

Version No. 061
Subdivision Act 1988
No. 53 of 1988

Version incorporating amendments as at 12 February 2008

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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 What are the purposes of this Act?

The purposes of this Act are to—

- (a) set out the procedure for the subdivision and consolidation of land, including buildings and airspace, and for the creation, variation or removal of easements or restrictions; and
- (b) regulate the management of and dealings with common property and the constitution and operation of bodies corporate.

S. 1(a)
amended by
No. 47/1989
s. 5(1).

2 When does this Act commence?

This Act comes into operation on a day or days to be proclaimed.

3 Definitions

(1) In this Act—

S. 3
amended by
No. 47/1989
s. 19(a).

acquire in relation to an acquiring authority,
means acquire by agreement or by
compulsory process;

S. 3(1) def. of
acquire
inserted by
No. 47/1989
s. 4(1)(a).

acquiring authority means any person or body of
persons authorised to acquire land
compulsorily;

s. 3

S. 3(1) def. of *applicant* substituted by No. 47/1989 s. 19(b).

applicant means—

- (a) a person who applies to the Council for certification of a plan; or
- (b) a person who applies to the Registrar to have a certified plan registered;

S. 3(1) def. of *body corporate* repealed by No. 69/2006 s. 206(1).

* * * * *

S. 3(1) def. of *building* amended by No. 48/1991 s. 4(1)(a).

building includes—

- (a) a structure and part of a building or a structure; and
- (b) walls, out-buildings, service installations and other appurtenances of a building; and
- (c) a boat or a pontoon which is permanently moored or fixed to land;

certified plan means a plan certified by a Council for lodging in the Office of Titles for registration;

S. 3(1) def. of *charge* inserted by No. 48/1991 s. 4(1)(b).

charge includes—

- (a) a charge under section 74 of the **Transfer of Land Act 1958**; or
- (b) a charge on land created under an Act other than this Act or the **Transfer of Land Act 1958**;

Council means the Council of the municipal district in which the land in the plan is located;

S. 3(1) def. of *encumbrance* repealed by No. 47/1989 s. 5(2).

* * * * *

land includes buildings and airspace;

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s. 3

* * * * *

S. 3(1) def. of *land affected by a body corporate* repealed by No. 69/2006 s. 206(1).

land affected by an owners corporation means the lots the owners for the time being of which are the members of the owners corporation together with the common property for which the owners corporation is responsible;

S. 3(1) def. of *land affected by an owners corporation* inserted by No. 69/2006 s. 206(2).

* * * * *

S. 3(1) def. of *limited body corporate* inserted by No. 48/1991 s. 4(1)(c), repealed by No. 69/2006 s. 206(1).

limited owners corporation has the meaning set out in section 27C;

S. 3(1) def. of *limited owners corporation* inserted by No. 69/2006 s. 206(2).

lot means a part (consisting of one or more pieces) of any land (except a road, a reserve or common property) shown on a plan which can be disposed of separately and includes a lot or accessory lot on a registered plan of strata subdivision and a lot or accessory lot on a registered cluster plan;

S. 3(1) def. of *lot* amended by Nos 47/1989 s. 18(1)(a), 48/1991 s. 4(1)(d).

lot affected by an owners corporation means a lot the owner for the time being of which is a member of the owners corporation;

S. 3(1) def. of *lot affected by an owners corporation* inserted by No. 69/2006 s. 206(2).

s. 3

S. 3(1) def. of *lot entitlement* substituted by No. 48/1991 s. 4(1)(e), repealed by No. 69/2006 s. 206(1), new def. of *lot entitlement* inserted by No. 69/2006 s. 206(2).

lot entitlement in relation to a lot affected by an owners corporation, means a number specified in the plan as the lot entitlement for that lot, expressing the extent of the lot owner's interest in any common property affected by the owners corporation;

S. 3(1) def. of *lot liability* substituted by No. 48/1991 s. 4(1)(e), repealed by No. 69/2006 s. 206(1), new def. of *lot liability* inserted by 69/2006 s. 206(2).

lot liability in relation to a lot affected by an owners corporation, means a number specified in the plan as the lot liability for that lot, expressing the proportion of the administrative and general expenses of the owners corporation that the lot owner is obliged to pay;

S. 3(1) def. of *master plan* inserted by No. 48/1991 s. 4(1)(f), amended by No. 34/1994 s. 7(1).

master plan in relation to a staged subdivision using the procedure under section 37, means a plan of all the land in the subdivision¹;

S. 3(1) def. of *owner* amended by No. 85/1998 s. 24(Sch. item 57.1 a)(b))

owner means—

- (a) for land under the **Transfer of Land Act 1958** (other than land in an identified folio under that Act), the registered proprietor of the fee simple in the land, or a person who is empowered by or under an Act to execute a transfer of the land;
- (b) for land in an identified folio under the **Transfer of Land Act 1958** or land not under the **Transfer of Land Act 1958**,

a person who has an estate in fee simple in the land (except a mortgagee), or is empowered by or under an Act to convey an estate in fee simple in the land;

owners corporation means a body corporate that is incorporated by registration of—

S. 3(1) def. of *owners corporation* inserted by No. 69/2006 s. 206(2).

- (a) a plan of subdivision; or
- (b) a plan of strata subdivision; or
- (c) a plan of cluster subdivision;

plan means a plan under section 24A, 32B or 37 or Division 3 of Part 5 or a plan of—

S. 3(1) def. of *plan* amended by Nos 47/1989 s. 5(4)(a), 48/1991 s. 4(1)(g), 69/2006 s. 206(3).

- (a) subdivision; or
- (b) consolidation; or
- (c) creation, variation or removal of an easement or restriction;

permit means a permit under the **Planning and Environment Act 1987**;

plan of subdivision means a plan showing the subdivision of land;

planning scheme means a planning scheme under the **Planning and Environment Act 1987**;

public authority means a body established for a public purpose by or under any Act but does not include a municipal council;

public open space means land set aside in a plan or land in a plan zoned or reserved under a planning scheme—

S. 3(1) def. of *public open space* amended by No. 48/1991 s. 4(1)(h).

- (a) for public recreation or public resort; or
 - (b) as parklands; or
 - (c) for similar purposes;
-

S. 3(1) def. of
public works
inserted by
No. 48/1991
s. 4(1)(i).

public works means—

- (a) the provision of roads, reserves, open spaces or services within a subdivision; or
- (b) fencing, landscaping, and road works outside the subdivision for roads, reserves or public open space related to the subdivision; or
- (c) works for sewerage, drainage, water supply, power, gas or telephone to connect the subdivision to the system serving properties outside it, excluding works to connect any particular property to the system for the subdivision; or
- (d) prescribed works;

referral authority means a person or body specified in the planning scheme as a referral authority to which an application for a permit or a plan must be referred, or which must be satisfied that things have been done;

S. 3(1) def. of
registered cluster plan
inserted by
No. 48/1991
s. 4(1)(j).

registered cluster plan means a plan of cluster subdivision registered under the **Cluster Titles Act 1974** and, if that plan is amended, that plan as amended and in force for the time being;

S. 3(1) def. of
registered plan of strata subdivision
inserted by
No. 48/1991
s. 4(1)(j).

registered plan of strata subdivision means a plan of strata subdivision registered under the **Strata Titles Act 1967** and, if that plan is amended, that plan as amended and in force for the time being;

registered plan means—

- (a) a plan registered or approved by the Registrar under any Act, whether before or after the commencement of section 44; or
- (b) a map or plan deposited or lodged with the Registrar under section 97 of the **Transfer of Land Act 1954** or a corresponding previous or subsequent enactment;

S. 3(1) def. of *registered plan* amended by No. 47/1989 s. 18(1)(b), substituted by No. 48/1991 s. 4(1)(k).

Registrar has the same meaning as it has in the **Transfer of Land Act 1958**;

reserve means land set aside as public open space, or for the use of a public authority or the Council;

residual land in relation to a staged subdivision, means—

- (a) land on the master plan that is not part of the first stage and is shown on the plan as another stage; or
- (b) land on a plan for the second or a subsequent stage that is not part of that stage and is shown on the plan as another stage;

S. 3(1) def. of *residual land* inserted by No. 48/1991 s. 4(1)(l).

responsible authority means a responsible authority under the **Planning and Environment Act 1987**;

restriction means a restrictive covenant or a restriction which can be registered, or recorded in the Register under the **Transfer of Land Act 1958**;

S. 3(1) def. of *restriction* amended by No. 47/1989 s. 19(c).

site value means market value on the assumptions that there were no improvements and no leases, mortgages or charges affecting the land;

s. 3

subdivision means the division of land into two or more parts which can be disposed of separately;

S. 3(1) def. of *terms contract* inserted by No. 48/1991 s. 4(1)(m).

terms contract has the same meaning as in the **Sale of Land Act 1962**;

S. 3(1) def. of *unlimited body corporate* inserted by No. 48/1991 s. 4(1)(m), repealed by No. 69/2006 s. 206(1).

* * * * *

S. 3(1) def. of *unlimited owners corporation* inserted by No. 69/2006 s. 206(2).

unlimited owners corporation has the meaning set out in section 27B;

S. 3(1) def. of *vesting date* inserted by No. 47/1989 s. 4(1)(b).

vesting date means the date on which a notice of acquisition under the **Land Acquisition and Compensation Act 1986** is published in the Government Gazette or, if land is acquired by agreement the date on which the land is registered in the name of the acquiring authority under the agreement;

works includes any changes to the natural or existing condition or topography of land including the removal, destruction or lopping of trees and the removal of vegetation or topsoil;

S. 3(2) inserted by No. 47/1989 s. 19(d).

(2) Subject to the regulations, a plan may contain information in any form, including words and drawings.

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- (3) For the purposes of this Act, the creation, variation or removal of an easement or restriction must be taken to be authorised by a permit (whether granted before or after the commencement of this subsection) or a planning scheme if the permit or scheme (by condition or otherwise)—
- (a) in any way requires, directs or allows; or
 - (b) in any other way provides for—
- that creation, variation or removal².
- (4) If a planning scheme or permit regulates or authorises the variation of an easement or restriction, that scheme or permit must be taken to include an authorisation to make the variation by removing the easement or restriction to be varied and creating a new easement or restriction in the varied form.
- (5) Without limiting Part 2, a Council or referral authority may, under that Part, require a plan varying an easement or restriction to be altered so that it removes an existing easement or restriction and creates a new easement or restriction in accordance with the planning scheme or permit.
- (6) Without limiting Part 4, the Registrar, under section 22, may require an applicant to amend, or may amend, a plan of variation of easement or restriction so that the plan removes an existing easement or restriction and creates a new easement or restriction in accordance with the planning scheme or permit.
- (7) A plan amended in accordance with subsection (6) does not have to be recertified.
- S. 3(3)**
inserted by
No. 48/1991
s. 4(2).
- S. 3(4)**
inserted by
No. 57/1993
s. 4.
- S. 3(5)**
inserted by
No. 57/1993
s. 4.
- S. 3(6)**
inserted by
No. 57/1993
s. 4.
- S. 3(7)**
inserted by
No. 57/1993
s. 4.

S. 3(8)
inserted by
No. 57/1993
s. 4.

- (8) If a planning scheme or permit authorising the variation of an easement under section 98 of the **Transfer of Land Act 1958** does not specify the land benefited by the easement, the easement must be taken to benefit the whole of the land in the subdivision in respect of which it was created.

4 What does this Act apply to?

- (1) This Act applies to—

S. 4(1)(c)
amended by
No. 47/1989
ss 5(4)(b),
6(1)(a),
substituted by
No. 48/1991
s. 5(1)(a).

- (a) subdivision of land; and
(b) consolidation of land; and
(c) the creation, variation or removal of any easement or restriction—
(i) as part of a plan of subdivision or consolidation; or
(ii) in accordance with a planning scheme or permit; or
(iii) in any other circumstances set out in section 6(1)(j) or (k); or
(iv) under Division 3 of Part 5 or section 36(2)(b)³; and

S. 4(1)(c)(iv)
amended by
Nos 57/1993
s. 15(2)(a),
69/2006
s. 207(a).

S. 4(1)(d)
amended by
No. 47/1989
s. 5(4)(b),
substituted by
No. 48/1991
s. 5(1)(a).

- (d) the creation of, or dealing with, common property; and

S. 4(1)(e)
substituted by
No. 69/2006
s. 207(b).

- (e) an owners corporation; and

-
- (f) plans under sections 24A, 32B and 37 and Division 3 of Part 5; and
- S. 4(1)(f) inserted by No. 48/1991 s. 5(1)(b), substituted by No. 69/2006 s. 207(b).
- (g) a subdivision brought about by disposition or acquisition of land in Victoria by—
- S. 4(1)(g) inserted by No. 48/1991 s. 5(1)(b).
- (i) the Crown in right of the State of Victoria; or
- (ii) a body established under an Act.
- (1A) A person (including the Crown in any right and a body established under the law of Victoria, the Commonwealth or another State) to whom this Act would not otherwise apply may elect to proceed under this Act and the **Transfer of Land Act 1958**.
- S. 4(1A) inserted by No. 48/1991 s. 5(2).
- (1B) If a person other than an acquiring authority acquires land compulsorily or acquires by agreement land which it may acquire compulsorily and proceeds under this Act, this Act applies as if the person were an acquiring authority and as if this Act referred to the Act or law under which the person acquired the land and not to the **Land Acquisition and Compensation Act 1986**.
- S. 4(1B) inserted by No. 48/1991 s. 5(2).
- (1C) A plan is not required under this Act to acquire an easement compulsorily under section 36⁴.
- S. 4(1C) inserted by No. 57/1993 s. 15(2)(b).
- (2) This Act does not apply to the disposition or acquisition of any land—
- S. 4(2) substituted by No. 47/1989 s. 19(e).
- (a) which can be lawfully dealt with under section 8A of the **Sale of Land Act 1962** without being subdivided; or
-

S. 4(3A)
inserted by
No. 57/1993
s. 5(1).

S. 4(4)
amended by
No. 47/1989
ss 5(4)(c),
6(1)(b)(i)(ii),
substituted by
Nos 48/1991
s. 5(3),
57/1993
s. 5(2).

S. 4(4A)
inserted by
No. 47/1989
s. 5(3).

S. 4(5)
repealed by
No. 47/1989
s. 6(1)(c),
new s. 4(5)
inserted by
No. 48/1991
s. 5(4).

- (b) if the land is disposed of or acquired by the Crown and, if it were disposed of or acquired by a private citizen, the land could lawfully be dealt with under section 8A of the **Sale of Land Act 1962** without being subdivided.
- (3) This Act does not apply to the acquisition of any land through a vesting order under section 62 of the **Transfer of Land Act 1958**.
- (3A) This Act does not apply to—
- (a) anything done under section 99 of the **Transfer of Land Act 1958**; or
- (b) anything done under section 100 or 101 of that Act in relation to an application under section 99; or
- (c) anything done under section 103(2) of that Act.
- (4) This Act does not apply to—
- (a) the creation of a covenant, if an Act other than this Act or the **Transfer of Land Act 1958** creates it or provides for its creation; or
- (b) the variation or removal of a covenant referred to in paragraph (a).
- (4A) This Act does not apply to an encumbrance unless the encumbrance constitutes an easement or a restriction.
- (5) This Act does not prevent a person from creating, varying or removing an easement or restriction by using a method or procedure other than provided by this Act.
- (6) Parts 2, 3 and 4 (except sections 24 and 25) do not apply to plans submitted under section 98CA or 98CF of the **Transfer of Land Act 1958**.

(7) This Act does not apply to subdivision by the Crown in order to issue a Crown grant under any Act.

S. 4(7)
amended by
Nos 79/1993
s. 10, 74/2000
s. 3(Sch. 1
item 119).

(8) This Act does not apply to a subdivision that occurs because of the vesting of land in the Rural Finance Corporation under section 47 of the **Rural Finance Act 1988** or because of the creation of a folio of the Register under section 23(4C) of the **State Electricity Commission Act 1958** or section 49(3) of the **Rural Finance Act 1988**.

S. 4(8)
inserted by
No. 47/1989
s. 19(f).

5 The procedure for certification and registration of plans

(1) Subject to sections 4 and 44, the subdivision or consolidation of land, or the creation, variation or removal of an easement or restriction, or the creation of common property, or any dealing with common property, must be done in accordance with this Act.

S. 5(1)
amended by
Nos 47/1989
ss 5(4)(d),
18(1)(c),
48/1991 s. 6.

(2) If there is a subdivision by acquisition by an acquiring authority—

S. 5(2)
substituted by
No. 47/1989
s. 4(2)(a).

(a) if all the land on the plan to be acquired is to be acquired by compulsory process, the authority must under section 35 submit a plan for certification—

- (i) if the land vests in the authority on the same vesting date, as soon as possible after that vesting date; or
- (ii) if the land vests in the authority on different vesting dates, not earlier than the first and not later than the last of those vesting dates to occur; and

(b) if—

- (i) the land on the plan to be acquired includes land to be acquired by agreement whether or not after service of a notice of intention to acquire as well as land to be acquired by compulsory process; or
- (ii) all the land on the plan to be acquired is to be acquired by agreement whether or not after service of a notice of intention to acquire—

the authority must under section 35 submit a plan for certification—

- (iii) if the land vests in or is registered in the name of the authority on the same vesting date, not later than that vesting date; or
- (iv) if the land vests in or is registered in the name of the authority on different vesting dates, not later than the first of those vesting dates to occur; and

(c) the authority is not required to submit any other plan of the land except a plan under section 35.

(3) A person who wishes to have a plan registered must—

- (a) prepare a plan in accordance with this Act and the regulations; and
- (b) if the land is not under the **Transfer of Land Act 1958**, bring the land under that Act; and
- (c) submit the plan to the Council for certification together with an application in the prescribed form; and

S. 5(3)(c)
amended by
No. 47/1989
s. 19(g).

-
- (d) obtain a statement of compliance from the Council; and
- (e) lodge the certified plan at the Office of Titles for registration together with an application in the prescribed form; and
- (f) in addition to any other fee payable under this Act, pay to the Registrar the fee, if any, prescribed under the **Survey Co-ordination Act 1958** for the maintenance of the survey control network.
- (4) The Council can accept and consider a plan submitted to it for certification even if a planning permit is required but has not been issued.
- (4A) The Council can accept, consider and certify a plan submitted to it even if, to make a boundary of any land in the plan accord with the boundary shown in the relevant folio of the Register, it would be necessary to make an application under section 99 or 103 of the **Transfer of Land Act 1958**, and the application has not been made or has not been determined.
- (5) Any person may, with the written consent of the owner, submit a plan to the Council for certification.
- (6) An owner may act through an agent unless the regulations require a personal or sealed declaration, consent or authorisation.
- (7) If the land in a plan is not in a municipal district, the Minister may carry out the functions of a Council.
- S. 5(3)(e) amended by Nos 47/1989 s. 19(h), 47/2004 s. 72.
- S. 5(3)(f) inserted by No. 47/2004 s. 72.
- S. 5(4A) inserted by No. 57/1993 s. 6.
- S. 5(7) amended by No. 47/1989 s. 19(i).
-

PART 2—CERTIFICATION OF PLANS⁵

6 What must the Council do?

(1) The Council must certify a plan within the prescribed time if—

S. 6(1)(a)
substituted by
No. 48/1991
s. 7(1).

(a) the plan complies with this Act, the regulations, and those requirements of the planning scheme and any permit that relate to the boundaries of roads, lots, common property and reserves and the form and content of the plan; and

(b) the land is under the **Transfer of Land Act 1958** or steps have been taken to bring the land under the Act; and

(c) every referral authority has given consent; and

(d) all alterations required by referral authorities have been made; and

* * * * *

S. 6(1)(e)
repealed by
No. 47/1989
s. 12(1).

(f) alterations required by the Council have been made; and

* * * * *

S. 6(1)(g)
repealed by
No. 47/1989
s. 12(1).

(h) where the only access to a lot is over Crown land, either a road has been reserved or proclaimed or the Minister administering the **Land Act 1958** has consented in writing to the use of the land for access; and

-
- (i) where the plan does anything requiring the unanimous resolution of the members of the owners corporation under Division 3 of Part 5 or an order of the Victorian Civil and Administrative Tribunal under section 34D, the plan is accompanied by a copy of the unanimous resolution or the order of the Tribunal; and
- (j) where a plan removes or varies a restriction—
- (i) the removal or variation is in accordance with the planning scheme or a permit; or
- (ii) the Registrar has declared that the restriction has been released modified or varied; and
- (k) where a plan removes or varies the whole or part of an easement—
- (i) the removal or variation is in accordance with the planning scheme or a permit; or
- (ii) the Registrar has declared that the easement has been abandoned or extinguished; or
- (iii) the easement was set aside for the purpose of a Council, public authority or other person which has requested or consented to the removal or variation; or
- S. 6(1)(i) repealed by No. 47/1989 s. 5(4)(e), new s. 6(1)(i) inserted by No. 48/1991 s. 7(2), substituted by No. 69/2006 s. 208(1).
- S. 6(1)(j)(i) amended by No. 47/1989 s. 6(1)(d), substituted by No. 48/1991 s. 7(3).
- S. 6(1)(j)(ii) amended by No. 47/1989 s. 6(1)(e).
- S. 6(1)(k)(i) amended by No. 47/1989 s. 6(1)(d), substituted by No. 48/1991 s. 7(4).

