

Commencement of Stage 1 of the *Planning and Environment Amendment (General) Act 2013*

This advisory note provides information about the commencement of Stage 1 of the *Planning and Environment Amendment (General) Act 2013* (the General Act).

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

The General Act amends the *Planning and Environment Act 1987* (the PE Act) and public open space requirements in the *Subdivision Act 1988* (the Subdivision Act). It also makes consequential amendments to the *Local Government Act 1989*.

The General Act

The General Act can be viewed online 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 will change and how new processes will work. The guide can be viewed online at www.dpcd.vic.gov.au/planning

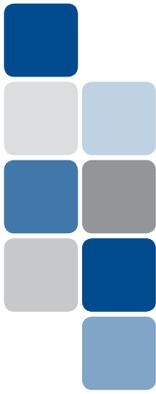
Decision-makers and regular users of the planning system should familiarise themselves with all of the amendments made by the General Act.

When does the General Act commence?

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

The General Act will come into operation in two stages:

- **Stage 1** – Amendments that commence on 22 July 2013. The proclamation for the commencement of this stage was published in the Government Gazette on 2 July 2013.
- **Stage 2** – Amendments that need changes to the Planning and Environment Regulations 2005 or the *Victoria Planning Provisions* before they can become effective. This stage will commence on 28 October 2013.



Which changes are included in Stage 1?

The changes to the PE Act in Stage 1 are listed below. The remaining changes to the PE Act and the Subdivision Act will commence in Stage 2.

Part/section of the General Act	Change to the PE Act
Part 2	Abolishes the provisions in Part 4 for Development Assessment Committees.
Part 3	Inserts provisions that allow the Planning Application Committee to be established.
Section 15	Inserts a new section 14A that sets out the duties of a referral authority.
Section 16	Inserts a new heading to section 49, which relates to the permit register kept by a responsible authority.
Section 37	Amends section 94 to make a referral authority, rather than the responsible authority, liable for compensation in certain circumstances.
Section 41	Amends section 197 to include referral authorities in the list of bodies that must act expeditiously.
Section 47	Amends section 175 to clarify when a bond or guarantee can be required as a condition in a section 173 agreement.
Section 50	Repeals section 179(1) to remove the requirement for a responsible authority to lodge a copy of a section 173 agreement with the Minister.
Part 8	Makes various amendments to Part 5 to clarify the allocation of liability for compensation arising from the reservation of land for a public purpose.
Part 9	Amends Division 1A of Part 4 to allow a responsible authority to amend a permit issued at the direction of the Victorian Civil and Administrative Tribunal (VCAT). Amends section 81 to limit the scope of VCAT to extend an expired permit. Inserts a new section 84AB to allow VCAT to limit its review of a matter to the specific issues in dispute between the parties.
Part 10 other than sections 70, 71(2), 73 and 76	Amends section 69 to extend the time for permit holders to request an extension of time for an expired permit. Introduces new provisions in Part 8 to enable a directions panel to give directions for hearings held by a panel. Amends section 3 to insert a definition of “business day”. Makes other miscellaneous changes.

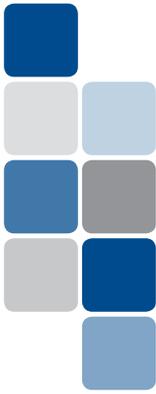


How does Stage 1 affect councils, referral authorities and VCAT?

Some Act changes in Stage 1, such as the new provisions for the Planning Application Committee, are enabling provisions and will become effective once the appropriate administrative arrangements are in place.

Other Act changes will immediately affect the way that councils, referral authorities and VCAT deal with certain matters. These immediate changes are summarised below.

Part/section of the General Act	PE Act change	Who is affected?	Transitional provision?
Sections 60 and 64	<p>Amending permits issued at the direction of VCAT</p> <p>A permit holder will now be able to apply to the responsible authority to amend a permit that has been issued at the direction of VCAT unless VCAT has specified that the permit may only be amended by VCAT.</p> <p>A permit holder can still apply to VCAT for an amendment under section 87A of the PE Act. This option has not been removed.</p> <p>Where a permit has been issued before 22 July 2013, the permit may be amended either by the responsible authority (under Division 1A of Part 4 of the PE Act) or VCAT (under section 87A of the PE Act).</p>	Councils VCAT Permit holders	No
Sections 61 and 77	<p>Extending expired permits under section 69</p> <p>A permit holder will now be able to request an extension of time:</p> <ul style="list-style-type: none"> ■ before or within 6 months after the permit expiry date, where the use or development allowed by the permit has not yet started; and ■ within 12 months after the permit expiry date, where the development allowed by the permit has lawfully started before the permit expires. <p>The new times apply to all extension of time requests, not just those made on or after 22 July 2013.</p> <p>If a request is made out of time, the responsible authority cannot consider the request and the permit holder will not be able to apply to VCAT for a review of the matter.</p>	Councils VCAT Permit holders	Yes, in section 221(8) PE Act
Section 50	<p>Lodging a copy of a section 173 agreement</p> <p>A responsible authority no longer needs to lodge a copy of an agreement with the Minister under section 179(1) of the PE Act.</p>	Councils	No



