existing ‘need’ test in section 18(1A) does not apply to a public open space requirement in a planning scheme.</p> <p>Change to the VPP and planning schemes</p> <p>Clause 52.01 is amended to:</p> <ul style="list-style-type: none"> • correct a reference to section 18(8) of the Subdivision Act • remove requirements that duplicate sections 18 and 18A of the Subdivision Act • delineate the exemptions applying to a public open space requirement in the planning scheme.

How does Stage 2 affect decision makers and applicants?

Some changes in Stage 2 affect the way that decision makers, for example, councils, responsible authorities and referral authorities, deal with certain matters under the PE Act. The key changes are summarised in the following table. Information about transitional provisions is also provided. In this table a reference to a 'section' is a reference to a section of the PE Act.

Changes relating to referral authorities	Who is affected?
<p>Two types of referral authority specified in planning schemes</p> <p>Clause 66 and the schedule to Clause 66.04 of planning schemes now specify whether a referral authority is a determining referral authority or a recommending referral authority.</p> <p>All CMAs are now designated as a recommending referral authority. All other referral authorities are a determining referral authority.</p> <p>More information about the two types of referral authority is included in Practice Note 54 – <i>Referral and notice provisions</i>.</p> <p>New requirements apply under sections 66 and 76A for giving notice to a recommending referral authority of a decision on a permit application and an application to amend a permit.</p> <p>Regulations 25, 26, 27 and 28 prescribe the form of notice to be given.</p>	<p>Responsible authorities</p> <p>Referral authorities</p>
<p>A responsible authority must give information to a referral authority</p> <p>In addition to giving a referral authority a copy of the permit application, the responsible authority will also be required to give the information prescribed in regulation 20A. This will include information about why the application is being referred.</p>	<p>Responsible authorities</p> <p>Referral authorities</p>
<p>A referral authority must provide a copy of its response and information requests to the applicant</p> <p>A referral authority must now give to the applicant, without delay, a copy of any:</p> <ul style="list-style-type: none"> • request it makes to the responsible authority for more information (see section 55(3)) • decision and comments it gives to the responsible authority (see section 56(3A)). 	<p>Referral authorities</p> <p>Permit applicants</p>
<p>A referral authority must keep a register</p> <p>A referral authority must now keep a register of all permit applications referred to it under section 55 (see section 56A). Regulation 23A sets out the information that must be recorded in the register.</p> <p>The referral authority must make the register publicly available during office hours for any person to inspect free of charge. A referral authority may also make the register available on its website.</p> <p>Transitional provision</p> <p>Under section 221(1) the register is only required to include details of applications referred to the authority on or after 28 October 2013. Details of applications referred to it before this date do not need to be included.</p>	<p>Referral authorities</p>

Changes relating to referral authorities	Who is affected?
<p>Review of a responsible authority decision by a recommending referral authority</p> <p>Under section 82AAA a recommending referral authority may apply to VCAT for a review of a decision of the responsible authority:</p> <ul style="list-style-type: none"> • to grant a permit, if the recommending referral authority objected to the grant of the permit; or • not to include a condition on the permit that the recommending referral authority recommended. <p>The time within which the recommending referral authority may apply for a review is 21 days after the responsible authority gave notice of its decision under section 66(2) or 76A(2) (see regulation 34A).</p>	<p>Responsible authorities</p> <p>Referral authorities</p> <p>Permit applicants</p> <p>VCAT</p>
<p>A recommending referral authority is a party to a review</p> <p>Under section 83(3) a recommending referral authority is a party to a review of a decision by the responsible authority if it is given notice of the application for review under section 83AB.</p>	<p>Referral authorities</p> <p>Permit applicants</p> <p>VCAT</p>
Changes relating to the planning scheme amendment process	Who is affected?
<p>Authorisation of municipal councils</p> <p>On receiving an application for authorisation to prepare an amendment from a municipal council under section 8A, the Minister may now decide:</p> <ul style="list-style-type: none"> • to authorise the council; or • that the application requires further review; or • to refuse to authorise the council. <p>If the Minister does not notify the council of his or her decision within 10 business days of receiving the application, the council may prepare the amendment without authorisation. Notice of the amendment must be given within 40 business days after the Minister's 10 business day authorisation time elapses (see clause 4(1)(b) of Ministerial Direction No. 15).</p> <p>Transitional provisions</p> <p>Under section 221(2), if a council was authorised to prepare an amendment to its own planning scheme before 28 October 2013, that is taken to be an authorisation under new section 8A and continues to have force and effect.</p> <p>Under section 221(3), if a council was authorised to prepare an amendment to a planning scheme applying to an adjoining municipal district before 28 October 2013, that is taken to be an authorisation under new section 8B and continues to have force and effect.</p>	<p>Councils</p> <p>Minister</p>