S. 6(1)(k)(iv)
amended by
No. 47/1989
s. 4(2)(b).

(iv) all parties interested in the easement or the part of it have agreed to the removal or variation; or

S. 6(1)(k)(v)
inserted by
No. 47/1989
s. 4(2)(b),
amended by
No. 52/1998
s. 311(Sch. 1
item 86.1).

(v) the Victorian Civil and Administrative Tribunal has given leave under section 36 to remove the easement and, if leave is given subject to conditions relating to the plan, those conditions have been met.

(2) If the conditions in subsection (1) are not met, the Council must refuse to certify the plan and give its reasons in writing to the applicant within the prescribed time.

S. 6(3)
inserted by
No. 48/1991
s. 7(5),
amended by
No. 69/2006
s. 208(2).

(3) The Council may rely on a verified copy of a unanimous resolution or Tribunal order accompanying a plan and referred to in section 6(1)(i) as conclusive proof that a unanimous resolution or order was made in those terms.

7 How long does certification last?

The certification of a plan is valid for 5 years from the date of certification.

8 When must the Council refer a plan to a referral authority?

(1) The Council must refer a plan to a referral authority within the prescribed time—

S. 8(1)(a)
amended by
No. 47/1989
s. 7(1)(a).

(a) if this is required by the planning scheme or the permit, unless—

(i) the plan is of a class exempted from the referral requirement by the planning scheme or the regulations; or

(ii) the applicant gives the Council satisfactory evidence of the authority's consent dated not more than 3 months before the date on which the plan is submitted for certification; or

-
- (b) if the authority is likely to have an interest in an easement or restriction which is to be created, varied or removed, unless the authority has agreed to the easement or restriction in connection with the planning scheme or permit or otherwise. **S. 8(1)(b) amended by No. 47/1989 s. 5(4)(f).**
- (2) The Council does not have to refer a plan to a referral authority if the plan is submitted by an acquiring authority under section 35 and shows acquired land without proposing to create additional lots.
- (3) If a referral authority has required specified alterations to be made to a plan and a plan containing those alterations is submitted to the Council, the Council does not have to refer the altered plan to that referral authority. **S. 8(3) inserted by No. 47/1989 s. 7(1)(b).**
- (4) The Council does not have to refer to a referral authority a plan under section 24A. **S. 8(4) inserted by No. 48/1991 s. 8.**
- (5) The Council does not have to refer again to a referral authority a plan which the Council has amended after referral, if the Council considers that the amendments are minor and are unlikely to affect the interests of the authority. **S. 8(5) inserted by No. 48/1991 s. 8.**
- (6) As soon as possible after certifying a plan that was not referred to a referral authority, the Council must give the authority a copy of the certified plan. **S. 8(6) inserted by No. 48/1991 s. 8.**

9 What must a referral authority do?

- (1) The referral authority must inform the Council within the prescribed time that it—
- (a) consents to the plan; or
 - (b) requires specified alterations; or
 - (c) refuses consent.

s. 10

S. 9(4)
amended by
No. 47/1989
s. 7(1)(c)(i)(ii).

- (2) If the authority requires specified alterations or refuses consent, it must give written reasons to the Council and the applicant.
- (3) If the authority does not reply within the prescribed time or fails to give written reasons, it consents.
- (4) If a referral authority requires a specified alteration to a plan, the time permitted for consideration of the plan by the authority and the Council is suspended until the altered plan is submitted to the Council.
- (5) If a plan contains all the specified alterations required by a referral authority, the authority cannot require any further alterations or refuse to consent to the plan.

10 Council may require alterations

S. 10(3)
amended by
No. 47/1989
s. 7(1)(d).

- (1) Within the prescribed time, the Council may require the applicant to alter the plan to make the plan suitable for certification.
- (2) The Council may agree to an alteration at the request of the applicant.
- (3) If the Council requires an alteration to a plan, the time for consideration of the plan is suspended until the altered plan is re-submitted to the Council.
- (4) If a plan contains the alterations required by a Council, the Council cannot require any further alterations.
- (5) The Council must send a copy of the altered plan to any referral authority referred to in section 8.
- (6) A Council cannot require or agree to an alteration which is inconsistent with any notice of acquisition in respect of that land published in the Government Gazette, or which is inconsistent with a requirement of a referral authority.

- (7) If the plan was prepared by a licensed surveyor, the Council must notify the surveyor of the alteration required by the Council.

S. 10(7)
amended by
No. 57/1993
s. 17(1).

11 Council may consent to the amendment of a certified plan

- (1) The owner or a person with the consent of the owner or an acquiring authority may apply to the Council to amend a certified plan.
- (2) The Council must refer the application to any referral authority referred to in section 8 within the prescribed time, unless the application is made by an acquiring authority.
- (2A) The Council does not have to refer an application to amend a certified plan to a referral authority if it considers that the amendment is minor and is unlikely to affect the interests of the authority.
- (3) The referral authority must inform the Council that it—
- (a) consents to the amendment; or
 - (b) requires alterations to ensure that the plan conforms with any requirements it made when it consented to the plan; or
 - (c) refuses to consent—
- within the prescribed time, giving its reasons for the refusal or the alteration.
- (4) If the referral authority does not reply within the prescribed time or fails to give written reasons, it consents to the amendment.
- (5) If a referral authority requires an alteration to a plan, the time permitted for consideration of the plan is suspended until the altered plan is submitted.

S. 11(2A)
inserted by
No. 48/1991
s. 9(1).

s. 11A

- (6) If a plan contains all the alterations required by a referral authority, the authority cannot require any further alterations or refuse to consent to the plan.
- (7) The Council must—
 - (a) re-certify the amended plan or certify a new plan; or
 - (b) advise the person who made the application to amend the certified plan in writing of the reasons for refusing to do so—
within the prescribed time.
- (8) If a new plan is submitted for certification the existing certified plan must be given to the Council.
- (9) The certification or re-certification of a plan under subsection (7) does not extend the period specified in section 7.
- (10) If the plan was prepared by a licensed surveyor the Council must notify the surveyor of an amendment applied for by an acquiring authority.
- (11) As soon as possible after re-certifying an amended plan where the amendment was not referred to a referral authority, the Council must give a copy of the re-certified plan to the referral authority.

S. 11(11)
inserted by
No. 48/1991
s. 9(2).

S. 11A
inserted by
No. 47/1989
s. 7(2).

11A Council and referral authority may ask for information

- (1) When considering a plan or an amendment to a plan under section 9, 10 or 11, the Council or a referral authority may require the applicant to give more information about the plan within a time specified by the Council or the authority.

- (2) If the Council or a referral authority requires more information, the time permitted for the Council and the referral authority to consider the plan is suspended until the information is received or the specified time ends, whichever is the sooner.
- (3) If a Council or a referral authority has required more information and the information is received within the specified time, the Council or the authority cannot require more information to be given.

12 Plan must show easements and other rights

- (1) A plan of subdivision or consolidation must specify—
 - (a) existing registered easements that burden the land (other than easements over land referred to in subsection (2)(a)(i)(ii) or (iii)), the purpose of the easements and either the land benefited by the easements or, if they were authorised by or under an Act other than this Act or the **Transfer of Land Act 1958**, the public authority, Council, Minister or other person in whose favour they are created; and
 - (b) proposed easements (other than easements over land referred to in subsection (2)(a)(i), (ii) or (iii)), the purpose of the easements and either the land which they are to benefit or, if they are authorised by or under an Act other than this Act or the **Transfer of Land Act 1958**, the public authority, Council, Minister or other person in whose favour they are to be created.
- (1A) A plan of creation, variation or removal of an easement must specify the easement to be created, varied or removed, the purpose of the easement and either the land benefited or to be benefited or, if the creation, variation or removal is authorised

S. 12(1)
amended by
No. 47/1989
s. 6(2)(a)(b),
substituted by
No. 48/1991
s. 10(1).

S. 12(1A)
inserted by
No. 48/1991
s. 10(1).

by or under an Act other than this Act or the **Transfer of Land Act 1958**, the public authority, Council, Minister or other person in whose favour the easement is or is to be created.

S. 12(1B)
inserted by
No. 57/1993
s. 7.

(1B) If land is described in a folio of the Register or in an instrument or plan referred to in that folio as being affected by an easement but that folio, instrument or plan does not do all or any of the following—

- (a) describe the purpose of the easement;
- (b) specify the land benefited by the easement;
- (c) if the easement is created under an Act, specify the person or authority in whose favour it is created—

a plan must be taken to comply with subsection (1)(a) or (1A) (as the case requires) if it specifies the land burdened by the easement and any other information about the purpose or benefit of the easement appearing from that folio, instrument or plan⁶.

S. 12(2)
substituted by
No. 47/1989
s. 6(2)(c),
amended by
No. 48/1991
s. 10(2)(a).

(2) Subject to subsection (3), there are implied—

- (a) over—
 - (i) all the land on a plan of subdivision of a building; and
 - (ii) that part of a subdivision which subdivides a building; and
 - (iii) any land affected by an owners corporation; and

S. 12(2)(a)(iii)
amended by
No. 48/1991
s. 10(2)(b),
substituted by
No. 69/2006
s. 209.

- (iv) any land on a plan if the plan specifies that this subsection applies to the land; and

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- (b) for the benefit of each lot and any common property—

S. 12(2)(b)
amended by
No. 48/1991
s. 10(2)(c).

all easements and rights necessary to provide—

- (c) support, shelter or protection; or
- (d) passage or provision of water, sewerage, drainage, gas, electricity, garbage, air or any other service of whatever nature (including telephone, radio, television and data transmission); or
- (e) rights of way; or
- (f) full, free and uninterrupted access to and use of light for windows, doors or other openings; or
- (g) maintenance of overhanging eaves—

if the easement or right is necessary for the reasonable use and enjoyment of the lot or the common property and is consistent with the reasonable use and enjoyment of the other lots and the common property.

- (3) A plan may provide that some only, or none, of the easements and rights mentioned in subsection (2) are implied over all or any of the land on the plan.

S. 12(3)
substituted by
Nos 47/1989
s. 6(2)(d),
48/1991
s. 10(3).

- (3A) Subsection (3) does not apply to—

- (a) any part of a plan that subdivides a building;
or
- (b) easements or rights for existing services provided to a lot, if the lot and the land on which the service is located are not in common ownership.

S. 12(3A)
inserted by
No. 48/1991
s. 10(3).

s. 12

S. 12(3B)
inserted by
No. 48/1991
s. 10(3).

(3B) There are implied over any road set aside on a plan, in favour of the appropriate responsible public authority or Council, all easements and rights necessary to provide water, sewerage, drainage, gas, electricity, telephone or any other prescribed service, if the easement or right is consistent with the reasonable use of the land as a road.

(4) Any person, Council or referral authority entitled to use an easement can gain access to that easement over the common property and any lot for the purpose of using the easement and must repair any damage caused in gaining access to or using the easement.

S. 12(5)
amended by
No. 47/1989
s. 6(2)(e)(i)(ii).

(5) If a plan of the easement is registered the person entitled to use the easement is not required to repair damage to buildings or works constructed or located so as to interfere with the exercise of rights conferred by the easement if reasonable care is taken in gaining access to and using the easement.

S. 12(6)
inserted by
No. 47/1989
s. 6(2)(f),
amended by
No. 48/1991
s. 10(4)(a)(i)(ii).

(6) If an easement in favour of a public authority, Council, Minister or other person is specified on a plan, subsection (2) does not operate to imply an easement or right for that person for the same purpose.

S. 12(7)
inserted by
No. 47/1989
s. 6(2)(f).

(7) This section does not prevent the exercise of rights conferred by—

S. 12(7)(a)
amended by
No. 48/1991
s. 10(4)(b)(i)(ii).

(a) an easement created in favour of a public authority, Council, Minister or other person otherwise than under this Act or the **Transfer of Land Act 1958**; or

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- (b) an agreement to create an easement in favour of a public authority, Council, Minister or other person made under an Act other than this Act or the **Transfer of Land Act 1958**. S. 12(7)(b) amended by No. 48/1991 s. 10(4)(b)(i)(ii).
- (8) The easements specified on a plan or implied by subsection (2) are in addition to easements under section 98(a) of the **Transfer of Land Act 1958**. S. 12(8) inserted by No. 47/1989 s. 6(2)(f).
- (9) Section 98(b) of the **Transfer of Land Act 1958** does not apply to a plan registered under this Act. S. 12(9) inserted by No. 47/1989 s. 6(2)(f).

13 Certification evidence of compliance with Act

Where the Council certifies a plan, the certification is conclusive evidence that the provisions of this Act relating to certification including any preliminary requirements, have been complied with, unless, before the plan is registered, an order is made under section 39(3) and served on the Registrar.

PART 3—STATUTORY REQUIREMENTS FOR PLANS

14 Application of Part

S. 14
amended by
No. 48/1991
s. 11(a).

(1) This Part does not apply to a plan submitted by an acquiring authority under section 35 unless the plan proposes to create additional lots except for the purpose of acquisition⁷.

S. 14(1)
amended by
No. 57/1993
s. 8.

(2) This Part does not apply to a plan under section 24A.

S. 14(2)
inserted by
No. 48/1991
s. 11(b).

15 Council or referral authority may require an engineering plan for works

(1) A Council or a referral authority may require an applicant to submit an engineering plan including specifications for works required under the planning scheme or permit.

(2) The Council or referral authority must—

- (a) approve the engineering plan; or
- (b) specify the alterations it requires; or
- (c) refuse to approve the plan—

within the prescribed time.

(3) If the Council or referral authority requires alterations or refuses to approve the engineering plan, it must at the same time give written reasons to the applicant.

(4) If the Council or referral authority requires an alteration to an engineering plan, the time for its consideration of the plan is suspended until the altered engineering plan is submitted.

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- (5) If an engineering plan contains all the alterations required by a Council or referral authority, the Council or referral authority cannot require any further alteration and must approve the plan.
- (6) The Council may make a charge not exceeding the prescribed fee for an engineering plan it prepares.

S. 15(5)
amended by
No. 48/1991
s. 12.

16 Works must comply with standards

Any person who constructs works must comply with—

- (a) the certified plan; and
- (b) the approved engineering plan; and
- (c) the standards specified in the planning scheme or the permit.

17 Construction and maintenance of works

- (1) A person must not commence works until—
- (a) the plan has been certified; and
 - (b) the engineering plan has been approved; and
 - (c) any agreement required by a responsible authority or a referral authority has been entered into.
- (2) A Council or referral authority may—
- (a) appoint a person to supervise the construction of the works; and
 - (b) make a charge not exceeding the prescribed fee for the supervision; and
 - (c) enter into an agreement with an owner or applicant in anticipation of the applicant becoming owner providing for either or both of the following—
 - (i) that works or other things required by the planning scheme or permit may be completed after registration;

S. 17(2)(c)
amended by
No. 47/1989
ss 12(2)(a),
13(1).

s. 17

S. 17(2)(c)(ii)
inserted by
No. 47/1989
s. 12(2)(b).

(ii) if works are required, securing compliance with section 20A.

S. 17(2A)
inserted by
No. 47/1989
s. 19(j).

(2A) If land the subject of an application for a permit to subdivide or consolidate or land on a plan is located outside the district of a relevant authority, the Council, if it considers that water or sewerage services should be provided, may request the Minister administering the Act under which the relevant authority is created (if that Minister has not already made a nomination) to nominate a relevant authority to consider what works (if any) are required and, if within the prescribed time the Minister does not nominate an authority, the Council may carry out a nominated relevant authority's functions under this section.

S. 17(2B)
inserted by
No. 47/1989
s. 19(j).

(2B) A nominated relevant authority may make any requirement under subsection (2) as if it were a referral authority.

S. 17(2C)
inserted by
No. 47/1989
s. 19(j).

(2C) An agreement made under subsection (2)(c) by a nominated relevant authority may make provision for any matter including but not limited to—

(a) the payment by the owner or applicant of—

(i) any reasonable part of the cost of constructing works; or

(ii) any reasonable part of the cost of maintaining works for a period of not more than 5 years; and

(b) the payment by the owner or applicant of any reasonable part of the cost of the authority's general system of public utility services, based on the area or use of the land; and

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- (c) the payment by the owner or applicant of any reasonable part of the cost of constructing or maintaining works on other land that are capable of benefiting the owner's or applicant's land; and
- (d) advances to be made by the owner or applicant to the authority for constructing or maintaining works; and
- (e) exempting the works from any provision of this section; and
- (f) the person or body in which works are to vest or who is to be responsible for works after they are completed; and
- (g) the referral of any proposal for works to any person or body.
- (2D) At any time after works are completed under an agreement to which subsection (2C) applies, the Council and a relevant authority may by agreement or the Governor in Council may by Order published in the Government Gazette, transfer the works and any land or interest in land relating to the works and rights, powers, obligations and liabilities under the agreement from the Council to a relevant authority. **S. 17(2D) inserted by No. 47/1989 s. 19(j).**
- (2E) Subject to any agreement, subsections (1), (3), (4), (5) and (6) apply as if they referred to a nominated relevant authority as well as to a referral authority. **S. 17(2E) inserted by No. 47/1989 s. 19(j).**
- (3) Subject to this section, Division 2 of Part 9 of the **Planning and Environment Act 1987** applies to an agreement under subsection (2)(c) as if the Council or referral authority were the responsible authority. **S. 17(3) amended by No. 48/1991 s. 13(1).**
- (3A) An agreement under subsection (2)(c) does not have to be under seal. **S. 17(3A) inserted by No. 48/1991 s. 13(2).**
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s. 17

S. 17(3B)
inserted by
No. 48/1991
s. 13(2).

(3B) If an agreement under subsection (2)(c) is not under seal, sections 174(1), 179 and 181 to 183 of the **Planning and Environment Act 1987** do not apply to it.

(4) The applicant is responsible for the maintenance of the completed works in good condition and repair for 3 months or any other period which is agreed between the applicant and the Council or referral authority.

(5) After the expiry of the maintenance period, maintenance of the works becomes the responsibility of the Council or the referral authority.

S. 17(6)
amended by
No. 47/1989
s. 19(k).

(6) In this section—

S. 17(6) def. of
agreement
inserted by
No. 48/1991
s. 13(3)(a).

agreement includes arrangement or understanding, whether written or oral or by conduct;

S. 17(6) def. of
relevant authority
amended by
No. 48/1991
s. 13(3)(b).

relevant authority means—

- (a) an authority under the **Water Act 1989** that has a water or a sewerage district; or
- (b) the Melbourne and Metropolitan Board of Works; and

works means works that—

- (a) are required by or for the Council or a referral authority to provide roads or public utility services to the land; and
- (b) are or are to be the responsibility of the Council or a referral authority after the maintenance period.

18 Council may require public open space^{8, 9}

- (1) If a requirement for public open space is not specified in the planning scheme, a Council, acting as a responsible authority or a referral authority under the **Planning and Environment Act 1987** may require the applicant who proposes to create any additional separately disposable parcel of land by a plan of subdivision to—
- (a) set aside on the plan, for public open space, in a location satisfactory to the Council, a percentage of all of the land in the subdivision intended to be used for residential, industrial or commercial purposes, being a percentage set by the Council not exceeding 5 per cent; or
- (b) pay or agree to pay to the Council a percentage of the site value of all of the land in the subdivision intended to be used for residential, industrial or commercial purposes, being a percentage set by the Council not exceeding 5 per cent; or
- (c) do a combination of (a) and (b) so that the total of the percentages required under (a) and (b) does not exceed 5 per cent of the site value of all the land in the subdivision.
- (1A) The Council may only make a public open space requirement if it considers that, as a result of the subdivision, there will be a need for more open space, having regard to—
- (a) the existing and proposed use or development of the land;
- (b) any likelihood that existing open space will be more intensively used after than before the subdivision;

S. 18(1) amended by Nos 47/1989 s. 14(1)(a), 48/1991 s. 14(1)(a)(b), 57/1993 s. 9(1).

S. 18(1)(a) substituted by No. 34/1994 s. 3(1).

S. 18(1)(b) amended by No. 48/1991 s. 14(1)(c), substituted by No. 34/1994 s. 3(1).

S. 18(1)(c) substituted by No. 47/1989 s. 14(1)(b), amended by No. 34/1994 s. 3(2).

S. 18(1A) inserted by No. 48/1991 s. 14(2).

- (c) any existing or likely population density in the area of the subdivision and the effect of the subdivision on this;
- (d) whether there are existing places of public resort or recreation in the neighbourhood of the subdivision, and the adequacy of these;
- (e) how much of the land in the subdivision is likely to be used for places of resort and recreation for lot owners;
- (f) any policies of the Council concerning the provision of places of public resort and recreation.