Part/section of the General Act	PE Act change	Who is affected?	Transitional provision?
Part 8	<p>Acquiring authorities and compensation</p> <p>If a Minister, council or public authority is designated in the planning scheme as the acquiring authority for land reserved for a public purpose, that body is liable for compensation payable arising from that reservation. This is the case whether the planning scheme designation was made before or after 22 July 2013.</p>	<p>Minister</p> <p>Councils</p> <p>Public authorities</p>	Yes, in section 221(7) PE Act
Section 15	<p>Duties of a referral authority</p> <p>A referral authority now has specific duties that it must carry out under the PE Act. In particular, a referral authority must:</p> <ul style="list-style-type: none"> ■ have regard to the objectives of planning in Victoria ■ have regard to the Minister's directions ■ comply with the PE Act ■ have regard to the planning scheme ■ provide information and reports as required by the Minister. 	Referral authorities	No
Section 37	<p>Referral authority may be liable for permit cancellation</p> <p>A referral authority will now be liable to pay compensation under section 94 of the PE Act if a permit is cancelled or amended because of a material mistake by the referral authority in relation to the grant of the permit.</p>	Referral authorities	No
Section 41	<p>Referral authorities must act expeditiously under section 197</p> <p>Referral authorities must now act as promptly as is reasonably practicable when undertaking actions under the PE Act.</p>	Referral authorities	No
Section 62	<p>Notice given by an applicant for a permit</p> <p>The President of VCAT now has the discretion under section 83B of the PE Act to direct an applicant for a permit to give notice of an application for review.</p>	<p>VCAT</p> <p>Permit applicants</p>	No
Sections 63 and 66	<p>VCAT may limit review to issues in dispute</p> <p>VCAT will now be able to confine a review to the particular matters in dispute if all the parties to the review agree.</p>	<p>VCAT</p> <p>Parties to review</p>	No



Part/section of the General Act	PE Act change	Who is affected?	Transitional provision?
Section 65	<p>Notifying the Minister of hearings for the cancellation and amendment of permits</p> <p>VCAT is no longer required to give the Minister a reasonable opportunity to be heard in relation to the cancellation or amendment of a permit.</p>	VCAT	No
Section 67	<p>VCAT may interpret an agreement</p> <p>VCAT now has jurisdiction to make a declaration relating to the interpretation of a section 173 agreement.</p>	VCAT Parties to an agreement	No

Transitional provisions for Stage 1

New section 221 of the PE Act sets out transitional provisions for certain amendments made by the General Act.

The following matters in Stage 1 have transitional provisions:

- **Designated acquiring authorities**

Under section 221(7) of the PE Act, a person or body designated in the planning scheme as an acquiring authority for land will be liable for compensation payable under Part 5 of the PE Act regardless of whether the designation was made before or after 22 July 2013.

- **Applications to VCAT relating to extension of time requests**

Under section 221(8) of the PE Act, if an application for review to VCAT relating to an extension of time request was made before 22 July 2013, the requirements in new section 81(3) of the PE Act do not apply. Therefore, VCAT may continue to deal with these applications even if the request to the responsible authority was made 'out of time'.

- **New definition of "business days"**

The transitional provisions in section 221(11) and (12) relate to the replacement of "working days" with "business days" in sections 52(2A), 84(6) and 86 of the PE Act.

For six months from 22 July 2013, the term "working days" in section 52(2A) will continue to apply to permit applications made before 22 July 2013.

Published by the Victorian Government Department of Transport, Planning and Local Infrastructure Melbourne, July 2013.

Unless indicated otherwise, this work is made available under the terms of the Creative Commons Attribution 3.0 Australia licence. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/3.0/au>.

It is a condition of this Creative Commons Attribution 3.0 Licence that you must give credit to the original author who is the State of Victoria. Attribution should be given as follows: Planning and Environment Amendment (General) Act 2013, State of Victoria through the Department of Transport, Planning and Local Infrastructure 2013.

Authorised by the Victorian Government, 1 Spring Street, Melbourne.

This publication may be of assistance to you but the State of Victoria and its employees do not guarantee that the publication is without flaw of any kind or is wholly appropriate for your particular purposes and therefore disclaims all liability for any error, loss or other consequence which may arise from you relying on any information in this publication.

www.dpcd.vic.gov.au/planning