Changes relating to the planning scheme amendment process	Who is affected?
<p>Planning authorities can no longer be authorised to approve amendments</p> <p>The Minister is no longer able to authorise a planning authority to approve a planning scheme amendment.</p> <p>Transitional provisions</p> <p>Despite this, section 221(9) and (10) provides a six month transitional arrangement for planning scheme amendments that have been adopted by a council. A council that has been authorised to approve an amendment may continue to do so provided:</p> <ul style="list-style-type: none"> the council adopted the amendment before 28 October 2013 the council approves the amendment before 28 April 2014 all of the requirements in force in the PE Act before 28 October 2013 relating to the approval of an amendment by a planning authority (such as sections 35A and 35B) are met. <p>This transitional provision applies only to councils and not other planning authorities.</p>	Councils
<p>New timeframe for giving the Minister a copy of a planning scheme amendment</p> <p>A planning authority must now give a copy of an amendment to the Minister at least 10 business days before it first gives a required notice of the amendment under section 19. This requirement is in addition to the requirements and times in Ministerial Direction No.15.</p>	Planning authorities
<p>Notice of amendment must be given to proposed acquiring authorities</p> <p>Regulations 8 and 40 are proposed to be amended to add to the list of prescribed persons and bodies that must be given notice of an amendment or a combined amendment and permit application. If an amendment designates a Minister, public authority or municipal council as an acquiring authority in the planning scheme, the planning authority will be required to give that Minister or body notice of the amendment.</p> <p>This requirement reflects the changes made to the PE Act by the General Act on 22 July 2013 to clarify that:</p> <ul style="list-style-type: none"> a planning scheme can designate acquiring authorities (see section 6(2)(fa)) if a planning scheme designates a Minister, public authority or municipal council as the acquiring authority for land reserved for a public purpose, that designated authority is liable for any compensation arising from that reservation (see sections 106 and 109). 	Planning authorities
Changes relating to the consideration of social and economic effects	Who is affected?
<p>Social and economic effects must be taken into account</p> <p>Under section 12(2)(c) planning authorities must now take into account social and economic effects when preparing a planning scheme amendment.</p> <p>Under section 60(1)(f) the responsible authority must now consider any significant social and economic effects before deciding on a permit application.</p>	Planning authorities Responsible authorities

Changes relating to section 173 agreements	Who is affected?
<p>The Minister’s involvement in amending and ending a section 173 agreement has been removed</p> <p>An agreement can now be amended or ended in two ways:</p> <ul style="list-style-type: none"> • by agreement between the responsible authority and all persons bound by the agreement (see sections 177(2)(a) and 178(a)) • by following a new process which may be used where the responsible authority agrees in principle to a proposal to amend or end the agreement (see sections 178A to 178I and 184A to 184D). 	<p>Responsible authorities</p> <p>Parties to the agreement</p>
<p>Section 173 agreements must be recorded on title</p> <p>A responsible authority must now apply to the Registrar of Titles, without delay, to record an agreement in the land titles register.</p> <p>Transitional provisions</p> <p>Under section 221(4), if an agreement was entered into before 28 October 2013, the provisions of section 181 in force before this date continue to apply. A responsible authority may still apply to the registrar to record the agreement but this is not mandatory.</p> <p>Under section 221(5), if an agreement entered into before 28 October 2013 is amended after this date, the new provisions for recording an agreement in section 181 apply.</p>	<p>Responsible authorities</p> <p>Parties to the agreement</p>
<p>Ability to apply to VCAT to remove land from an agreement repealed</p> <p>Sections 184(3) and (4) have been repealed. It is no longer possible for a land purchaser to apply to VCAT under those sections for an amendment to remove the land from an agreement.</p> <p>Transitional provision</p> <p>Despite this, section 221(6) enables VCAT to continue to deal with applications made by purchasers before 28 October 2013.</p>	<p>Responsible authorities</p> <p>Parties to the agreement</p> <p>VCAT</p>

Authorised and published by Victorian Government
 Department of Transport, Planning and Local Infrastructure
 1 Spring Street, Melbourne 3000
 October 2013

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