S. 18(1B)
inserted by
No. 57/1993
s. 9(2).

- (1B) If a Council requires an applicant to pay or agree to pay an amount under subsection (1)—
 - (a) the amount must be paid before the Council issues its statement of compliance; and
 - (b) subject to paragraph (a), the time for payment of the amount is at the applicant's discretion; and
 - (c) despite paragraph (a), the whole or any part of the amount may be paid after the Council issues its statement of compliance if the applicant and the Council so agree under section 21(1)(b)(ii).

S. 18(2)
substituted by
No. 47/1989
s. 8(1)(a),
amended by
No. 34/1994
s. 3(3).

- (2) In the case of a staged subdivision using the procedure under section 37—

S. 18(2)(a)
amended by
No. 48/1991
s. 14(3).

- (a) if an open space requirement is to be made, it must be made for the master plan, but may be expressed to apply to any particular stage or stages; and

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- (b) if the requirement applies to the second or a subsequent stage, the location of the open space need not be defined except on the plan for that stage; and
- (c) if the requirement applies to the second or a subsequent stage and is a requirement to pay money, the total amount to be paid may be apportioned between particular stages, and the proportion need not be specified except for the plans of the appropriate stages.
- (3) Land intended to be used for residential, industrial or commercial purposes includes land set aside on the plan of subdivision for roads or other reserves incidental or ancillary to the use of the land for residential, industrial or commercial purposes.
- (4) The applicant may agree with the Council to set aside or pay a percentage other than the set percentage.
- (5) A public open space requirement may be made only once in respect of any of the land to be subdivided whether the requirement was made before or after the commencement of this section, unless subsection (6) applies.
- (6) A further open space requirement may only be made when a building is subdivided and a public open space requirement was not made under section 569H of the **Local Government Act 1958** or section 21A of the **Building Control Act 1981** when the building was constructed.
- (7) If any amount is paid to the Council under this section and the Council is satisfied that it is no longer intended to subdivide the land to create any additional lot, the Council may refund the amount paid to it.

S. 18(5)
amended by
No. 48/1991
s. 14(4).

- (8) A public open space requirement is not required if—
- (a) the subdivision is of a class of subdivision that is exempted from the public open space requirement by the planning scheme; or
 - (b) the subdivision is for the purpose of excising land to be transferred to a public authority, Council or a Minister for a utility installation; or
 - (c) the subdivision subdivides land into two lots and the Council considers it unlikely that each lot will be further subdivided.

S. 18(8)(c)
amended by
No. 48/1991
s. 14(5).

19 Valuation of land for public open space

- (1) The Council may obtain a valuation of the land from a person who holds the qualifications or experience specified under section 13DA(1A) of the **Valuation of Land Act 1960** if the value is not agreed.
- (2) The land is to be valued on a day not more than 12 months before the date for payment of the public open space contribution.
- (3) The Council must give the applicant a copy of the valuation.
- (4) Part III of the **Valuation of Land Act 1960** (except Division 2) applies to the valuation as if the valuation had been made under Part 8 of the **Local Government Act 1989**.
- (5) If a public open space contribution is not paid within 12 months after it is required, the Council may obtain a revaluation at each anniversary of the making of the requirement, and vary the amount of the payment accordingly.

S. 19(1)
amended by
No. 91/1994
s. 36(9).

S. 19(2)
substituted by
No. 48/1991
s. 15(1).

S. 19(4)
amended by
No. 48/1991
s. 15(2),
substituted by
No. 47/2007
s. 20.

S. 19(5)
substituted by
No. 48/1991
s. 15(3).

20 What must the Council do with public open space?

- (1) A Council must set aside for public open space any land which is vested in the Council for that purpose.
- (2) The Council must use any payment towards public open space it receives under this Act or has received under section 569B(8A) of the **Local Government Act 1958** but has not applied under subsection (8C) of that section or the proceeds of any sale of public open space to—
 - (a) buy land for use for public recreation or public resort, as parklands or for similar purposes; or
 - (b) improve land already set aside, zoned or reserved (by the Council, the Crown, a planning scheme or otherwise) for use for public recreation or public resort, as parklands or for similar purposes; or
 - (c) with the approval of the Minister administering the **Local Government Act 1989**, improve land (whether set aside on a plan or not) used for public recreation or public resort, as parklands or for similar purposes.

S. 20(2)
substituted by
No. 48/1991
s. 16(1).

* * * * *

S. 20(3)
repealed by
No. 48/1991
s. 16(2).

- (4) Public open space can be used for municipal purposes in accordance with the planning scheme, or sold only if the Council has provided for replacement public open space.

S. 20A
inserted by
No. 47/1989
s. 12(3).

20A Land to be marked out

(1) If works are not required in connection with a plan of subdivision, the applicant must, before the Council gives its statement of compliance, submit to the Council written advice in the prescribed form by a licensed surveyor—

(a) that at the date the advice is given—

(i) where appropriate, roads and reserves are marked out or defined; and

(ii) where appropriate, the boundaries of the land in the plan, the lots and the common property are marked out or defined—

and any supporting survey monumentation required under the **Surveying Act 2004** or the **Survey Co-ordination Act 1958** is in place; and

(b) if there is a substantial discrepancy between a boundary and the boundary as shown on the plan, that a substantial discrepancy exists.

(2) If works are required in connection with a plan of subdivision, the applicant must, not earlier than the date of completion of the works and not later than the end of one month after that date of completion, submit to the Council written advice in the prescribed form by a licensed surveyor—

(a) that at the date the advice is given—

(i) where appropriate, roads and reserves are marked out or defined; and

S. 20A(2)(a)
substituted by
No. 48/1991
s. 17(2),
amended by
No. 47/2004
s. 71(Sch.
item 4).

- (ii) where appropriate, the boundaries of the land in the plan, the lots and the common property are marked out or defined—

and any supporting survey monumentation required under the **Surveying Act 2004** or the **Survey Co-ordination Act 1958** is in place; and

- (b) if there is a substantial discrepancy between a boundary and the boundary as shown on the plan, that a substantial discrepancy exists.

(3) In this section *works* means—

- (a) works within the meaning of section 17(6);
or
- (b) building works which define any boundary;
or
- (c) works required by a planning scheme or permit, the plan of subdivision, an engineering plan, a nominated relevant authority under section 17, or an agreement made under section 17.

21 Statement of compliance with statutory requirements

S. 21
amended by
No. 47/1989
s. 8(1)(b).

- (1) Subject to subsection (2C), a Council must issue a statement of compliance to the applicant in the prescribed form as soon as possible after—
 - (a) the applicant has given it the prescribed information; and

S. 21(1)
amended by
No. 35/2006
s. 8(1).

S. 21(1)(b)(i)
amended by
Nos 47/1989
s. 19(l),
48/1991
s. 18(1).

- (b) it is satisfied that—
- (i) all requirements of and under this Part and the **Planning and Environment Act 1987** that relate to public works have been met; or
 - (ii) there is an agreement to secure compliance with those requirements.

S. 21(2)
inserted by
No. 47/1989
s. 8(1)(c),
amended by
No. 34/1994
s. 4(1).

- (2) In the case of a staged subdivision using the procedure under section 37—

S. 21(2)(a)
amended by
No. 48/1991
s. 18(2)(a).

- (a) a statement of compliance for the master plan must contain the prescribed information; and
- (b) a statement of compliance for a plan of the second or a subsequent stage must contain the prescribed information; and

S. 21(2)(c)
substituted by
No. 48/1991
s. 18(2)(b).

- (c) a statement of compliance for the first stage (but not the residual land) is a sufficient statement of compliance to enable the master plan to be registered; and

S. 21(2)(d)
inserted by
No. 48/1991
s. 18(2)(b).

- (d) a statement of compliance for the second or a subsequent stage (but not for the residual land on the plan for that stage) is a sufficient statement of compliance to enable that plan to be registered.

S. 21(2A)
inserted by
No. 35/2006
s. 8(2).

- (2A) A Council, within 7 days after receiving the request for the issue of the statement of compliance in relation to a plan of a subdivision that relates to land which is within a project area for which a resolution is in force under Division 5A of Part 3 of the **Victorian Urban Development Authority Act 2003** levying a general development charge or infrastructure recovery charge, must—

-
- (a) notify the Victorian Urban Development Authority in writing—
- (i) of the receipt of that request and the date of that receipt; and
 - (ii) as to whether the land in the plan of subdivision has been the subject of a subdivision of land in the period of 3 years immediately preceding the date of that receipt; and
- (b) provide the Victorian Urban Development Authority with a copy of the planning permit for that subdivision.
- (2B) Subsection (2A) does not apply to a plan of subdivision that involves an alteration to the boundaries of the lots on an existing plan of subdivision but does not increase the number of lots above the number of lots on that existing plan of subdivision.
- (2C) A Council must not issue a statement of compliance under this section in relation to a plan of subdivision for which it has given notice under subsection (2A) unless the Victorian Urban Development Authority has notified the Council under section 51ZA of the **Victorian Urban Development Authority Act 2003** that—
- (a) a general development charge or an infrastructure recovery charge is not payable in respect of the subdivision; or
 - (b) if a general development charge or an infrastructure recovery charge is payable in respect of the subdivision, the charge has been paid or the person liable to pay the charge has entered into an agreement with the Authority under section 51Y of that Act to pay the charge.

S. 21(2B)
inserted by
No. 35/2006
s. 8(2).

S. 21(2C)
inserted by
No. 35/2006
s. 8(2).

Subdivision Act 1988
No. 53 of 1988

s. 21

S. 21(3)
inserted by
No. 48/1991
s. 18(3),
amended by
No. 126/1993
s. 264(Sch. 5
item 20).

(3) A Council cannot refuse to issue a statement of compliance because a requirement made in relation to an application, approval, permit or certificate under the **Building Act 1993** or in relation to regulations under that Act remains outstanding.

S. 21(4)
inserted by
No. 48/1991
s. 18(3).

(4) If—

S. 21(4)(a)
amended by
No. 34/1994
s. 4(2).

- (a) the Council and the owners of all or any of the lots in a staged subdivision within the meaning of section 37(1) have entered into an agreement under Division 2 of Part 9 of the **Planning and Environment Act 1987**, whether or not any other people are also parties to that agreement; and
- (b) the Council is satisfied that the owners of any of the lots in a stage who entered into the agreement—
 - (i) have paid all money then due by them under the agreement; and
 - (ii) have met all other obligations then imposed under the agreement; and
- (c) the Council is satisfied that, under the agreement, they have no further liability to pay money and no further obligations—

the Council may, in the statement of compliance, provide that the agreement no longer applies to specified land in that stage.

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- (4A) In subsection (4), *stage* means—
- (a) for a staged subdivision using the procedure under section 37, a stage provided for in that section; or
 - (b) for a subdivision of land in stages not using that procedure, the land in a plan of subdivision that, in accordance with the authorising planning scheme or permit, forms one of those stages.
- (5) If the statement of compliance contains a provision mentioned in subsection (4) and the agreement relates only to the land covered by that provision, then for all purposes the agreement ends on the date of issue of the statement of compliance.
- (6) If a statement of compliance contains a provision mentioned in subsection (4) and the provision does not cover all the land covered by the agreement, the agreement must for all purposes be taken to have been amended, in accordance with that provision, on the date of issue of the statement of compliance.
- (7) Land which was subject to a charge under section 175(4) of the **Planning and Environment Act 1987** and to which, because of a provision in the statement of compliance, the agreement no longer applies, ceases to be subject to the charge on the date of issue of the statement.
- (8) Sections 179 to 183 of the **Planning and Environment Act 1987** apply to the ending or amendment of an agreement under this section.

S. 21(4A)
inserted by
No. 34/1994
s. 4(3).

s. 21A

21A Enforcement of agreements

S. 21A
inserted by
No. 47/1989
s. 19(m),
amended by
No. 48/1991
s. 19(a).

(1) Subject to this section, Division 2 of Part 9 of the **Planning and Environment Act 1987** applies to an agreement under section 21(1)(b)(ii) as if a relevant authority within the meaning of section 17(6), a referral authority or the Council (as the case requires) were the responsible authority.

S. 21A(2)
inserted by
No. 48/1991
s. 19(b).

(2) An agreement under section 21(1)(b)(ii) does not have to be under seal.

S. 21A(3)
inserted by
No. 48/1991
s. 19(b).

(3) If an agreement referred to in subsection (2) is not under seal, sections 174(1), 179 and 181 to 183 of the **Planning and Environment Act 1987** do not apply to it.

S. 21A(4)
inserted by
No. 48/1991
s. 19(b).

(4) In this section and in section 21(1)(b)(ii) **agreement** includes an arrangement or understanding, whether written, oral or by conduct.

PART 4—REGISTRATION OF CERTIFIED PLANS¹⁰

22 When can the Registrar register a plan?¹¹

(1) The Registrar may register a plan if—

- | | |
|--|---|
| (a) it appears to the Registrar that the plan has been certified by the Council and the certification remains valid; and | S. 22(1)(a) amended by No. 47/1989 s. 18(1)(d). |
| (b) the applicant provides a statement of compliance or an acquiring authority, Minister government department, public authority or Council submits a statement that the plan is exempt from Part 3; and | S. 22(1)(b) amended by No. 48/1991 s. 20(1)(a). |
| (c) in the case of a master plan, each of the persons listed in subsection (1A) whose encumbrance mentioned in that subsection relates to the land in the first stage (but not the residual land) consents in writing to the registration of the plan; and | S. 22(1)(c) substituted by Nos 47/1989 s. 8(1)(d), 48/1991 s. 20(1)(b). |
| (d) in the case of a plan for the second or a subsequent stage in a staged subdivision using the procedure under section 37, each of the persons listed in subsection (1A) whose encumbrance mentioned in that subsection relates to that stage (but not the residual land) consents in writing to the registration of the plan; and | S. 22(1)(d) substituted by No. 48/1991 s. 20(1)(b), amended by No. 34/1994 s. 5(a). |
| (da) in the case of a plan that is not a plan for a staged subdivision using the procedure under section 37, each of the persons listed in subsection (1A) whose encumbrance mentioned in that subsection relates to the land on the plan consents in writing to the registration of the plan; and | S. 22(1)(da) inserted by No. 48/1991 s. 20(1)(b), amended by No. 34/1994 s. 5(b). |

Subdivision Act 1988
No. 53 of 1988

s. 22

S. 22(1)(e)
amended by
Nos 47/1989
s. 19(n),
48/1991
s. 20(2)(a),
57/1993
s. 10(1).

(e) the land is under the **Transfer of Land Act 1958** and (except for a plan referred to in section 35) is not subject to a mortgage under the general law that is shown on the folio of the Register for the land; and

S. 22(1)(f)
inserted by
No. 92/1989
s. 7(a),
amended by
No. 48/1991
ss 20(2)(b),
30(2)(a),
substituted by
No. 69/2006
s. 210(1).

(f) except for a plan referred to in section 23, 24A, 32A, 35, 36 or 37 or Division 3 of Part 5 or that is in accordance with a court or Tribunal order under this Act, none of the land in the plan is land affected by an existing owners corporation.

S. 22(1A)
inserted by
No. 48/1991
s. 20(3).

(1A) For the purposes of subsection (1)(c), (d) and (da) the following are listed persons—

S. 22(1A)(a)
amended by
No. 57/1993
s. 10(2)(a).

(a) a registered mortgagee, registered lessee or registered sub-lessee;

S. 22(1A)(b)
substituted by
No. 57/1993
s. 10(2)(b).

(b) the registered annuitant;

S. 22(1A)(c)
amended by
No. 57/1993
s. 10(2)(b).

(c) a caveator whose caveat is recorded in the Register;

S. 22(1A)(d)
amended by
No. 57/1993
s. 10(2)(c)(i)(ii).

(d) an annuitant whose charge, or a person whose mortgage, caveat, lease or sub-lease was lodged before the lodging of the plan.

S. 22(1AA)
inserted by
No. 57/1993
s. 10(3).

(1AA) If a plan provides that land becomes common property, then for the purposes of subsection (1)(c), (d) and (da) consent to the registration of the plan is not required from any person with an interest in the common property but not in the land.

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- (1AB) If a person's consent to the registration of a plan is required and the person requests the Registrar to register the plan, the request must be taken to be consent to the registration of the plan. **S. 22(1AB) inserted by No. 57/1993 s. 10(3).**
- (1AC) The Registrar may treat as consent from a person whose consent to the registration of a plan is required— **S. 22(1AC) inserted by No. 57/1993 s. 10(3).**
- (a) in the case of a natural person, a consent or request to register the plan apparently made on behalf of that person; or
 - (b) in the case of a corporation or a statutory corporation, a consent or request to register the plan—
 - (i) apparently made on behalf of the corporation; or
 - (ii) apparently signed by a director or other person concerned in the management of the corporation; or
 - (iii) apparently signed by a person who manages the corporation's transactions or securities affecting land.
- (1AD) The Registrar need not— **S. 22(1AD) inserted by No. 57/1993 s. 10(3).**
- (a) enquire as to the existence or scope of the authority to sign of a person who signs a consent or a request to which subsection (1AB) or (1AC) applies; or
 - (b) call for or examine any documents relating to any of the matters referred to in paragraph (a).
- (1B) Where a person whose consent to the registration of a plan is required has not consented, the applicant may apply to the Registrar for service on that person of a notice under subsection (1C). **S. 22(1B) inserted by No. 48/1991 s. 20(3).**
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S. 22(1C)
inserted by
No. 48/1991
s. 20(3).

- (1C) The notice must—
- (a) state that the applicant has applied for registration of the plan; and
 - (b) specify a day, being not less than 30 days from the service of the notice, before which notice of refusal to consent may be given; and
 - (c) state that the person served with the notice is to be taken to have consented to the registration of the plan unless before the day specified in the notice the person gives to the Registrar written notice of refusal to consent.

S. 22(1D)
inserted by
No. 48/1991
s. 20(3).

- (1D) A person served with a notice under subsection (1B) must be taken to have consented to the registration of the plan if before the day specified in the notice the person has not given to the Registrar written notice of refusal to consent.

S. 22(1E)
inserted by
No. 48/1991
s. 20(3).

- (1E) Where a person whose consent to the registration of a plan is required refuses to consent, the applicant for its registration may apply to the Supreme Court for an Order consenting to the registration of the plan on behalf of the person whose consent was required.

S. 22(1F)
inserted by
No. 48/1991
s. 20(3).

- (1F) On the application, the Court, if satisfied that the refusal of consent was unreasonable, may make the Order sought.

S. 22(2)
substituted by
No. 47/1989
s. 7(1)(e).

- (2) If the Registrar is satisfied that a certified plan requires corrections before it can be registered, the Registrar may—
- (a) if satisfied that the corrections are minor in nature, make them, or require the applicant to make them on the certified plan, without returning the plan to the applicant for it to be amended under section 11; or

- (b) in any other case, return the plan to the applicant to be amended under section 11.

23 What if a planning scheme directs the creation, removal or variation of rights?

- (1) If a planning scheme or permit regulates or authorises the creation, removal or variation of an easement or restriction, the owner of the land burdened or to be burdened by the easement or restriction must, in accordance with the planning scheme or permit and with the **Planning and Environment Act 1987**, lodge a certified plan at the Office of Titles for registration.
- (2) The consent of any other person who has an estate, interest or claim in the land is not required to the certification and registration of a plan referred to in subsection (1).
- (3) If the planning scheme or permit also relates to the subdivision or consolidation of land, the certified plan required by subsection (1) may be a plan of subdivision or consolidation.
- (4) If the planning scheme or a permit regulates or authorises the variation or removal of a condition in the nature of an easement in a Crown grant, a person may proceed under this section as if the condition were an easement and, where a person does so, this Act applies as if any reference to an easement included a reference to that condition.
- (5) Subsection (4) applies despite anything to the contrary in the **Land Act 1958** or in a Crown grant.

S. 23(1) amended by No. 47/1989 ss 5(4)(g), 6(3)(a)(b), substituted by No. 48/1991 s. 21(1), amended by No. 57/1993 s. 11.

S. 23(2) substituted by No. 48/1991 s. 21(1).

S. 23(3) inserted by No. 47/1989 s. 6(3)(c), amended by No. 48/1991 s. 21(2).

S. 23(4) inserted by No. 48/1991 s. 21(3).

S. 23(5) inserted by No. 48/1991 s. 21(3).

24 What is the effect of registration?

S. 24(1)
amended by
No. 47/1989
s. 19(o).

(1) The registration of a plan takes effect from the time that the Registrar records that the plan has been registered.

S. 24(2)(a)
amended by
No. 48/1991
s. 22(1)(a).

(2) Upon registration—

(a) land set aside as a reserve vests in the body named in the plan freed and discharged from any mortgage, charge, notice or memorandum of charge, restriction, lease or sub-lease; and

S. 24(2)(b)
amended by
No. 48/1991
s. 22(1)(a).

(b) land set aside as a road vests in the Council or any other person or body identified for that purpose in the plan freed and discharged from any mortgage, charge, notice or memorandum of charge, restriction, lease or sub-lease; and

S. 24(2)(d)
amended by
No. 47/1989
s. 5(4)(h).

(c) any road vested in the Council becomes a public highway; and

(d) any easement, restriction or other right is created, varied or removed as specified in the plan; and

S. 24(2)(da)
inserted by
No. 81/1989
s. 3(Sch.
item 50).

(da) any right to take water conferred by section 8 of the **Water Act 1989** is allocated as specified in the plan; and

S. 24(2)(e)
amended by
No. 47/1989
s. 6(3)(d).

(e) any easements or rights implied by section 12(2) are created; and

(f) the registered plan replaces or modifies any previous registered plan; and

S. 24(2)(g)
inserted by
No. 48/1991
s. 22(1)(b),
amended by
No. 69/2006
s. 210(2).

(g) if it is a plan referred to in section 23, 24A, 32B, 35 or 37 or Division 3 of Part 5, the registered plan amends any previous registered plan in the ways indicated in that later registered plan.

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- (2A) When the land set aside as a road vests in a Council, person or body—
- (a) the land continues under the operation of the **Transfer of Land Act 1958** and the Council, person or body is deemed to be its registered proprietor; and
 - (b) the Registrar need not create a folio of the register or produce a certificate of title for the land; and
 - (c) the Registrar may delete any folio of the register so far as it relates to that land.
- (3) The Registrar must create a folio of the Register under the **Transfer of Land Act 1958** for—
- (a) each lot; and
 - (b) each reserve.
- (4) Despite anything in subsection (3) of this section or in section 28(e), the Registrar may decide not to create a folio of the Register under the **Transfer of Land Act 1958** if—
- (a) a document required by the Registrar has not been submitted or lodged; or
 - (b) there is an order of a court or the Victorian Civil and Administrative Tribunal prohibiting the creation of the folio of the Register; or
 - (c) the creation of a folio of the register is not required by the owner and its creation would not be desirable; or
 - (d) in the opinion of the Registrar, other special circumstances make the creation of the folio of the Register undesirable or unnecessary.

S. 24(2A)
inserted by
No. 47/1989
s. 15.

S. 24(3)
amended by
No. 18/1989
s. 15(b).

S. 24(4)
amended by
Nos 92/1989
s. 7(b),
18/1989
s. 15(b).

S. 24(4)(a)
amended by
No. 18/1989
s. 15(c).

S. 24(4)(b)
amended by
Nos 18/1989
s. 15(d),
52/1998
s. 311(Sch. 1
item 86.1).

S. 24(4)(c)
substituted by
No. 18/1989
s. 15(e).

S. 24(4)(d)
amended by
No. 18/1989
s. 15(f).

s. 24A

S. 24(5)
inserted by
No. 47/1989
s. 19(p).

(5) The Registrar must make any amendments to any registered plan or to the Register under the **Transfer of Land Act 1958** that are necessary because of the operation of this Act.

S. 24(6)
inserted by
No. 48/1991
s. 22(2).

(6) Where a plan amending a previous registered plan is lodged for registration, it must be accompanied by substitute sheets for the sheets of the registered plan that require amendment, and the Registrar may substitute those sheets for the appropriate sheets of the registered plan and, on the making of the substitution, those substituted sheets form part of the registered plan.

S. 24A
inserted by
No. 48/1991
s. 23,
amended by
No. 57/1993
s. 12(1)(a)(b).

24A Reserves and other similar land

(1) If required or authorised to do so by the planning scheme or a permit, a person or body listed in column 1 of the Table may lodge at the Titles Office for registration a certified plan to do any of the things listed in relation to that person or body in column 2 of the Table in relation to the whole or any part of land referred to in that part of the column.

S. 24A(1)
(Table)
amended by
No. 57/1993
s. 12(2).

TABLE

<i>Column 1</i> <i>Person or body</i>	<i>Column 2</i> <i>Action</i>
A Council	Vest in itself land shown or set aside as a reserve on a registered but not certified plan.
A Council	Vest in itself land on a registered but not certified plan that is not shown or set aside as a lot, common property, road or reserve.
The person or body in whom or in which the land is vested	Remove a reservation from land shown or set aside as a reserve on a registered but not certified plan or shown on a plan prepared under this section.

<i>Column 1 Person or body</i>	<i>Column 2 Action</i>
The person or body in whom or in which the land is vested	Remove a reservation from land set aside as a reserve on a certified and registered plan.
The person or body in whom or in which the land is vested	Remove any restriction on the use of land vested under section 18 of the Cluster Titles Act 1974 .

- (1A) A plan referred to in subsection (1) may do anything else that can be done by a plan under this Act.
- (2) In addition to the requirements of this Act about the certification of plans, the Council may certify a plan removing a reservation or restriction prepared under subsection (1) if the applicant satisfies it that the land in the plan need no longer be used for the purpose for which it is currently reserved or used.
- (3) In addition to section 24, on the registration of a plan prepared under this section—
- (a) the land in the plan vests; or
 - (b) any reservation or restriction referred to in the Table in subsection (1) is removed from the land in the plan—
- as is specified in the plan.
- (4) On the registration of a plan vesting land in a body, the land is freed and discharged from any mortgage, charge, lease or sub-lease.
- (5) On the registration of a plan removing a reservation or restriction referred to in the Table in subsection (1) over land, the land becomes a lot.

S. 24A(1A)
inserted by
No. 57/1993
s. 12(3).

S. 24A(2)
amended by
No. 57/1993
s. 12(4).

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- (6) The Registrar may register a plan under this section without delivery of any relevant certificate of title.
 - (7) On the registration of the plan the body in which the land is vested may—
 - (a) subject to section 20 or to any other Act under which the body is created, sell it; or
 - (b) use it for any purpose consistent with any Act under which it operates and with the planning scheme.
 - (8) If a body sells land under this section that was public open space, it must apply the proceeds—
 - (a) first, in paying the expenses of or incidental to the sale;
 - (b) secondly, for any recreational or cultural purpose referred to in item 5 of Schedule 1 of the **Local Government Act 1989**.

25 Notification of Councils and referral authorities¹²

- (1) After registration of the plan, the Registrar must notify the Council and the Council must then notify any public authority for which an easement has been created or in which a reserve has vested.
- (2) The Registrar must notify the Council if a plan which has been lodged in the Office of Titles is—
 - (a) withdrawn; or
 - (b) refused registration by the Registrar.
- (3) The Council must notify any referral authority affected by the withdrawal or refusal.

S. 25(4)
amended by
No. 47/1989
ss 5(4)(i),
6(3)(e)(i)(ii),
repealed by
No. 48/1991
s. 24.

* * * * *

26 Boundary plans

- (1) A person intending to subdivide land or an acquiring authority may apply at any time to the Registrar for approval of a boundary plan showing—
 - (a) the outer boundaries of the land; and
 - (b) abuttals; and
 - (c) any other matter required by the Registrar.
 - (2) The Registrar must—
 - (a) approve the plan; or
 - (b) reject the plan giving reasons in writing—
within the prescribed time.
-

Pt 5 (Heading and ss 27–34) amended by Nos 47/1989 ss 5(4)(j), 9(a)–(p), 10, 19(q), 92/1989 ss 4, 5, 7(c)(d), 48/1991 ss 25–29, 30(1)(2)(b), 57/1993 s. 13, 17(2), 44/2001 s. 3(Sch. item 106), substituted as Pt 5 (Heading and ss 27–34H) by No. 69/2006 s. 211.

PART 5—SUBDIVISIONS WITH OWNERS CORPORATIONS

Division 1—Creation of owners corporation

S. 27 substituted by No. 69/2006 s. 211.

27 How is an owners corporation created?

- (1) A plan may provide for the creation of one or more owners corporations consisting of the owners of specified lots.
- (2) An owners corporation may be—
 - (a) an unlimited owners corporation; or
 - (b) a limited owners corporation.
- (3) The plan must specify whether an owners corporation is an unlimited owners corporation or a limited owners corporation.
- (4) The plan must specify the lots and common property to be affected by the owners corporation.

S. 27A inserted by No. 69/2006 s. 211.

27A If there is common property an owners corporation must be created

A plan which contains common property must provide for the creation of one or more owners corporations.

27B What is an unlimited owners corporation?

- (1) An unlimited owners corporation is an owners corporation that is not a limited owners corporation.
- (2) The plan must be accompanied by a document specifying the purposes of the unlimited owners corporation.

S. 27B
inserted by
No. 69/2006
s. 211.

27C What is a limited owners corporation?

- (1) A limited owners corporation is an owners corporation specified on a plan as a limited owners corporation.
- (2) The plan must be accompanied by a document specifying the purposes of the limited owners corporation.
- (3) Only the members of a limited owners corporation affecting a lot are entitled to use any common property affected by that limited owners corporation.
- (4) The plan may be accompanied by a document specifying the functions or obligations of the limited owners corporation under the **Owners Corporations Act 2006** that are to be carried out or complied with by the unlimited owners corporation affecting the land affected by the limited owners corporation.
- (5) If a document accompanying a plan specifies functions or obligations as provided for in subsection (4), then, despite anything to the contrary in the **Owners Corporations Act 2006**, on the registration of the plan—
 - (a) the unlimited owners corporation must carry out those functions or comply with those obligations instead of the limited owners corporation; and

S. 27C
inserted by
No. 69/2006
s. 211.

s. 27D

- (b) the limited owners corporation is not required to carry out those functions or comply with those obligations.

Example

A document accompanying a plan may specify that the unlimited owners corporation is to issue owners corporation certificates instead of the limited owners corporation.

S. 27D
inserted by
No. 69/2006
s. 211.

27D Restriction on creation of owners corporations

- (1) A lot must not be affected by more than one unlimited owners corporation.
- (2) A lot must not be affected by more than one owners corporation unless—
 - (a) one of the owners corporations is an unlimited owners corporation; and
 - (b) all the other owners corporations affecting the lot are limited owners corporations.

S. 27E
inserted by
No. 69/2006
s. 211.

27E Creation of rules

- (1) A plan providing for the creation of an owners corporation or for the merger of owners corporations may be accompanied by proposed rules for the owners corporation.
- (2) On the registration of the plan, the rules must be taken to be rules made by the owners corporation under the **Owners Corporations Act 2006** and may be revoked or amended accordingly.

Note

Part 8 of the **Owners Corporations Act 2006** provides for the powers to make rules of an owners corporation.

S. 27F
inserted by
No. 69/2006
s. 211.

27F Plan must specify lot entitlement and lot liability

- (1) A plan providing for the creation of an owners corporation or for the merger of owners corporations must specify details of lot entitlement and lot liability.

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- (2) A plan referred to in subsection (1) must be accompanied by a document—
 - (a) specifying the basis for the allocation of lot entitlement and lot liability; and
 - (b) containing the prescribed information.
 - (3) The prescribed information that a document must contain under subsection (2) is not limited to information about the owners corporation or lot entitlement or lot liability.

27G Plan may specify limitations

A plan providing for the creation of an owners corporation may specify that the owners corporation is limited to the common property.

Note

The **Owners Corporations Act 2006** provides that certain provisions of that Act do not apply to an owners corporation that is specified to be limited to the common property.

S. 27G
inserted by
No. 69/2006
s. 211.

27H Registrar to record information

The Registrar must, as prescribed, record information contained in or provided with a plan and must amend that information in the prescribed manner and in the prescribed circumstances.

S. 27H
inserted by
No. 69/2006
s. 211.

28 Creation of owners corporation

- (1) In addition to section 24, when a plan providing for the creation of one or more owners corporations or containing common property is registered—
 - (a) each owners corporation for which the plan provides is incorporated; and
 - (b) the owners of the specified lots become the first members of the owners corporation; and
 - (c) the owners for the time being of the lots are the members of the owners corporation.

S. 28
substituted by
No. 69/2006
s. 211.

- (2) An owners corporation has perpetual succession and a common seal and is capable of suing and being sued in its own name.

Note

An owners corporation has the powers and functions set out in Division 1 of Part 2 of the **Owners Corporations Act 2006**.

S. 29
substituted by
No. 69/2006
s. 211.

29 Owners corporation excluded from Corporations legislation

An owners corporation is declared to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to the whole of the Corporations legislation, otherwise than to the extent that the owners corporation carries out activities that are not authorised by or under this Act or the **Owners Corporations Act 2006**.

Note

This section ensures that neither the Corporations Act nor Part 3 of the ASIC Act will apply in relation to an owners corporation in relation to its performance of functions or exercise of powers under this Act or the **Owners Corporations Act 2006**. Section 5F of the Corporations Act provides that if a State law declares a matter to be an excluded matter in relation to the whole of the Corporations legislation other than to a specified extent, then that legislation will not apply, except to the specified extent, in relation to that matter in the State concerned.

Division 2—Common property

S. 30
substituted by
No. 69/2006
s. 211.

30 Vesting of common property

- (1) In addition to section 24, when a plan containing common property is registered—
- (a) any common property affected by an unlimited owners corporation vests in the owners for the time being of the lots affected by the unlimited owners corporation as tenants in common in shares proportional to their lot entitlement; and

- (b) subject to paragraph (c), any common property affected by a limited owners corporation vests in the owners for the time being of the lots affected by the relevant unlimited owners corporation as tenants in common in shares proportional to their lot entitlement; and
- (c) any common property affected by a limited owners corporation vests in the owners for the time being of the lots affected by the limited owners corporation, if there is no unlimited owners corporation affecting those lots.

- (2) In subsection (1), *relevant unlimited owners corporation* means the unlimited owners corporation affecting the lots affected by the limited owners corporation.

31 Registrar must create folio of Register for common property

S. 31
substituted by
No. 69/2006
s. 211.

- (1) The Registrar must create folios of the Register for any common property in the name of the relevant owners corporation as nominee for the owners of the common property but must not produce a certificate of title for those folios.
- (2) The Registrar may require submission of and cancel any existing certificate of title for common property.

31A Dealings in common property

S. 31A
inserted by
No. 69/2006
s. 211.

- (1) The share in the common property of a member of an owners corporation cannot be dealt with except—
 - (a) as part of a dealing with the member's lot; or
 - (b) under Division 3 or section 32A; or
 - (c) by the owners corporation, in accordance with the regulations.

- (2) A dealing, encumbrance or notification affecting a lot operates as a dealing, encumbrance or notification affecting the lot owner's share in the common property, even though that share is not mentioned in any document giving effect to the dealing, encumbrance or notification affecting the lot.
- (3) The Registrar may only record on the folio of the Register for common property anything affecting the common property only and not the lots.
- (4) A recording made on the folio of the Register for a lot operates in relation to the owner's interest in the common property as if it were also a recording made in relation to that interest on the folio for the common property.

Division 3—Alteration of a subdivision

S. 32
substituted by
No. 69/2006
s. 211.

32 Powers to alter subdivision

If there is a unanimous resolution of the members, an owners corporation may proceed under this Division to do one or more of the following—

- (a) dispose of the fee simple in—
 - (i) all or part of any common property vested in it; or
 - (ii) any other land purchased or obtained by it;
- (b) purchase or otherwise obtain land—
 - (i) for inclusion in or to become common property; or
 - (ii) which is or is to become a lot;
- (c) alter the boundaries of any land affected by the owners corporation;

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- (d) increase or reduce the number of lots affected by the owners corporation;
 - (e) create new lots or new common property;
 - (f) create and name an owners corporation and specify the land to be land affected by that new owners corporation and specify lot entitlement and lot liability in relation to that owners corporation;
 - (g) dissolve itself if—
 - (i) it is an owners corporation without common property vested in it and it owns no land; or
 - (ii) it disposes under this section of all its common property and all the land that it owns;
 - (h) merge with another owners corporation (created on the same or another plan) if—
 - (i) none of the land affected by the first owners corporation is land affected by the other owners corporation and the merger would not result in the same land being land affected by 2 or more unlimited owners corporations; or
 - (ii) one of the merging owners corporations is an unlimited owners corporation and the land affected by that owners corporation includes all the land affected by all other merging limited owners corporations;
 - (i) create, vary or remove any easement or restriction (including an implied easement);
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s. 32AA

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- (j) consolidate into a single lot all the land affected by the owners corporation if—
 - (i) it is an unlimited owners corporation and, if any land affected by it is also affected by a limited owners corporation, the members of that limited owners corporation by unanimous resolution consent to the consolidation; or
 - (ii) none of the land affected by the owners corporation is land affected by another owners corporation;
 - (k) create, alter or extinguish lot entitlement or lot liability in any way necessary because of the exercise of its other powers under this section;
 - (l) amend or cancel a scheme of development under the **Cluster Titles Act 1974** in any way necessary because of the exercise of its other powers under this section;
 - (m) create roads or reserves.

S. 32AA
inserted by
No. 69/2006
s. 211.

32AA Powers do not apply to certain changes relating to common property

Section 32 does not apply to a change in the ownership of the common property that occurs because of a change in the ownership of a lot.

S. 32AB
inserted by
No. 69/2006
s. 211.

32AB No power to compulsorily acquire

An owners corporation cannot under section 32(b) acquire land by compulsory process.

32AC Creation of roads and reserves

S. 32AC
inserted by
No. 69/2006
s. 211.

- (1) The owners corporation may exercise its powers over land under section 32(m) even though the land is not, and will not after the exercise of the power become, land affected by the owners corporation.
- (2) The owners corporation cannot exercise its powers over land under section 32(m) so that the land vests in itself.

32AD Registration of plan

S. 32AD
inserted by
No. 69/2006
s. 211.

- (1) If it proceeds under section 32, an owners corporation must submit for certification and lodge for registration a plan showing the changes to be made to any registered plan.
- (2) Section 22 applies to a plan resulting from the exercise by the owners corporation of its powers over land under section 32 as if it included a requirement that the registered proprietor of land in the plan that is not land affected by the owners corporation must consent to the registration of the plan.
- (3) To the extent that a plan referred to in subsection (1) affects common property, consent to the plan is not required by any person in respect of any lot if the common property is not vested in the owners of that lot.
- (4) If a plan referred to in subsection (1) relates to some but not all of the land in the registered plan and does not relate to common property, consent to the registration of the plan is not required by any person in respect of land that is not the subject of the plan.

s. 32AE

- (5) Despite section 24, on the registration of a plan under this section, the Registrar may if appropriate—
- (a) create a folio of the Register for the existing common property and a folio of the Register for newly created common property in the name of a relevant owners corporation; or
 - (b) create in the name of the relevant owners corporation a single folio of the Register for existing and newly created common property.

S. 32AE
inserted by
No. 69/2006
s. 211.

32AE Lot liability and lot entitlement

In exercising its powers under section 32 to create, alter or extinguish lot entitlement or lot liability, an owners corporation must comply with sections 33(2) and 33(3).

S. 32AF
inserted by
No. 69/2006
s. 211.

32AF Land to which powers may apply

- (1) An owners corporation may only exercise its powers under section 32 in relation to—
- (a) land affected by it; or
 - (b) land (whether on the same or another plan) which, when the power is exercised, will become land affected by it.
- (2) If the exercise by an owners corporation of its powers under section 32 involves land affected by another owners corporation (whether on the same or another plan) and the other owners corporation is not a limited owners corporation all of whose members are members of the first owners corporation, the first owners corporation must first get from the members of the other owners corporation their consent by unanimous resolution.

32AG Dissolution of owners corporation

S. 32AG
inserted by
No. 69/2006
s. 211.

If an owners corporation exercises its power under section 32(g) to dissolve itself—

- (a) the Registrar must not amend or cancel the plan to give effect to the exercise of that power unless satisfied that the owners corporation has no accrued or accruing debts; and
- (b) the owners corporation is dissolved when the Registrar amends or cancels the plan.

32AH Merger of owners corporations

S. 32AH
inserted by
No. 69/2006
s. 211.

If an owners corporation merges with another owners corporation—

- (a) the plan giving effect to the merger must specify the name (by reference to a relevant plan number) of the new owners corporation, the land affected by it, and all relevant lot entitlements and liabilities, and whether it is a limited or unlimited owners corporation; and
- (b) on the registration of that plan—
 - (i) the merging owners corporations are dissolved; and
 - (ii) land affected by those owners corporations ceases to be so affected; and
 - (iii) the new owners corporation is the successor in law of the merging owners corporations; and
 - (iv) if a new limited owners corporation succeeds an unlimited owners corporation, the new owners corporation has, in respect of the assets, rights, liabilities and obligations which

have passed to it from the unlimited owners corporation, all the functions, powers and duties of an unlimited owners corporation.

S. 32AI
inserted by
No. 69/2006
s. 211.

32AI Consolidation, subdivision or alteration

- (1) The owner or owners of a lot or lots affected by an owners corporation on a registered plan may, without obtaining a resolution of the owners corporation, proceed under this subsection to consolidate, subdivide or alter the lot or lots owned, if the consolidation, subdivision or alteration—
 - (a) does not alter the boundaries of common property; and
 - (b) does not alter the boundaries or lot entitlement or liability of lots not being consolidated, subdivided or altered; and
 - (c) does not add an area of land that is more than 10% or, if another percentage is prescribed, that prescribed percentage, of the area of the land in the registered plan to the land affected by the owners corporation.
- (2) If an owner proceeds under subsection (1), the owner must submit for certification and lodge for registration a plan showing the changes to be made to the registered plan.
- (3) Consent to the registration of the plan is not required by any person in respect of land that is not the subject of the plan.
- (4) Despite section 24, on the registration of a plan under this section, the Registrar may, if appropriate—

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- (a) create a folio of the Register for the existing common property and a folio of the Register for newly created common property in the name of a relevant owners corporation; or
 - (b) create in the name of the relevant owners corporation a single folio of the Register for existing and newly created common property.

32AJ Restriction on alteration to plan

S. 32AJ
inserted by
No. 69/2006
s. 211.

If an owners corporation is created on a registered plan, the owners corporation or the owner of a lot on that plan must not submit for certification or lodge for registration a plan consolidating, subdividing, or altering the boundaries of any land affected by the owners corporation except—

- (a) under this Division or section 23, 32A, 36 or 37; or
- (b) in accordance with an order of a court or tribunal under this Act.

32AK Identity of owners corporation not affected by alteration of plan

S. 32AK
inserted by
No. 69/2006
s. 211.

- (1) Unless this Part otherwise provides, the alteration of a registered plan under this Division does not affect the legal identity or continuity of operation of the owners corporation.
- (2) If the alteration of a registered plan for which there is only one owners corporation (the **first owners corporation**) results in the creation of one or more additional owners corporations, the Registrar may rename the first owners corporation.
- (3) An owners corporation that is renamed under subsection (2) is deemed to be the same body under the new name and any reference to that body by the old name in any Act or instrument is

deemed to be a reference to that body by its new name.

S. 32AL
inserted by
No. 69/2006
s. 211.

32AL Registration of plan of consolidation

- (1) On the registration of a plan of consolidation of all the land affected by an owners corporation into a single lot—
 - (a) that owners corporation is dissolved; and
 - (b) if the land is also land affected by another owners corporation, that other owners corporation is dissolved; and
 - (c) the land vests in the former lot owners who are members of the owners corporation exercising the power, as tenants in common in proportion to their lot entitlements in that owners corporation, freed from any caveat, mortgage, charge, lease, sub-lease and from any easement under section 12; and
 - (d) the Registrar must create a folio of the Register accordingly.
- (2) The Registrar must not register a plan referred to in subsection (1) unless satisfied that the owners corporation on the registered plan has no accrued or accruing debts.

Division 4—General provisions relating to plans

S. 32A
substituted by
No. 69/2006
s. 211.

32A Total consolidation or re-subdivision

- (1) The owners of all the land in a plan that includes land affected by one or more owners corporations may submit for certification and lodge for registration a plan consolidating or re-subdividing all that land.
- (2) The Registrar must not register the plan unless satisfied that each owners corporation on the existing plan has no accrued or accruing debts.

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- (3) On the registration of the plan—
- (a) each owners corporation on the previous registered plan is dissolved; and
 - (b) the land affected by each owners corporation on the previous registered plan vests in the former lot owners who were members of that owners corporation as tenants in common in proportion to their lot entitlements in that owners corporation, freed from any caveat, mortgage, charge, lease, sub-lease and from any easement under section 12.

32B New plan may create owners corporation

S. 32B
substituted by
No. 69/2006
s. 211.

- (1) The owners of lots on one or more plans that are not lots affected by an owners corporation may submit for certification and lodge for registration a plan providing for the creation of one or more limited or unlimited owners corporations and amending any registered plan in any way necessary because of that creation.
- (2) The plan must not provide for the creation of common property or the alteration of existing boundaries.
- (3) Consent to the registration of the plan is not required by any other person in respect of any land that is not the subject of the plan.

33 How can lot entitlement and liability be altered?

S. 33
substituted by
No. 69/2006
s. 211.

- (1) If there is a unanimous resolution of the members, the owners corporation may apply to the Registrar in the prescribed form to alter the lot entitlement or lot liability.
- (2) In making any change to the lot entitlement, the owners corporation must have regard to the value of the lot and the proportion that value bears to the total value of the lots affected by the owners corporation.

- (3) In making any change to the lot liability, the owners corporation must consider the amount that it would be just and equitable for the owner of the lot to contribute towards the administrative and general expenses of the owners corporation.

S. 34
substituted by
No. 69/2006
s. 211.

34 Recording of changes to a plan

- (1) The Registrar must record all changes and alterations.
- (2) An owners corporation must inform the Registrar of any change of its address.
- (3) A notice to an owners corporation may be served by post and is properly addressed if the address in the notice is the one shown in the records of the Registrar.

Division 5—Disputes and other proceedings relating to owners corporations

S. 34A
inserted by
No. 69/2006
s. 211.

34A Disputes relating to owners corporations—general

- (1) This section applies if a dispute or any other matter arises under this Act or the regulations and affects—
 - (a) an owners corporation; or
 - (b) an owner of land affected by an owners corporation; or
 - (c) a purchaser in possession under a terms contract of a lot affected by an owners corporation.
- (2) The owners corporation, owner of a lot or purchaser may apply to the Victorian Civil and Administrative Tribunal for an order determining the dispute or matter.
- (3) The Victorian Civil and Administrative Tribunal may make any order it thinks fit on an application under this section.

34B Disputes about easements

S. 34B
inserted by
No. 69/2006
s. 211.

- (1) This section applies if a dispute or other matter arises between the owners of lots, roads or reserves on a plan, in relation to—
 - (a) an easement implied by section 12; or
 - (b) the exercise of rights conferred by the easement; or
 - (c) interference with the easement; or
 - (d) maintenance or repair obligations in relation to the easement.
- (2) Any of the owners may apply to the Victorian Civil and Administrative Tribunal for an order determining the dispute or matter.
- (3) The Victorian Civil and Administrative Tribunal may make any order it thinks fit on an application under this section.

34C VCAT may refer matter to County Court

S. 34C
inserted by
No. 69/2006
s. 211.

The Victorian Civil and Administrative Tribunal may refer a dispute or other matter to which section 34A or 34B applies to the County Court, on its own motion or on the application of a party if the Tribunal is satisfied that it ought to be so referred having regard to—

- (a) the fact that the dispute or other matter raises a question of general importance; and
 - (b) this Act and the regulations; and
 - (c) the complexity of the matter; and
 - (d) the amount (if any) in dispute.
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S. 34D
inserted by
No. 69/2006
s. 211.

34D Applications relating to plans

- (1) A member of the owners corporation, an owners corporation, an administrator of an owners corporation or a person with an interest in the land affected by the owners corporation may apply to the Victorian Civil and Administrative Tribunal for—
 - (a) an order requiring the owners corporation to do any of the things set out in section 32 or 33; or
 - (b) an order consenting on behalf of a member or group of members of an owners corporation to the doing by the owners corporation of any of the things set out in section 32 or 33; or
 - (c) an order consenting on behalf of a person whose consent to the registration of a plan is required under section 22; or
 - (d) an order restraining the owners corporation from doing any action under this Act or the regulations.
- (2) The Victorian Civil and Administrative Tribunal may make an order on an application under subsection (1)(a) even though there is no unanimous resolution of the owners corporation authorising the action.
- (3) The Victorian Civil and Administrative Tribunal must not make an order on an application under subsection (1)(b) unless it is satisfied that—
 - (a) the member or group of members cannot vote because the member is or the members are dead, out of Victoria, or cannot be found; or

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- (b) for any other reason it is impracticable to obtain the vote of the member or members;
or
 - (c) the member has or members have refused consent to the proposed action and—
 - (i) more than half of the membership of the owners corporation having total lot entitlements of more than half of the total lot entitlement of the members of the owners corporation consent to the proposed action; and
 - (ii) the purpose for which the action is to be taken is likely to bring economic or social benefits to the subdivision as a whole greater than any economic or social disadvantages to the members who did not consent to the action.
 - (4) For the purposes of sections 32 and 33, an order made on an application under subsection (1)(b) is to be treated as a vote by the member in favour of the proposed action of the plan.
 - (5) The Victorian Civil and Administrative Tribunal must not make an order on an application under subsection (1)(c) unless it is satisfied that—
 - (a) the person whose consent is required is dead or out of Victoria or cannot be found; or
 - (b) it is otherwise impracticable to obtain the person's consent; or
 - (c) it is impracticable to serve the person with the notice under section 22(1B).
 - (6) Subject to this section, the Victorian Civil and Administrative Tribunal may make any order it thinks fit on an application under this section.
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s. 34E

S. 34E
inserted by
No. 69/2006
s. 211.

34E Application for order requiring owners corporation to comply

- (1) A person (including a Minister, the Council or a public authority) for whose benefit a requirement or duty is imposed on an owners corporation by this Act or the regulations may apply to the Victorian Civil and Administrative Tribunal for an order compelling the owners corporation to carry out the requirement or perform the duty.
- (2) The Victorian Civil and Administrative Tribunal may make any order it thinks fit on an application under this section.

S. 34F
inserted by
No. 69/2006
s. 211.

34F Order to Registrar

The Victorian Civil and Administrative Tribunal may in an order under this Division direct or authorise the Registrar to dispense with the delivery of any certificate of title or duplicate instrument or other document.

Division 6—Winding up of owners corporation

S. 34G
inserted by
No. 69/2006
s. 211.

34G Winding up of an owners corporation

- (1) An owners corporation, a member of the owners corporation, an administrator of an owners corporation or a registered mortgagee may apply to the Victorian Civil and Administrative Tribunal for the winding up of the owners corporation.
- (2) The Victorian Civil and Administrative Tribunal may order the owners corporation to be wound up if it decides that is just and equitable.
- (3) A person claiming an estate or interest in the land, a creditor of the owners corporation and an insurer who has insurance over any part of the land have a right to be heard in an application.

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- (4) Notice of an application must be served on the Registrar who must record the notice in the prescribed manner.
 - (5) The Victorian Civil and Administrative Tribunal may make any directions or impose any conditions or vary, modify or cancel the order as it thinks fit.

34H Cancellation or amendment of plan on winding up

S. 34H
inserted by
No. 69/2006
s. 211.

- (1) If the Victorian Civil and Administrative Tribunal makes an order under section 34G in respect of an unlimited owners corporation, the applicant for the order may apply to the Registrar for the amendment or cancellation of the plan and the Registrar may amend or cancel the plan in accordance with the order.
- (2) If the Victorian Civil and Administrative Tribunal makes an order under section 34G in respect of a limited owners corporation, the applicant for the order may apply to the Registrar for the amendment of the plan and the Registrar may amend the plan in accordance with the order.
- (3) An unlimited owners corporation is dissolved when the Registrar amends or cancels the plan under subsection (1) and, subject to the order of the Victorian Civil and Administrative Tribunal, the lots and common property (if any) become a single lot and vest in the former lot owners as tenants in common, in proportion to their lot entitlements and the Registrar must create a folio of the Register accordingly.
- (4) A limited owners corporation is dissolved when the Registrar amends the plan under subsection (2).
- (5) After amending or cancelling the plan, the Registrar must notify the Council.

PART 6—MISCELLANEOUS

35 Acquisition of land by acquiring authority

S. 35
substituted by
No. 47/1989
s. 4(3).

S. 35(1)
amended by
No. 48/1991
s. 31(1).

(1) If an acquiring authority is to acquire or acquires land that cannot be disposed of without being subdivided, the authority must, in accordance with section 5(2), submit a plan to the Council for certification and lodge it for registration as if the authority were the owner of all the land to be subdivided by the acquisition.

S. 35(2)
amended by
Nos 48/1991
s. 31(2),
69/2006
s. 212(a).

(2) If a plan submitted by the authority for certification relates to part of the land affected by an owners corporation, the Council may require the acquiring authority to submit for certification a new plan of the land affected by the owners corporation or to amend the plan so that it includes all that land.

S. 35(3)(a)
amended by
No. 48/1991
s. 31(3)(a).

(3) A plan submitted by an acquiring authority¹³—
(a) may do anything which can be done by a plan including, but not limited to, one or more of the following:

S. 35(3)(a)(i)
amended by
No. 57/1993
s. 14(1)(a).

- (i) Maintain without alteration of boundaries except for the purposes of acquisition or to correct any minor defect in boundaries found on survey the number of separately disposable parcels of land in the area covered by the plan, excluding the land to be acquired;
- (ii) Reduce the number of separately disposable parcels of land in the area covered by the plan, excluding the land to be acquired;

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- (ia) Alter any separately disposable parcels of land, excluding the land to be acquired; **S. 35(3)(a)(ia) inserted by No. 48/1991 s. 31(3)(b).**
- (ib) Subject to section 33(2) and (3), create new lot entitlements or lot liabilities; **S. 35(3)(a)(ib) inserted by No. 48/1991 s. 31(3)(b).**
- (ii) Create additional lots;
- (iv) Include land that the authority does not intend to acquire any part of which abuts other land in the plan;
- (v) Include land any part of which abuts land in the plan that is either vested in or registered in the name of the authority;
- (vi) Alter the lot entitlement or liability of land on the plan;
- (via) Consolidate into a single lot all or any of the land on the plan to be acquired by the authority; **S. 35(3)(a)(via) inserted by No. 57/1993 s. 14(1)(b).**
- (vii) Amend a registered plan in any way necessary because of the things done by the plan; and **S. 35(3)(a)(vii) inserted by No. 48/1991 s. 31(3)(c).**
- (b) must state which land is to be acquired by the authority and whether it is to be acquired free from or subject to encumbrances; and **S. 35(3)(b) amended by No. 57/1993 s. 17(3).**
- (c) having regard to subsection (6), must, for each thing done by the plan, state whether it is to happen—
- (i) on the registration of the plan; or
- (ii) to the extent that it relates to land acquired by compulsory process, when the Registrar records the vesting date; or
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S. 35(3)(c)(iii)
amended by
No. 57/1993
s. 14(1)(c).

(iii) to the extent that it relates to land acquired by agreement, on the vesting date; and

S. 35(3)(d)
inserted by
No. 57/1993
s. 14(1)(c).

(d) if the plan consolidates land acquired or to be acquired by the authority, must (despite paragraph (c)) state that the consolidation is to happen—

(i) on the registration of the plan, if all the land to be consolidated has been acquired by the authority before that registration; or

(ii) if any of the land is acquired after the registration of the plan, on the last of the vesting dates of, or recorded for, that land.

S. 35(4)
substituted by
No. 48/1991
s. 31(4).

(4) Consent to the registration of the plan is not required by any person to the extent that the plan¹⁴—

S. 35(4)(a)
amended by
No. 57/1993
s. 14(2)(a).

(a) maintains without alteration of boundaries, except for the purposes of acquisition or to correct any minor defect in boundaries found on survey, the number of separately disposable parcels of land in the area covered by the plan, excluding the land to be acquired; or

(b) creates new lot entitlements or lot liability as a result of the acquisition; or

S. 35(4)(c)
amended by
No. 57/1993
s. 14(2)(b).

(c) relates to land vested in or registered in the name of the Authority; or

S. 35(4)(d)
inserted by
No. 57/1993
s. 14(2)(b).

(d) relates to land acquired or to be acquired by the authority.

(5) Sections 5(3)(b) and 6(1)(b) do not apply to land in a plan submitted or lodged under this section.

S. 35(5)
substituted by
No. 48/1991
s. 31(4).

(6) If a plan lodged by an acquiring authority is registered—

(a) the authority must advise the Registrar of the vesting date of each piece of land in the plan acquired or to be acquired by compulsory process as soon as possible after that vesting date; and

(b) the Registrar must record the vesting dates advised by the authority; and

(c) any thing done by the plan (except consolidation) in relation to land to be acquired by compulsory process has effect when the Registrar records the vesting date of that land, and this Act applies to those things as if the plan were registered on that date; and

S. 35(6)(c)
substituted by
No. 48/1991
s. 31(5)(a),
amended by
No. 57/1993
s. 14(3)(a).

(d) any thing done by the plan (except consolidation) in relation to land to be acquired by agreement has effect on the vesting date of that land, and this Act applies to those things as if the plan were registered on that date; and

S. 35(6)(d)
substituted by
No. 48/1991
s. 31(5)(a),
amended by
No. 57/1993
s. 14(3)(a).

(e) any thing else done by the plan (except consolidation) has effect when the plan is registered; and

S. 35(6)(e)
substituted by
No. 48/1991
s. 31(5)(a),
amended by
No. 57/1993
s. 14(3)(a).

(ea) this Act applies to land on the plan that the authority acquires by agreement as if section 24(2)(c) referred to "registered in the name of" instead of "vested" and section 24(2A) referred to "is registered in the name of" instead of "vests"; and

S. 35(6)(ea)
inserted by
No. 48/1991
s. 31(5)(a).

Subdivision Act 1988
No. 53 of 1988

s. 35

S. 35(6)(eb)
inserted by
No. 48/1991
s. 31(5)(a).

(eb) despite paragraphs (c) and (d), the boundaries of the land to be acquired are those shown on the plan but the status of that land does not change unless in accordance with paragraph (c) or (d); and

(f) the holder of any relevant certificate of title for land in the plan must, if requested, deliver it to the Registrar; and

S. 35(6)(g)
substituted by
No. 48/1991
s. 31(5)(b),
amended by
No. 85/1998
s. 24(Sch.
item 57.2).

(g) if any land in the plan is not under the operation of the **Transfer of Land Act 1958** or steps have not been taken to bring it under that Act, the Registrar, before registering the plan, must bring the land under the operation of that Act; and

S. 35(6)(h)
inserted by
No. 48/1991
s. 31(5)(b),
amended by
No. 69/2006
s. 212(b).

(h) unless the plan states that land is to remain land affected by an owners corporation and its existing lot entitlement and liability is to continue, the land acquired ceases to be land affected by an owners corporation and to have any lot entitlement or liability—

(i) if it is acquired by compulsory process, when the Registrar records the vesting date of the land; or

S. 35(6)(h)(ii)
amended by
No. 57/1993
s. 14(3)(b).

(ii) if it is acquired by agreement, on the vesting date; and

S. 35(6)(i)
inserted by
No. 57/1993
s. 14(3)(b).

(i) to the extent indicated by the plan, land is consolidated into a single lot on the date indicated in the plan; and

S. 35(6)(j)
inserted by
No. 57/1993
s. 14(3)(b).

(j) if on the registration of the plan there is still land to be acquired by the authority, then despite anything to the contrary in section 24 the Registrar need not create folios of the Register for that land until the last of the vesting dates for or recorded for that land; and

-
- (k) if the plan consolidates land into a single lot, then despite anything to the contrary in section 24 or paragraph (j) the Registrar need not create a folio of the Register for the land until the consolidation occurs and may then create a single folio of the Register for the land in the name of the authority; and
- (l) the Registrar may create any folio of the Register in the name of the authority, for land on the plan that is vested in or acquired by the authority.
- (7) This Act does not limit or affect the operation of the **Land Acquisition and Compensation Act 1986**.
- (8) An acquiring authority may under this section submit for certification and lodge for registration a plan subdividing or consolidating any land vested in it or registered in its name.
- (9) Subsections (2) to (6) apply to a plan referred to in subsection (8) as if—
- (a) the land in the plan were land acquired by the authority;
- (b) subsection (3)(a)(i) provided—
- "(i) maintain the number of separately disposable parcels of land in the area covered by the plan;"
- (c) in subsection (3)(a)(ii) the reference to "excluding the land to be acquired" were deleted;
- (d) subsection (3)(b)(c) and subsection (6)(a) to (d) and (ea) were deleted.
- (10) Without limiting subsection (9), a plan referred to in subsection (8) may do anything that can be done by a plan referred to in section 24A.
- S. 35(6)(k) inserted by No. 57/1993 s. 14(3)(b).
- S. 35(6)(l) inserted by No. 57/1993 s. 14(3)(b).
- S. 35(7) inserted by No. 48/1991 s. 31(6).
- S. 35(8) inserted by No. 48/1991 s. 31(6), amended by No. 57/1993 s. 14(4).
- S. 35(9) inserted by No. 48/1991 s. 31(6).
- S. 35(9)(b) substituted by No. 57/1993 s. 14(5).
- S. 35(10) inserted by No. 57/1993 s. 14(6).

36 Power of owner to acquire or remove easements

S. 36(1)
substituted by
No. 48/1991
s. 32(1),
amended by
Nos 34/1994
s. 6(1),
52/1998 s.
311(Sch. 1
item 86.2(a)).

(1) If—

- (a) when considering a proposed amendment to a planning scheme or an application for a permit or to amend a permit; or
- (b) in implementing an amendment to a planning scheme; or
- (c) in a condition in a permit—

the Council or a referral authority states in writing that it considers that the economical and efficient subdivision or consolidation (whether existing or proposed) or servicing of, or access to, land covered by the amendment, proposed amendment, application or permit requires the owner of land to—

- (d) remove a right of way over the owner's land; or
- (e) acquire or remove an easement over—
 - (i) other land in the subdivision or consolidation; or
 - (ii) other land in the vicinity—

and that the removal or acquisition will not result in an unreasonable loss of amenity in the area affected by the removal or acquisition, the owner may apply to the Victorian Civil and Administrative Tribunal for leave to remove the right of way or acquire or remove the easement compulsorily¹⁵.

S. 36(1AA)
inserted by
No. 48/1991
s. 32(1),
amended by
No. 34/1994
s. 6(2).

- (1AA) In conferring powers on a Council or referral authority under subsection (1) it is the intention of Parliament that, in considering a matter for the purposes of that subsection, the Council or referral authority should make an assessment of the engineering and amenity aspects of the matter, is

not bound to notify anyone affected or to hear objections, but objections to that assessment may be raised before the Tribunal¹⁶.

- (1A) The Tribunal may give leave subject to any conditions it thinks fit.

S. 36(1A) inserted by No. 47/1989 s. 4(4)(a), amended by No. 52/1998 s. 311(Sch. 1 item 86.2(b)).

- (2) If leave is given—

S. 36(2) substituted by No. 47/1989 s. 4(4)(b).

- (a) in accordance with any conditions to which the leave is subject, the owner may compulsorily acquire the easement and¹⁷—

* * * * *

S. 36(2)(a)(i) repealed by No. 57/1993 s. 15(1).

- (ii) the **Land Acquisition and Compensation Act 1986** applies to the acquirement of the easement, and for that purpose this section is the special Act and the owner is the Authority; or

- (b) in accordance with any conditions to which leave is subject, the owner may submit for certification and lodge for registration a plan to remove the easement and—

- (i) unless the Tribunal otherwise directs, the consent of any person having an interest in land benefited by the easement is not required for its removal, and section 22(1)(c)(d) and (da) does not apply to the removal of the easement; and

S. 36(2)(b)(i) amended by No. 48/1991 s. 32(2).

s. 37

S. 36(2)(b)(ii)
amended by
No. 48/1991
s. 32(3).

- (ii) Parts 3, 4, 6, 7, 10 and 11 of the **Land Acquisition and Compensation Act 1986** apply to claims for compensation on the removal of the easement by persons having an interest in land benefited by the easement as if the owner who removed the easement had acquired by compulsory process an interest in land benefited by the easement, and for that purpose this section is the special Act and that owner is the Authority.

S. 36(3)
repealed by
No. 48/1991
s. 32(4).

* * * * *

S. 37
substituted by
No. 47/1989
s. 8(2).

37 Staged subdivision¹⁸

S. 37(2)
repealed by
No. 48/1991
s. 33(1),
new s. 37(2)
inserted by
No. 34/1994
s. 7(2).

- (1) A staged subdivision is a scheme for the subdivision of land in stages.
- (2) If a planning scheme or permit authorises a staged subdivision, that staged subdivision may be done—
- (a) as a series of separate subdivisions in accordance with the provisions of this Act other than this section; or
 - (b) by using the procedure set out in subsections (3) to (10).

S. 37(3)
amended by
No. 34/1994
s. 7(3).

- (3) If a planning scheme or permit authorises a staged subdivision and the procedure in this section is used—
- (a) a master plan must be submitted for certification and lodged for registration and must specify the lots in the first stage and contain the prescribed information; and

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- (b) a plan for the second or a subsequent stage must contain the prescribed information; and
- (c) a plan for the second or a subsequent stage may do any one or more of the following—
- (i) create additional lots on, or alter the lots on, the land in that stage;
 - (ii) in relation to the land in that stage, create an owners corporation, common property, lot entitlement or lot liability; **S. 37(3)(c)(ii) amended by No. 69/2006 s. 212(c).**
 - (iii) create, vary or remove an easement or restriction over land in that stage;
 - (iiia) Set aside additional roads or reserves on the land in that stage; **S. 37(3)(c)(iiia) inserted by No. 48/1991 s. 33(2).**
 - (iv) Amend the master plan or a plan for an earlier stage by—
 - (A) adding to the membership of an existing owners corporation; or **S. 37(3)(c)(iv)(A) amended by No. 69/2006 s. 212(d).**
 - (B) adding to existing common property; or
 - (C) Subject to sections 33(2) and (3), changing lot entitlement or liability of existing lots; or
 - (D) showing land on that plan as land benefited by an easement or restriction created over the land in the plan for the second or subsequent stage;
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s. 37

S. 37(3)(c)(v)
amended by
No. 48/1991
s. 33(5).

- (v) Amend the master plan or a plan for an earlier stage in any way not provided for in subparagraph (iv) if—
 - (A) the amendment does not affect common property; and
 - (B) section 22 is complied with, but as if it required consent to the amendment in respect of any lot on the master plan or a plan for an earlier stage shown on the plan sought to be registered as being affected by it and as if the persons listed in section 22(1A) included each person who, before the lodging of the plan, is an owner or transferee under an instrument lodged for registration.

S. 37(4)
amended by
No. 69/2006
s. 212(e).

- (4) The amendment of a registered plan under this section does not affect the legal identity or continuity of operation of an owners corporation created on the plan.

S. 37(5)
amended by
No. 69/2006
s. 212(f).

- (5) A plan for a second or a subsequent stage may be submitted for certification and lodged for registration by the owner of all the land in that stage or the applicant for the certification and registration of the master plan, and, if an owners corporation is created on the master plan or a plan for an earlier stage, the unanimous resolution of the owners corporation is not required for any change made to that plan by a plan for a subsequent stage.
- (6) When registering a master plan, the Registrar must record the prescribed information.

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- (7) When registering a plan for the second or a subsequent stage, the Registrar must—
- (a) record the prescribed information; and
 - (b) make any necessary amendments to the information recorded for any earlier stage that are necessary because of the registration of the subsequent plan.

- (8) A plan for the second or a subsequent stage may take the land in that stage or in that or any future stages out of the staged subdivision and, if it does this—

S. 37(8)
inserted by
No. 48/1991
s. 33(6).

- (a) must amend the master plan so as to show the land as a lot on the plan; and
- (b) subject to section 33(2) and (3), must make any necessary amendments to lot entitlement and liability; and
- (c) may provide that the land in the plan becomes a lot affected by any relevant owners corporation.

S. 37(8)(c)
amended by
No. 69/2006
s. 212(g).

- (9) On the registration of a plan referred to in subsection (8)—

S. 37(9)
inserted by
No. 48/1991
s. 33(6).

- (a) this section ceases to apply to the land in the plan; and

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S. 37(9)(b)
repealed by
No. 57/1993
s. 16.

- (c) any requirement made in the statement of compliance for the master plan ceases to apply to the land in the newly registered plan.

s. 39

S. 37(10)
inserted by
No. 48/1991
s. 33(6).

- (10) A plan referred to in subsection (8) may amend the master plan or a plan for any earlier stage in any way necessary because the land in the plan is taken out of the staged subdivision.

S. 38
amended by
Nos 47/1989
s. 9(q)–(s),
57/1989
s. 5(6)(a)(b),
48/1991 s. 34,
34/1994 s. 8,
repealed by
No. 69/2006
s. 213.

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S. 39
(Heading)
inserted by
No. 69/2006
s. 214(1).

39 General disputes arising under this Act¹⁹

S. 39(1)
amended by
No. 48/1991
s. 35(a),
substituted by
No. 52/1998
s. 311(Sch. 1
item 86.3).

- (1) An owner, an applicant, a Council or a referral authority may apply to the Victorian Civil and Administrative Tribunal for the determination of a dispute arising under this Act or the regulations.

S. 39(2)(a)
amended by
No. 69/2006
s. 214(2).

- (2) Subsection (1) does not apply to a dispute—
(a) under section 35 or referred to in Division 5 of Part 5; or

S. 39(2)(b)
amended by
No. 92/1989
s. 7(e),
substituted by
No. 52/1998
s. 311(Sch. 1
item 86.4).

- (b) that involves a decision or matter referred to in section 149 or 149A of the **Planning and Environment Act 1987**; or

- (c) relating to an enforcement order under section 114 of that Act; or

- (d) relating to an agreement under section 173 of that Act; or

- (e) relating to orders of a Court.

- (3) On the application of any person, a referral authority, a responsible authority or the Minister, the County Court may order that the registration of a certified plan be stopped if there has been—
- (a) a material mis-statement or concealment of fact in the application for certification or in relation to the statement of compliance under section 21; or
 - (b) a material breach of this Act or the regulations or of any other Act or regulations or the planning scheme; or
 - (c) any failure to give notice under section 22(1B) when requested to do so.
- (4) In an urgent case, the Court may make an interim order under subsection (3) without first giving notice to any person.
- (5) Any dispute under section 35 must be referred to the Minister, whose decision takes the place of the decision of the Council or a referral authority.

S. 39(3)(c)
substituted by
No. 48/1991
s. 35(b).

40 Review of refusal or failure to decide

- (1) An applicant may apply to the Victorian Civil and Administrative Tribunal for review of—
- (a) a decision of a Council to refuse to—
 - (i) certify or re-certify a plan; or
 - (ii) approve an engineering plan; or
 - (iii) issue a statement of compliance; or
 - (b) a decision of a referral authority to—
 - (i) refuse to consent to the certification or amendment of a plan; or
 - (ii) refuse to approve an engineering plan; or

S. 40
amended by
Nos 47/1989
s. 19(r),
48/1991
s. 36(1)-(3),
substituted by
No. 52/1998
s. 311(Sch. 1
item 86.5).

S. 40(1)(c)
amended by
No. 47/2007
s. 21.

- (iii) make a requirement under section 44(3F); or
 - (c) a decision of a Council or referral authority to require alterations to a plan or an engineering plan; or
 - (d) a decision of a Council or referral authority to require the applicant to enter into an agreement under section 17(2)(c) or 21(1)(b)(ii).
- (2) An owner who requests the Council or a referral authority to make a statement under section 36 or has applied for a permit or requested a permit to be amended may apply to the Victorian Civil and Administrative Tribunal for review of a decision of the Council or referral authority to refuse to make the statement.
 - (3) A reference in subsection (2) to a decision to refuse to make a statement includes a reference to a failure to make the statement within the prescribed time.
 - (4) A reference in subsection (1) or (2) to a decision to refuse to do a thing includes a reference to a failure to do that thing.
 - (5) An applicant under section 44(4A), (5), (5A) or (5B) may apply to the Victorian Civil and Administrative Tribunal for review of a refusal of the Council to consent to the application.
 - (6) Without limiting its powers on review, if the Tribunal finds that a Council or referral authority has unreasonably refused or failed to take any action, the Tribunal may order that the action be carried out by another person, wholly or partly, at the cost of the Council or referral authority.

41 Application for declaration

- (1) A person may apply to the Victorian Civil and Administrative Tribunal for a declaration concerning any matter that could form the subject of an application to that Tribunal under this Act (except an application under section 39).
- (2) On an application under subsection (1) the Tribunal may make any declaration it thinks appropriate in the circumstances.
- (3) The Tribunal's power to make a declaration under this section is exercisable only by a presidential member of the Tribunal.

S. 41 amended by No. 47/1989 s. 16, repealed by No. 12/1989 s. 4(1)(Sch. 2 item 114.1) (as amended by No. 53/1988 s. 45 (as amended by No. 47/1989 s. 23)), new s. 41 inserted by No. 52/1998 s. 311(Sch. 1 item 86.6).

41A Parties not restricted to grounds previously notified

A party in a proceeding for review under this Act is not restricted at the hearing of the proceeding to any grounds previously notified to the other parties (whether in the course of or before the proceeding) or the Victorian Civil and Administrative Tribunal.

S. 41A inserted by No. 52/1998 s. 311(Sch. 1 item 86.6).

41B Matters Tribunal must take into account

In determining an application under this Act (other than an application under section 39) the Victorian Civil and Administrative Tribunal must—

- (a) take into account any relevant planning scheme; and
- (b) where appropriate, have regard to any planning scheme or amendment adopted by a planning authority under the **Planning and Environment Act 1987** but not, as at the date the application is determined, approved by the Minister or the planning authority; and

S. 41B inserted by No. 52/1998 s. 311(Sch. 1 item 86.6).

S. 41B(b) amended by No. 81/2004 s. 51.

- (c) take account of and give effect to any relevant State environment protection policy declared in any Order made by the Governor in Council under section 16 of the **Environment Protection Act 1970**; and
- (d) where appropriate, have regard to any agreement made under section 173 of the **Planning and Environment Act 1987** affecting land the subject of the application.

42 Delegation by the Minister

S. 42(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (1) The Minister may delegate in writing any powers, duties or functions under this Act to a Department Head or any employee in the public service.
- (2) When the Minister has the functions of a municipal council, he or she may delegate in writing any of these functions to a council, Minister or a public authority.

42A Registrar may approve forms

S. 42A
inserted by
No. 2/2008
s. 32.

- (1) Subject to this Act and the regulations, the Registrar may from time to time approve forms for use under this Act.
- (2) The Registrar must publish a copy of each approved form on the Internet site for the Office of Titles.
- (3) If the Registrar approves a form for use under this Act, any form in or to the like effect of that form is sufficient in law.

43 Regulations

- (1) The Governor in Council may make regulations—
 - (a) prescribing the manner or form of giving a notice; and
 - (b) prescribing the manner or form of an application; and

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|--|--|
| (ba) regulating the making of applications; and | S. 43(1)(ba)
inserted by
No. 47/1989
s. 17(1)(a). |
| (bb) prescribing the form and content of plans;
and | S. 43(1)(bb)
inserted by
No. 47/1989
s. 17(1)(a). |
| (bc) prescribing matters in relation to the
interpretation of plans of strata or cluster
subdivision or strata or cluster
redevelopment; and | S. 43(1)(bc)
inserted by
No. 47/1989
s. 17(1)(a). |
| (bd) prescribing classes of plans to be exempted
from the referral requirements in section 8;
and | S. 43(1)(bd)
inserted by
No. 47/1989
s. 17(1)(a). |
| (c) prescribing what constitutes evidence of
completion; and | |
| (d) prescribing time limits including different
time limits for different classes of cases; and | S. 43(1)(d)
amended by
No. 47/1989
s. 17(1)(b). |
| (e) prescribing the time within which any
application for review to the Victorian Civil
and Administrative Tribunal may be made;
and | S. 43(1)(e)
amended by
No. 47/2007
s. 22. |
| (f) prescribing standards for plans, survey marks
and the laying out of subdivisions; and | |
| (g) requiring records or registers to be kept and
prescribing the content and manner of
keeping records or registers under this Act or
the regulations; and | S. 43(1)(g)
substituted by
No. 47/1989
s. 17(1)(c). |

Subdivision Act 1988
No. 53 of 1988

s. 43

S. 43(1)(h)
amended by
Nos 47/1989
s. 17(1)(d),
92/1989 s. 7(f),
28/2000
s. 23(a),
repealed by
No. 69/2006
s. 215(a).

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S. 43(1)(i)
amended by
No. 47/1989
s. 17(1)(e),
repealed by
No. 69/2006
s. 215(b).

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S. 43(1)(ia)
inserted by
No. 47/1989
s. 17(1)(f),
amended by
No. 28/2000
s. 23(b),
repealed by
No. 69/2006
s. 215(c).

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S. 43(1)(ib)
inserted by
No. 47/1989
s. 17(1)(f).

- (ib) prescribing the powers and duties of the Registrar in connection with plans and other matters arising under this Act or the regulations including authorising the Registrar—
- (i) to allocate plan numbers; and
 - (ii) to publish acceptable abbreviations to be used on plans; and
 - (iii) to charge fees for supplying a copy of any document; and
 - (iv) to charge fees for lodging or sending any document by post; and

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- (v) to supply information concerning existing registered easements for the purposes of section 12 and to charge fees for doing so; and **S. 43(1)(ib)(v) inserted by No. 48/1991 s. 37(a).**
- (j) prescribing fees for any thing done under this Act; and
- (ja) prescribing forms for the purposes of this Act; and **S. 43(1)(ja) inserted by No. 2/2008 s. 33.**
- (k) prescribing penalties not exceeding 20 penalty units or 6 months imprisonment for a contravention of the regulations; and
- (l) providing for any other matter which is authorised or required to be prescribed or necessary to be prescribed to carry out this Act. **S. 43(1)(l) amended by No. 48/1991 s. 37(b).**
- (2) The regulations may—
- (a) prescribe fees including—
- (i) different fees for different classes of applications, determinations, documents or things done under this Act; and
- (ii) composite fees payable to the responsible authority for consideration of an application by the responsible authority and any referral authority or the Council; and
- (iii) maximum and minimum fees related to the costs and value of services or works; and **S. 43(2)(a)(iii) substituted by No. 47/1989 s. 17(2)(a).**
- (iv) the fixing by Councils of fees to be charged for checking engineering plans; and **S. 43(2)(a)(iv) inserted by No. 47/1989 s. 17(2)(a).**
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s. 43

S. 43(2)(a)(v)
inserted by
No. 47/1989
s. 17(2)(a).

(v) fees to be substituted for the fees fixed
by a provision applied by section
44(3B); and

- (b) require a responsible authority to give a
referral authority or Council the fees
collected on its behalf; and
- (c) empower a responsible authority, referral
authority or Council to waive or rebate the
payment of a fee in specified circumstances;
and
- (d) require the making of a statutory declaration;
and
- (e) empower a responsible authority to make an
administration charge not exceeding the
prescribed amount for collecting fees
referred to in paragraph (b); and

S. 43(2)(f)
inserted by
No. 47/1989
s. 17(2)(b).

(f) require a Council to give information about a
plan in specified circumstances; and

S. 43(2)(g)
inserted by
No. 47/1989
s. 17(2)(b).

(g) be of general or limited application and may
differ according to differences in time, place
or circumstance.

- (3) The regulations may apply, adopt or incorporate
any document, code, standard, rule, specification
or method formulated, issued, prescribed or
published by any authority or body whether—
 - (a) wholly or partially or as amended by the
regulations; or
 - (b) as formulated, issued, prescribed or
published at the time the regulations are
made or at any time before then; or
 - (c) as formulated, issued, prescribed or
published from time to time.

- (4) Regulations made under this Act may be disallowed in whole or in part by resolution of either House of the Parliament in accordance with the requirements of section 6(2) of the **Subordinate Legislation Act 1962**.
- (5) Disallowance of a regulation under subsection (4) is deemed to be disallowance by the Parliament for the purposes of the **Subordinate Legislation Act 1962**.

44 Repeals and savings

- (1) The following are **repealed**—
- (a) the **Strata Titles Act 1967**;
 - (b) the **Cluster Titles Act 1974**;
 - (c) sections 569AA, 569AB, 569, 569A, 569B, 569BAA, 569C, 569D, 569E, 569G, 569H, 569I, 570, 571, 572(1), 656F, 656G, 693A, 693B and 696AA of the **Local Government Act 1958**;
 - (d) the **Transfer of Land (Amendment) Act 1984**;
 - (e) the **Sale of Land (Allotments) Act 1985**.
- (2) Subject to this section, if before the commencement of this section or not later than 6 months after its commencement—
- (a) a person or an acquiring authority—
 - (i) gives notice under section 569 of the **Local Government Act 1958**, section 4 of the **Strata Titles Act 1967** or section 4 of the **Cluster Titles Act 1974**; or

S. 44(1)(c)
amended by
No. 47/1989
s. 20(1).

S. 44(1)(d)
inserted by
No. 47/1989
s. 20(2).

S. 44(1)(e)
inserted by
No. 47/1989
s. 20(2).

S. 44(2)
substituted by
No. 47/1989
s. 18(1)(e).

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- (ii) submits a plan of subdivision or consolidation for sealing by a Council;
or
 - (iii) has a plan of subdivision or consolidation sealed; or
- (b) an acquiring authority—
- (i) gives notice of intention to acquire land under the **Land Acquisition and Compensation Act 1986**; or
 - (ii) commences negotiations to acquire land that has been publicly advertised for sale; or
 - (iii) serves a statement under section 7(1)(b) of the **Land Acquisition and Compensation Act 1986** that it has no intention to acquire land compulsorily; or
 - (iv) obtains a certificate from the Minister under section 7(1)(c) of the **Land Acquisition and Compensation Act 1986** concerning any land—

the person or acquiring authority may choose—

- (c) to prepare a plan and have it certified, lodged and registered under this Act and not to proceed with action referred to in paragraph (a); or
- (d) to—
 - (i) have the plan sealed, and, where the land is under the operation of the **Transfer of Land Act 1958**, lodged and approved or registered; or
 - (ii) proceed with the acquisition—

as if this Act (except subsections (2) to (11) of this section) had not commenced.

-
- (3) Subject to this section, if before the commencement of this section a person or acquiring authority has lodged a plan of subdivision or consolidation for registration or approval by the Registrar, the plan must be dealt with as if this Act (except for subsections (2) to (11) of this section) had not commenced. S. 44(3) substituted by No. 47/1989 s. 18(1)(e).
- (3A) Subject to this section, if a person or acquiring authority makes a choice under subsection (2)(d)— S. 44(3A) inserted by No. 47/1989 s. 18(1)(e).
- (a) a plan must be prepared, submitted for sealing, sealed and otherwise dealt with, and, where the land is under the operation of the **Transfer of Land Act 1958**, lodged with the Registrar, registered or approved; or
- (b) the acquisition must proceed—
- as if this Act (except for subsections (2) to (11) of this section) had not commenced.
- (3B) Subject to this section, if a person or an acquiring authority proceeds under subsection (3) or (3A), any provision relating to— S. 44(3B) inserted by No. 47/1989 s. 18(1)(e).
- (a) the plan and its sealing, lodgment, approval or registration or any appeal or proceedings in relation to those matters; or
- (b) land acquisition—
- and any regulations made for the purposes of such a provision continue to apply as if this Act (except for subsections (2) to (11) of this section) had not commenced.
- (3C) A plan of land under the operation of the **Transfer of Land Act 1958** (including a plan of strata subdivision or cluster subdivision or strata redevelopment or cluster redevelopment) sealed by a Council— S. 44(3C) inserted by No. 47/1989 s. 18(1)(e).
- (a) before the commencement of this section; or
-

(b) on or after the commencement of this section, under provisions applied by subsection (3B)—

is valid until the end of 5 years from its sealing or the end of 12 months from the date of commencement of this section, whichever last happens.

S. 44(3D)
inserted by
No. 47/1989
s. 18(1)(e).

(3D) Subsection (3C) does not validate an invalid plan unless the plan is invalid only because any period during which plans are valid after they are sealed has expired.

S. 44(3E)
inserted by
No. 47/1989
s. 18(1)(e).

(3E) If—

(a) before the commencement of this section—

(i) a permit for the subdivision or consolidation of land is in force under the **Planning and Environment Act 1987**; and

(ii) at the time the permit was granted the planning scheme did not require the proposal to be referred to referral authorities; and

(b) a plan is submitted to the Council for certification—

the Council must refer the plan to the referral authorities listed in the planning scheme in force at the time it receives the plan, and this Act applies to the plan as if it had been referred under section 8.

S. 44(3F)
inserted by
No. 92/1989
s. 6(1),
substituted by
No. 48/1991
s. 38(1),
amended by
No. 52/1998
s. 311(Sch. 1
item 86.7).

(3F) If a plan is referred to a referral authority under subsection (3E), the authority may require the permit to be amended to include conditions about the works required by the authority, and Division 3 of Part 4 of the **Planning and Environment Act 1987** applies to that

amendment as if after section 87(2) of that Act there were included—

"(2A) The Tribunal may amend a permit referred to in section 44(3E) of the **Subdivision Act 1988** so as to include requirements made by a referral authority under section 44(3F) of that Act."

* * * * *

S. 44(4) substituted by No. 47/1989 s. 18(1)(f), repealed by No. 48/1991 s. 38(2)(a).

(4A) With the written consent of the Council, the owner of an accessory lot on a plan of strata subdivision or of an accessory lot on a plan of cluster subdivision may apply in the prescribed form to the Registrar to have the plan amended so that the lot is no longer shown as an accessory lot, and the Registrar may amend the plan in accordance with the application and on the amendment of the plan, the lot ceases to be an accessory lot and becomes a lot for the purposes of this Act, and the Registrar may make any amendments to the Register Book that are necessary because of the operation of this subsection.

S. 44(4A) inserted by No. 92/1989 s. 6(2), amended by No. 48/1991 s. 38(2)(b) (i)-(iv).

(4B) On an application under subsection (4A), (5), (5A) or (5B) the consent of any person who has an estate, interest or claim in the land is not required.

S. 44(4B) inserted by No. 92/1989 s. 6(2).

(5) With the written consent of the Council, the owner of a restricted lot on a plan of strata subdivision or a restricted lot on a plan of cluster subdivision may apply in the prescribed form to the Registrar to remove the restriction and the Registrar may amend the plan in accordance with the application and on the amendment of the plan the notice ceases to apply to that lot.

S. 44(5) amended by Nos 47/1989 s. 18(1)(g), 48/1991 s. 38(2)(c)(i)(ii).

s. 44

S. 44(5A)
inserted by
No. 47/1989
s. 18(1)(h),
amended by
No. 69/2006
s. 212(h).

S. 44(5B)
inserted by
No. 47/1989
s. 18(1)(h).

S. 44(5C)
inserted by
No. 47/1989
s. 18(1)(h),
amended by
No. 69/2006
s. 212(h).

S. 44(5D)
inserted by
No. 47/1989
s. 18(1)(h),
amended by
No. 48/1991
s. 38(2)(d).

S. 44(5E)
inserted by
No. 47/1989
s. 18(1)(h),
amended by
No. 48/1991
s. 38(2)(e).

- (5A) With the written consent of the Council, an owners corporation may apply in the prescribed form to the Registrar to cancel or alter a scheme of development accompanying a plan of cluster subdivision.
- (5B) With the written consent of the Council, the owner of a lot on a plan of cluster subdivision may apply in the prescribed form to the Registrar to cancel or alter the scheme of development accompanying the plan so far as it affects that lot.
- (5C) The Registrar may cancel or alter the scheme of development in accordance with the application of an owners corporation or the owner of a lot and—
- (i) if cancelled, the scheme ceases to have effect; or
 - (ii) if altered, has effect as altered by the Registrar.
- (5D) A plan registered or approved by the Registrar—
- (a) before the commencement of this section; or
 - (b) on or after the commencement of this section, under the provisions applied by subsection (3B)—
- continues, subject to Schedule 2 and until replaced, modified or amended by a plan under this Act, to have the same status and operation as it had before the commencement of this section.
- (5E) If a plan of cluster subdivision for the development of land in stages has been registered—
- (a) before the commencement of this section; or
 - (b) on or after the commencement of this section, under the provisions applied by subsection (3B)—

proceedings may be taken in relation to any further stage in the development or to have a plan substituted as if this Act (except for subsections (2) to (11) of this section) had not commenced, and Part IV of the **Cluster Titles Act 1974** and any regulations made under that Act for the purposes of that Part continue, subject to Schedule 2, to apply to that staged development.

- (5F) If before the commencement of this section or not later than 6 months after its commencement an application has been made under section 35 of the **Strata Titles Act 1967** and any regulations under that Act, the application may be dealt with as if this Act (except for subsections (2) to (11) of this section) had not commenced and Part IV of the **Strata Titles Act 1967** any regulations made under that Act for the purposes of that Part continue to apply to it.

S. 44(5F)
inserted by
No. 47/1989
s. 18(1)(h),
amended by
No. 92/1989
s. 6(3)(a)(b).

- (6) Until the Act application date in Schedule 2 the **Strata Titles Act 1967** and any regulations made under that Act and the **Cluster Titles Act 1974** and any regulations made under that Act continue to apply to the cancellation of a plan of strata subdivision or a plan of cluster subdivision and to a redevelopment within the meaning of the **Strata Titles Act 1967** and to a cluster redevelopment within the meaning of the **Cluster Titles Act 1974** and to the inclusion of land in common property and to dealings with common property, units, accessory units, lots and accessory lots on any plan of strata subdivision or strata redevelopment, cluster subdivision or cluster redevelopment.

S. 44(6)
substituted by
No. 47/1989
s. 18(1)(i),
amended by
Nos 92/1989
s. 6(4),
48/1991
s. 38(2)(f)(i)(ii),
57/1993
s. 17(4).

- (6A) Section 9AA of the **Sale of Land Act 1962** as amended by this Act does not apply to dealings to which subsection (6) of this section applies.

S. 44(6A)
inserted by
No. 47/1989
s. 18(1)(i).

S. 44(6AB)
inserted by
No. 92/1989
s. 6(5).

(6AB) If—

- (a) in relation to a redevelopment within the meaning of the **Strata Titles Act 1967** an appeal is made to the Administrative Appeals Tribunal under a provision of that Act applied by this section; or
- (b) in relation to a cluster redevelopment within the meaning of the **Cluster Titles Act 1974** an appeal is made to the Administrative Appeals Tribunal under a provision of that Act applied by this section—

the Tribunal may, in addition to its other powers, make any order which a court may make under section 38(3)(a), (aa) or (b) of this Act, and section 38 applies with the necessary modifications to the making of that Order by the Tribunal.

S. 44(6B)(6C)
inserted by
No. 47/1989
s. 18(1)(i),
repealed by
No. 48/1991
s. 38(2)(a).

* * * * *

S. 44(6D)
inserted by
No. 47/1989
s. 18(1)(i).

(6D) If before the commencement of this section an application for a declaration has been made under section 569D(3A) of the **Local Government Act 1958** but has not been determined at the commencement of this section, section 569D(3A) of that Act continues to apply to the determination of, and any declaration made on, that application as if this Act (except subsections (2) to (11) of this section) had not commenced.

S. 44(6E)
inserted by
No. 47/1989
s. 18(1)(i),
substituted by
No. 48/1991
s. 38(3).

(6E) This Act does not apply to anything done under section 526, 527, 528 or 569BA of the **Local Government Act 1958**.

- (7) A plan of subdivision, including a plan of strata subdivision and a plan of cluster subdivision or a plan of consolidation, which has been sealed by a Council may be amended in accordance with section 11 as if it were a certified plan.

S. 44(7)
amended by
No. 48/1991
s. 38(2)(g).

* * * * *

S. 44(8)
repealed by
No. 48/1991
s. 38(2)(a).

- (9) Without limiting subsection (6), the provisions of the **Sale of Land Act 1962** and the **Local Government Act 1958** that relate to the sale of land before plans are approved or registered by the Registrar continue to apply to—

S. 44(9)
substituted by
No. 47/1989
s. 18(1)(j).

- (a) an unsealed plan of strata subdivision prepared; and
- (b) a valid plan of subdivision (including a plan of strata subdivision, strata redevelopment, cluster subdivision or cluster redevelopment) sealed—

before the commencement of this section, or on or after the commencement of this section under the provisions applied by subsection (3B), as if this Act (except subsections (2) to (11) of this section) had not commenced.

- (10) Subject to this section, any application, instrument or other dealing lodged under the **Transfer of Land Act 1958**—

S. 44(10)
amended by
No. 47/1989
s. 18(1)(k)(i)(ii).

- (a) before the commencement of this section; or
- (b) on or after the commencement of this section, under the provisions applied by subsection 3B—

must be dealt with by the Registrar as if this Act (except subsections (2) to (11) of this section) had not commenced.

s. 44A

S. 44(10A)
inserted by
No. 48/1991
s. 38(4).

(10A) An application, instrument or other dealing lodged under the **Transfer of Land Act 1958** in respect of a plan—

(a) before the Act application date for that plan in Schedule 2; or

(b) not later than 6 months after that date—

relating to a matter under the **Strata Titles Act 1967** or the **Cluster Titles Act 1974** must be dealt with by the Registrar in the same manner as it could have been dealt with before the Act application date.

S. 44(11)
inserted by
No. 47/1989
s. 18(1)(i).

(11) This section is in addition to and does not limit the operation of the **Interpretation of Legislation Act 1984**.

S. 44A
inserted by
No. 47/1989
s. 18(2).

44A References

In—

(a) an Act other than this Act; or

(b) a subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984** made under an Act other than this Act; or

(c) a document—

unless inconsistent with the context or subject matter, a reference—

(d) to a plan of subdivision must be taken to include a reference to a plan of strata subdivision, a plan of strata redevelopment, a plan of cluster subdivision and a plan of cluster redevelopment; and

(e) to a lot on a plan of subdivision must be taken to include a reference to a unit on a plan of strata subdivision, a plan of strata redevelopment and a lot on a plan of cluster

subdivision or cluster redevelopment and an allotment on a plan of subdivision; and

- (f) to the registration of a plan of subdivision must be taken to include a reference to the registration of a plan of strata subdivision, the approval of a plan of strata redevelopment, the registration of a plan of cluster subdivision, the approval of a plan of cluster redevelopment and the approval of a plan of subdivision; and

* * * * *

S. 44A(g)
repealed by
No. 48/1991
s. 38(5).

(h) to—

- (i) a plan of consolidation; or
(ii) a registered plan (if the reference relates to a registered plan of consolidation under the **Subdivision Act 1988**)—

must be taken to include a reference to a plan of consolidation or an approved plan of consolidation, as the case requires; and

- (i) to the certification of a plan of subdivision or consolidation or to a certified plan must be taken to include a reference to the sealing of a plan of strata subdivision, plan of strata redevelopment, plan of cluster subdivision, plan of cluster redevelopment or plan of consolidation; and
(j) to the **Strata Titles Act 1967** or the **Cluster Titles Act 1974** must be taken to be a reference to the **Subdivision Act 1988**; and

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- (k) to—
- (i) an approved plan of subdivision; or
 - (ii) a registered plan of strata subdivision;
or
 - (iii) a registered cluster plan; or
 - (iv) an approved plan of consolidation—
must be taken to include a reference to a
registered plan under the **Subdivision Act
1988**; and
- (l) to the sealing of a plan of subdivision or
consolidation must be taken to include a
reference to the certification of a plan under
the **Subdivision Act 1988**; and
- (m) to—
- (i) a plan of redevelopment under the
Strata Titles Act 1967; or
 - (ii) a plan of cluster redevelopment—
must be taken to include a reference to a plan
of subdivision under the **Subdivision Act
1988**; and
- (n) to a clearing statement in relation to a plan of
cluster subdivision must be taken to include
a reference to a statement of compliance
under section 21(2) of the **Subdivision Act
1988**; and
- (o) to—
- (i) a plan of strata subdivision; or
 - (ii) a plan of cluster subdivision—
must be taken to include a reference to a plan
of subdivision under the **Subdivision Act
1988** having one or more bodies corporate;
and
-

- (p) to a lot or unit on a cluster or strata subdivision must be taken to include a reference to a lot on a plan of subdivision under the **Subdivision Act 1988** having one or more bodies corporate.

45 References to the Register under the Transfer of Land Act 1958

S. 45 substituted by Nos 47/1989 s. 23(1), 48/1991 s. 39.

Until the coming into operation of section 7 of the **Transfer of Land (Computer Register) Act 1989**, a reference in this Act to—

- (a) the Register, must be taken to be a reference to the Register Book; and
- (b) a folio of the Register, must be taken to be a reference to a registered Crown grant or a registered certificate of title; and
- (c) folios of the Register, must be taken to be a reference to registered Crown grants or registered certificates of title; and
- (d) a certificate of title must be taken to be a reference to a duplicate Crown grant or a duplicate certificate of title.

46 Strata and cluster plans

Schedule 2 has effect with respect to registered plans of strata subdivision, registered cluster plans, plans of redevelopment within the meaning of the **Strata Titles Act 1967** and plans of cluster redevelopment within the meaning of the **Cluster Titles Act 1974**.

S. 46 amended by No. 47/1989 s. 19(s)-(v), substituted by No. 48/1991 s. 40.

47 Transitional—Owners Corporations Act 2006

- (1) This section does not limit or take away from the **Interpretation of Legislation Act 1984**.
- (2) A provision or provisions of this Act (as in force before the commencement of section 211 of the **Owners Corporations Act 2006**) specified in

S. 47 amended by No. 47/1989 s. 24(a)(b), repealed by No. 48/1991 s. 42(1), new s. 47 inserted by No. 69/2006 s. 216.

Column 1 of the Table are deemed to be re-enacted (with modifications) by the provision or provisions of this Act (as amended by the **Owners Corporations Act 2006**) appearing opposite in Column 2 of the Table.

<i>Old Provision</i>	<i>New Provision</i>
Sections 27 to 28A	Divisions 1 and 2 of Part 5
Section 31	Division 6 of Part 5
Section 32	Division 3 of Part 5
Sections 32A to 34	Division 4 of Part 5

S. 48
repealed by
No. 48/1991
s. 42(1),
new s. 48
inserted by
No. 69/2006
s. 216.

48 Continuation of proceedings

Despite the repeal of section 38 by the **Owners Corporations Act 2006**, any proceedings commenced under that section but not finally determined before that repeal may be continued and completed as if that section had not been repealed.

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Ss 49, 50
inserted by
No. 47/1989
s. 21,
repealed by
No. 48/1991
s. 42(1).

SCHEDULES

* * * * *

Sch. 1
repealed by
No. 47/1989
s. 14(2).

Sch. 2
amended by
No. 47/1989
ss 4(5),
6(3)(f)(4),
8(1)(e), 11,
12(4), 13(2),
18(1)(m)(i)–(vii)
(n), 19(w)(i)(ii)
(x)–(z),
(za)–(zi),
22(a)–(h)(i)–(iii),
substituted by
No. 48/1991
s. 41.

SCHEDULE 2

STRATA AND CLUSTER SUBDIVISIONS

1 Definitions

In this Schedule—

accessory lot means a unit (which, by force of this Schedule, becomes a lot) on a registered plan of strata subdivision or a lot on a registered cluster plan—

- (a) intended for separate ownership and use with any other lot as—
 - (i) a stairway, passage or utility space or for a like purpose, in the case of a registered plan of strata subdivision; or
 - (ii) a garden, garage, car parking space, storage space, swimming pool or laundry, or for a like purpose, in the case of a strata or cluster plan—

or partly for one and partly for any other of those purposes; and

- (b) shown as an accessory lot on the plan;

Act application date means—

- (a) for strata or cluster plans registered or strata or cluster redevelopment plans approved before the commencement of this Schedule, the date of commencement of this Schedule; or
- (b) for strata or cluster plans registered or strata or cluster redevelopment plans approved on or after that

commencement, the time immediately
after the plan is registered or approved;

car park lot means an accessory lot intended to be
owned and used for the purposes of parking
a motor vehicle or partly for those purposes
and partly for some other purpose;

limited residential lot means a unit (which, by
force of this Schedule, becomes a lot) on a
registered plan of strata subdivision or a lot
on a registered cluster plan—

- (a) intended to be owned and used for
residential purposes or partly for
residential purposes and partly for some
other purpose; and
- (b) no part of which is intended to be
owned and used for the purposes of
parking a motor vehicle; and
- (c) which is not an accessory lot;

notice of restriction means—

- (a) a notice in or to the effect of the form in
the Fourth Schedule to the **Strata
Titles Act 1967** and contained in a
registered plan of strata subdivision or a
plan of redevelopment within the
meaning of that Act; or
- (b) a notice in or to the effect of the form in
the Second Schedule to the **Cluster
Titles Act 1974** and contained in a
registered cluster plan or in a plan of
cluster redevelopment;

restricted lot means a limited residential lot
specified as a restricted lot in a notice of
restriction;

scheme of development means a scheme of development accompanying a registered cluster plan under section 21 of the **Cluster Titles Act 1974**;

strata or cluster body corporate means—

- (a) a body corporate created under the **Strata Titles Act 1967** on a registered plan of strata subdivision; or
- (b) a body corporate created under the **Cluster Titles Act 1974** on a registered cluster plan;

strata or cluster plan means—

- (a) a registered plan of strata subdivision; or
- (b) a registered cluster plan;

strata or cluster redevelopment plan means—

- (a) a plan of redevelopment approved under the **Strata Titles Act 1967**; or
- (b) a plan of cluster redevelopment approved under the **Cluster Titles Act 1974**.

2 Act to apply to strata or cluster plans and redevelopment

(1) On and from the Act application date—

- (a) this Act applies to a strata or cluster plan or a strata or cluster redevelopment plan and the **Strata Titles Act 1967** and **Cluster Titles Act 1974** cease to apply to that plan;
- (b) each registered plan of strata subdivision or approved plan of redevelopment within the meaning of the **Strata Titles Act 1967** and each notice of restriction contained in it or scheme of development accompanying it has

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- effect as if a reference to a unit (whether accessory, car park, limited residential, restricted or otherwise) were a reference to a lot;
- (c) the status of land as an accessory lot, car park lot, limited residential lot or restricted lot or common property is not affected;
 - (d) each strata or cluster body corporate becomes a body corporate under this Act;
 - (e) the easements or rights implied over a strata or cluster plan under section 12 of the **Strata Titles Act 1967** or section 20 of the **Cluster Titles Act 1974** are extinguished;
 - (f) there are implied over the land in a strata or cluster plan the easements referred to in section 12(2) of this Act;
 - (g) a certificate of title to a lot on a strata or cluster plan has effect as if any reference to section 12 of the **Strata Titles Act 1967** or section 20 of the **Cluster Titles Act 1974** were a reference to section 12 of this Act.
- (2) Subsection (1) does not affect the status or operation of—
- (a) a strata or cluster body corporate; or
 - (b) a notice of restriction on a strata or cluster plan or a strata or cluster redevelopment plan; or
 - (c) lot entitlement or liability on a strata or cluster plan or a strata or cluster redevelopment plan; or
 - (d) a lot, accessory lot, car park lot, limited residential lot, restricted lot or common property on a strata or cluster plan or a strata or cluster redevelopment plan.
-

- (3) In relation to a strata or cluster plan, section 28 has effect as if all the lots on the plan were specified lots.

3 Folios of the Register and certificates of title

- (1) Unless the Registrar is requested to do so under section 31 or 32 of the **Transfer of Land Act 1958** or the plan is next amended or, in the case of common property, section 28(e) otherwise requires, the Registrar need not—
- (a) amend recordings in the Register concerning, or produce a new certificate of title for, a lot affected by the operation of clause 2(1); or
 - (b) create a folio of the Register or produce a certificate of title for common property on a strata or cluster plan.
- (2) On the creation of a folio of the Register for common property on a strata or cluster plan, any folio of the Register for a lot on that plan has effect as if any reference to an undivided share in the common property were deleted.
- (3) On a folio of the Register or Certificate of Title for an accessory lot or restricted lot, the Registrar may record the fact that it is a lot of that kind.
- (4) This clause has effect despite anything in section 28(e).

4 Administrators

- (1) On the Act application date a current order made under the **Strata Titles Act 1967** or the **Cluster Titles Act 1974** appointing an administrator has effect as if made under this Act.
- (2) Subsection (1) does not affect the previous operation of the order.

5 Boundaries

Unless the plan otherwise provides, if the whole or part of a boundary of a lot with another lot or with common property on a strata or cluster plan or a strata or cluster redevelopment plan lies along or within a structure that is a wall, fence, floor or ceiling, the boundary is the median of the structure.

6 Effect of notice of restriction

If a strata or cluster plan or a strata or cluster redevelopment plan contains a notice of restriction, the Registrar must not—

- (a) register a transfer, mortgage, charge, lease or sub-lease of a restricted lot on the same plan unless that dealing includes a car park lot; or
- (b) record in the Register a transmission of, or vesting order or disposition dealing with, a restricted lot on the same plan unless the transmission, order or disposition includes a car park lot; or
- (c) create a folio of the Register for a restricted lot unless the folio states that the registration of dealings with the lot is restricted.

7 Updating plans

- (1) The Registrar may—
 - (a) amend or substitute information in a strata or cluster plan or a strata or cluster redevelopment plan; or
 - (b) require a person who proposes to amend a plan of that kind to amend or substitute information in it—

in any way the Registrar thinks appropriate to make the plan resemble more closely plans prepared under this Act.

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- (2) Subsection (1) does not permit a change to the substance of the information in a plan.

8 Accessory lots

A person cannot deal with an interest in an accessory lot by selling, transferring, mortgaging, leasing or sub-leasing it unless—

- (a) the dealing is made or has effect as part of or in connection with a dealing with a corresponding interest in a lot on the same plan that is not an accessory lot; or
- (b) the dealing is made with the Registered proprietor, purchaser, transferee, mortgagee, lessee or sub-lessee of a lot on the same plan that is not an accessory lot.

9 Amendment of plans

- (1) On and from the Act application date, a strata or cluster plan cannot be amended by a later strata or cluster plan or a later strata or cluster redevelopment plan unless—
 - (a) section 44(5E), (5F) or (10A) applies to the later plan; or
 - (b) the later plan was submitted and lodged under section 44(2) or (3).
- (2) If the Council agrees, a cluster plan registered on or after the commencement of this Schedule need not be accompanied by a scheme of development.

10 Additional powers of strata or cluster bodies corporate

- (1) Without limiting its other powers, a strata or cluster body corporate may proceed under section 32(1) to—
 - (a) add to or delete a notice of restriction on the plan; or

(b) change a lot to an accessory lot or an accessory lot to a lot.

(2) A strata or cluster body corporate cannot exercise any of the powers referred to in subclause (1) so that land included in the plan after the Act application date becomes or is included in a restricted lot or accessory lot.

11 Enforcement of schemes of development

(1) A Council or a body corporate created on a cluster plan or a member of that body corporate may apply to a court of competent jurisdiction for an order—

Sch. 2 cl. 11(1)
amended by
No. 57/1993
s. 17(5).

(a) compelling performance, or restraining a breach, of a requirement or restriction in a scheme of development; or

(b) awarding damages for loss or damage arising out of a breach of a requirement or restriction in a scheme of development—

by a body corporate, a member of the body corporate or (to the extent that the requirement or restriction is negative in character) the occupier of a lot affected by the body corporate.

(2) The court may make the order applied for if it is satisfied it is just and equitable to do so.

12 Stage development

(1) If—

(a) there is a registered cluster plan for the development of land in stages; and

Sch. 2

(b) any of the stages is subject to outstanding Council requirements within the meaning of the **Cluster Titles Act 1974**—

the owners of the land subject to the requirements may use a plan under section 37 to take the land out of the stage development, as if the development were a staged subdivision.

- (2) On the registration of a plan referred to in subclause (1), Part IV of the **Cluster Titles Act 1974** and any applicable Council requirements cease to apply to the land in the plan.
- (3) This Schedule does not prevent a person choosing to proceed with the development of land in stages under section 44.

Sch. 3
inserted by
No. 47/1989
s. 23(2),
repealed by
No. 48/1991
s. 42(2).

* * * * *

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 13 October 1987

Legislative Council: 12 April 1988

The long title for the **Subdivision Act 1988** was "A Bill relating to the subdivision of land and for other purposes."

The **Subdivision Act 1988** was assented to on 31 May 1988 and came into operation on 30 October 1989: Government Gazette 4 October 1989 page 2532.

2. Table of Amendments

This Version incorporates amendments made to the **Subdivision Act 1988** by Acts and subordinate instruments.

Local Government (Consequential Provisions) Act 1989, No. 12/1989 (as amended by No. 53/1988 (as amended by No. 47/1989))

Assent Date: 9.5.89
Commencement Date: S. 4(1)(Sch. 2 item 114.1) on 1.11.89: Government Gazette 1.11.89 p. 2798
Current State: This information relates only to the provision/s amending the **Subdivision Act 1988**

Transfer of Land (Computer Register) Act 1989, No. 18/1989 (as amended by No. 48/1991)

Assent Date: 16.5.89
Commencement Date: All of Act on 3.2.92: Government Gazette 18.12.91 p. 3488
Current State: All of Act in operation

Subdivision (Amendment) Act 1989, No. 47/1989

Assent Date: 6.6.89
Commencement Date: 6.6.89
Current State: All of Act in operation

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Water (Consequential Amendments) Act 1989, No. 81/1989

Assent Date: 5.12.89
Commencement Date: 1.11.90: Government Gazette 15.8.90 p. 2473
Current State: All of Act in operation

Subdivision (Further Amendment) Act 1989, No. 92/1989

Assent Date: 5.12.89
Commencement Date: 12.12.89: Government Gazette 6.12.89 p. 3127
Current State: All of Act in operation

Subdivision (Miscellaneous Amendments) Act 1991, No. 48/1991

Assent Date: 25.6.91
Commencement Date: Ss 38(2)(f)(3), 56(2)(3), 65 on 30.10.89: s. 2(2); rest of Act (*except* ss 50, 53(5), 57) on 25.6.91: s. 2(4); s. 53(5) on 1.10.92: s. 2(1); ss 50, 57 on 3.2.92: i.e. same day as s. 7 of Act No. 18/1989
Current State: All of Act in operation

Subdivision Act 1988
No. 53 of 1988

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Subdivision (Amendment) Act 1993, No. 57/1993²⁰

Assent Date: 8.6.93
Commencement Date: All of Act (except s. 17 (4)) on 8.6.93: s. 2 (2); s. 17(4)
on 30.10.89: s. 2 (1)
Current State: All of Act in operation

Land (Further Amendment) Act 1993, No. 79/1993

Assent Date: 3.11.93
Commencement Date: 3.11.93
Current State: All of Act in operation

Building Act 1993, No. 126/1993

Assent Date: 14.12.93
Commencement Date: S. 264(Sch. 5 item 20) on 1.7.94: Special Gazette
(No. 42) 1.7.94 p. 1
Current State: This information relates only to the provision/s
amending the **Subdivision Act 1988**

Subdivision (Further Amendment) Act 1994, No. 34/1994

Assent Date: 31.5.94
Commencement Date: 31.5.94
Current State: All of Act in operation

Valuation of Land (Amendment) Act 1994, No. 91/1994

Assent Date: 6.12.94
Commencement Date: S. 36(9) on 1.1.95: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Subdivision Act 1988**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Subdivision Act 1988**

**Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998,
No. 52/1998**

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 86) on 1.7.98: Government Gazette
18.6.98 p. 1512
Current State: This information relates only to the provision/s
amending the **Subdivision Act 1988**

Transfer of Land (Single Register) Act 1998, No. 85/1998

Assent Date: 17.11.98
Commencement Date: S. 24(Sch. item 57) on 1.1.99: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Subdivision Act 1988**

Planning and Environment (Amendment) Act 2000, No. 28/2000

Assent Date: 30.5.00
Commencement Date: S. 23 on 31.5.00: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Subdivision Act 1988**

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Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 119) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Subdivision Act 1988**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 106) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Subdivision Act 1988**

Surveying Act 2004, No. 47/2004

Assent Date: 16.6.04
Commencement Date: Ss 71(Sch. item 4), 72 on 1.1.05: s. 2(2)
Current State: This information relates only to the provision/s amending the **Subdivision Act 1988**

Planning and Environment (General Amendment) Act 2004, No. 81/2004

Assent Date: 16.11.04
Commencement Date: S. 51 on 23.5.05: Government Gazette 19.5.05 p. 930
Current State: This information relates only to the provision/s amending the **Subdivision Act 1988**

Victorian Urban Development Authority (Amendment) Act 2006, No. 35/2006

Assent Date: 13.6.06
Commencement Date: S. 8 on 1.9.06: s. 2(2)
Current State: This information relates only to the provision/s amending the **Subdivision Act 1988**

Owners Corporations Act 2006, No. 69/2006

Assent Date: 19.9.06
Commencement Date: Ss 206–216 on 31.12.07: s. 2(2)
Current State: This information relates only to the provision/s amending the **Subdivision Act 1988**

Planning and Environment Amendment Act 2007, No. 47/2007

Assent Date: 25.9.07
Commencement Date: Ss 20–22 on 26.9.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Subdivision Act 1988**

Fair Trading and Consumer Acts Further Amendment Act 2008, No. 2/2008

Assent Date: 11.2.08
Commencement Date: Ss 32, 33 on 12.2.08: s. 2(1)
Current State: This information relates only to the provision/s amending the **Subdivision Act 1988**

3. Explanatory Details

¹ S. 3(1) def of *master plan*: Section 9 of the **Subdivision (Further Amendment) Act 1994**, No. 34/1994 reads as follows:

9 Transitional provisions regarding staged subdivisions

- (1) If, before the commencement of this Act, a planning scheme or permit under the **Planning and Environment Act 1987** authorised the subdivision of land in stages and, instead of using the procedure under section 37 of the **Subdivision Act 1988**, the other provisions of that Act were used for that subdivision, that subdivision is as valid as if when it was done and since then, section 37(2) of that Act as amended by this Act were in operation.
- (2) Subsection (1) applies to each stage of the subdivision.

² S. 3(3): Section 23 of the **Subdivision (Amendment) Act 1993**, No. 57/1993 reads as follows:

23 Variations of easements and restrictions

- (1) The amendments made to the Principal Act by section 4 apply to—
 - (a) a variation of an easement or restriction authorised by a planning scheme or permit, whether before or after the commencement of that section; and
 - (b) a plan submitted for certification or lodged for registration before or after that commencement.
- (2) Subsection (1) does not affect—
 - (a) the certification or registration of a plan under the Principal Act before the commencement of this section; or

- (b) any requirement made before the commencement of this section by the Council or the Registrar in relation to a plan of variation of an easement or restriction under the Principal Act; or
- (c) anything done before or after the commencement of this section to comply with a requirement referred to in paragraph (b).

³ S. 4(1)(c)(iv): Section 29 of the **Subdivision (Amendment) Act 1993**, No. 57/1993 reads as follows:

29 Compulsory acquisition of easements

- (1) The amendments made to the Principal Act by section 15 of this Act and the amendments made to the **Transfer of Land Act 1958** by section 19 of this Act do not apply to a plan for the compulsory acquisition of an easement that is submitted for certification before the date of commencement of sections 15 and 19.
- (2) The provisions of the Principal Act referred to in section 15 of this Act and section 72 of the **Transfer of Land Act 1958** continue to apply to a plan referred to in subsection (1), as if sections 15 and 19 had not been enacted.

⁴ S. 4(1C): See note 3.

⁵ Pt 2: Section 44 of the **Subdivision (Miscellaneous Amendments) Act 1991**, No. 48/1991 reads as follows:

44 Transitional provisions: plans and other matters

- (1) Subject to this section, an amendment made to the Principal Act by a provision of this Part, other than an amendment made by sections 4, 38 and 41, applies only to—
 - (a) a plan submitted for certification or lodged for registration; or
-

- (b) a dealing or other matter occurring—
on or after the date of commencement of that
provision.
- (2) The Principal Act continues to apply (as if this
Act had not been enacted) to—
- (a) a plan submitted for certification or lodged
for registration; or
- (b) the continuation or completion of any other
dealing or matter begun—
before the commencement of this subsection or
not later than 6 months after the commencement.
- (3) Despite subsection (2), if—
- (a) a plan submitted for certification or lodged
for registration; or
- (b) a dealing or matter begun—
before the commencement of this section or not
later than 6 months after that commencement
complies with the Principal Act as amended by
any provision of this Part, the Council or Registrar
must deal with it as if, when it was submitted or
lodged, or began, the amendment to the Principal
Act were in operation.
- (4) Subsection (1) does not prevent the submission of
a new plan or the amendment or re-certification of
an existing plan in accordance with an amendment
made to the Principal Act by this Part.
- (5) In this section *matter* means an agreement or a
public open space requirement.

⁶ S. 12(1B): Section 24 of the **Subdivision (Amendment) Act 1993**, No. 57/1993 reads as follows:

24 Recording of easements

The amendments made to section 12 of the Principal Act by section 7 of this Act apply to plans under the Principal Act submitted for certification or lodged for registration before or after the commencement of section 7.

⁷ S. 14(1): Section 25 of the **Subdivision (Amendment) Act 1993**, No. 57/1993 reads as follows:

25 Application of Part 3 of the Principal Act

The amendments to section 14 of the Principal Act made by section 8 of this Act apply to plans submitted for certification before or after the commencement of section 8.

⁸ S. 18: Section 45 of the **Subdivision (Miscellaneous Amendments) Act 1991**, No. 48/1991 reads as follows:

45 Transitional provisions: public open space requirements

Without limiting section 44, if—

- (a) before the commencement of section 14 a public open space requirement was made under the Principal Act; and
- (b) the requirement could not be made under the Principal Act as amended by that section; and
- (c) at the date of commencement of that section the requirement has not been complied with—

the requirement must for all purposes be taken never to have been made.

⁹ S. 18: Section 26 of the **Subdivision (Amendment) Act 1993**, No. 57/1993 reads as follows:

26 Public open space requirements

- (1) This section has effect despite anything to the contrary in the Principal Act as amended by this Act or in section 45 of the **Subdivision (Miscellaneous Amendments) Act 1991**.
- (2) Section 18 of the Principal Act as amended by section 9 of this Act applies to a public open space requirement made on or after the date of commencement of section 9.
- (3) Subject to subsection (4) a requirement which purported to have been made under section 18 of the Principal Act as in force at any time before the commencement of section 9 of this Act is not, and must be taken never to have been, invalid merely because it was made more than 7 days before the Council issued its statement of compliance.
- (4) Subsection (3) does not apply to a requirement which, under section 45 of the **Subdivision (Miscellaneous Amendments) Act 1991**, is taken by force of that section never to have been made if another requirement under section 18 of the Principal Act as amended by that Act has been made in relation to the same plan.
- (5) If a requirement referred to in subsection (3) specifies a date for compliance that falls before the date of commencement of section 9 of this Act, and at that date of commencement the requirement has not been complied with, then by force of this section, the requirement has effect, and must be taken always to have had effect, as if it specified a date for compliance that is the 28th day after the date of commencement of that section.

- (6) This section does not invalidate—
- (a) the issue of any statement of compliance under the Principal Act as in force at any time before the commencement of section 9 of this Act; or
 - (b) the registration, before or after that date of commencement, of a plan where the statement of compliance was issued before that date of commencement; or
 - (c) any requirement made under section 18 of the Principal Act—
 - (i) as in force before the date of commencement of section 14 of the **Subdivision (Miscellaneous Amendments) Act 1991**, if that requirement has been complied with at that date of commencement; or
 - (ii) as in force on or after the commencement of section 14 of that Act and before the commencement of section 9 of this Act, if the requirement was made not more than 7 days before the Council issued its statement of compliance.

¹⁰ Pt 4: See note 5.

¹¹ S. 22: Section 27 of the **Subdivision (Amendment) Act 1993**, No. 57/1993 reads as follows:

27 Plan registration

- (1) The amendments made to section 22 of the Principal Act by section 10(1) and (2) of this Act apply to plans under the Principal Act lodged for registration before or after the commencement of that subsection.

- (2) The amendments to section 22 of the Principal Act made by section 10(3) of this Act apply to plans lodged for registration on or after the date of commencement of that subsection.
- (3) Section 22 of the Principal Act continues to apply to plans lodged for registration before the commencement of section 10(3) of this Act as if that subsection had not been enacted.

¹² S. 25: Section 47 of the **Subdivision (Miscellaneous Amendments) Act 1991**, No. 48/1991 reads as follows:

47 Transitional provisions: Notice of easement registration

If before the repeal of section 25(4) of the Principal Act a creation, variation or removal of an easement or restriction was registered under the **Transfer of Land Act 1958** and the easement or restriction is not part of a plan of subdivision or consolidation, the Registrar need not give the Council notice of that registration.

¹³ S. 35(3): Section 28 of the **Subdivision (Amendment) Act 1993**, No. 57/1993 reads as follows:

28 Acquisition plans

- (1) The amendments made to section 35 of the Principal Act by section 14(1)(a) and (2)(a) of this Act apply to a plan lodged for registration before or after the commencement of those provisions.
- (2) Subsection (1) does not affect—
 - (a) any requirement made by the Registrar in relation to a plan referred to in subsection (1) before the date of commencement of section 14(1)(a) and (2)(a); or

- (b) anything done, before or after that date of commencement, to comply with that requirement.

¹⁴ S. 35(4): See note 13.

¹⁵ S. 36(1): Section 10 of the **Subdivision (Further Amendment) Act 1994**, No. 34/1994 reads as follows:

10 Transitional provisions regarding statements under section 36

- (1) Section 36 of the **Subdivision Act 1988** continues to apply to statements made by councils before the commencement of this Act as if Part 2 of this Act had not been enacted.
- (2) Section 36 of the **Subdivision Act 1988** as amended by this Act applies to statements made by councils on or after the commencement of this Act.

¹⁶ S. 36(1AA): See note 15.

¹⁷ S. 36(2)(a): See note 3.

¹⁸ S. 37: See note 1.

¹⁹ S. 39: Section 43 of the **Subdivision (Miscellaneous Amendments) Act 1991**, No. 48/1991 reads as follows:

43 Transitional provisions: proceedings

- (1) In this section *relevant date* means—
- (a) for a provision of this Act that commences not later than the day on which this Act receives the Royal Assent, the date of the Royal Assent; or
- (b) for any other provision of this Act, the date of commencement of that provision.

- (2) A proceeding commenced before the relevant date before a Court or Tribunal may, on and from that date, be continued or completed as if this Act had not been enacted.
- (3) A proceeding by way of appeal or review of a proceeding mentioned in subsection (2) may be commenced, continued or completed before on or after the relevant date as if this Act had not been enacted.

²⁰ Table of Amendments, **Subdivision (Amendment) Act 1993**: Section 32 of the **Subdivision (Amendment) Act 1993**, No. 57/1993 reads as follows:

32 General transition provisions

- (1) This Part does not affect or limit the operation of the **Interpretation of Legislation Act 1984**.
- (2) This Part does not prevent a plan to which, by virtue of this Part, an amendment made by this Act to the Principal Act does not apply from being amended in accordance with the Principal Act to comply with the provision of the Principal Act as so amended, and if that plan is so amended that amended provision applies to it.