

LEGISLATIVE ASSEMBLY

Read 1° 28 November 1979

(Brought in by Mr Lieberman and Mr Maclellan)

A BILL

To constitute a Planning Appeals Board, to make Provision concerning Appeals against Planning Decisions made under various Acts, to amend the *Town and Country Planning Act 1961*, the *Local Government Act 1958*, the *Environment Protection Act 1970*, the *Port Phillip Authority Act 1966* and the *Strata Titles Act 1967* and for other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

PART I.—INTRODUCTORY

1. (1) This Act may be cited as the *Planning Appeals Board Act 1979*. Short title.

10 (2) The several provisions of this Act shall come into operation on a day or the respective days to be fixed by proclamation or successive proclamations of the Governor in Council published in the *Government Gazette*. Commencement.

15 (3) This Act is divided into Parts as follows:
Part I.—Introductory.
Part II.—Planning Appeals Board.

Part III.—Compulsory Conference.

Part IV.—Procedure.

Part V.—Regulations.

Part VI.—Amendments to Certain Acts.

2. (1) Except as in this Act expressly or by necessary implication provided— 5

(a) all persons things and circumstances appointed or created by or under the *Town and Country Planning Act 1961*, the *Environment Protection Act 1970*, Divisions 9 and 10 of Part XIX. of the *Local Government Act 1958* or the *Port Phillip Authority Act 1966* or any corresponding previous enactment or existing or continuing under any of those Acts or enactments immediately before the commencement of this Act shall under and subject to this Act and those Acts as amended by this Act continue to have the same status operation and effect as they respectively would have had if this Act had not come into operation; and 10 15

(b) in particular and without affecting the generality of the foregoing provisions of this sub-section the continuity of status operation or effect of any rule order regulation appointment application notice certificate planning scheme agreement determination consent permit authority recommendation determination objection appeal approval requirement representation liability or right made effected issued granted given presented fixed accrued incurred or acquired or existing or continuing by or under any such Act or enactment before the commencement of this Act shall not be affected. 20 25

(2) If the hearing of an appeal lodged under the *Town and Country Planning Act 1961*, the *Environment Protection Act 1970*, Division 9 or 10 of Part XIX. of the *Local Government Act 1958* or the *Port Phillip Authority Act 1966* has commenced prior to the commencement of this Act, the appeal shall be heard and determined pursuant to the provisions of the Act under which the appeal was brought as if this Act had not come into operation. 30 35

(3) If the hearing of an appeal lodged under the *Town and Country Planning Act 1961*, the *Environment Protection Act 1970*, Division 9 or 10 of Part XIX. of the *Local Government Act 1958* or the *Port Phillip Authority Act 1966* has not commenced prior to the commencement of this Act, the appeal shall be heard and determined pursuant to the provisions of this Act but anything done or any requirement complied with pursuant to the provisions of the aforesaid Acts in relation to the appeal shall as far as 40

practicable

practicable be deemed to have been done or complied with for the purposes of the hearing and determination of the appeal under this Act.

3. For the purposes of section 2, the members of the Town
5 Planning Appeals Tribunal, the members of the Environment
Protection Appeal Board and the Arbitrator under the *Local
Government Act 1958* shall, notwithstanding the provisions of this
Act, continue to hold their respective offices for such period as
is necessary.

10 4. In this Act unless inconsistent with the context or Interpretation.
subject-matter—

“Appeal” means any matter referred to the Board for
determination under this or any other Act and
“appellant” shall have a corresponding meaning.

15 “Board” means the Planning Appeals Board established under
this Act.

“Chief chairman” means the chief chairman of the Planning
Appeals Board appointed under this Act.

“Division” means a division of the Planning Appeals Board.

20 “Member” means a member of the Planning Appeals Board
appointed under this Act.

“Prescribed” means prescribed by this Act or the regulations.

“Protection agency” has the same meaning as it has in
the *Environment Protection Act 1970*.

25 “Regulations” means regulations under this Act.

“Responsible authority” has the same meaning as it has in
the *Town and Country Planning Act 1961*.

PART II.—PLANNING APPEALS BOARD

30 5. (1) There shall be a Planning Appeals Board consisting of
as many full-time members and as many part-time members as the
Governor in Council thinks fit and the Governor in Council may
remove or suspend from office any member of the Board.

Constitution
of Planning
Appeals Board.

(2) A full-time member of the Board shall not during his
continuance in office either directly or indirectly engage in any
35 paid employment outside of his office without the consent of the
Governor in Council.

Full-time
members.

(3) The Governor in Council shall appoint a full-time member
who is qualified for appointment as a judge of the County Court as
chief chairman of the Board.

Chief chairman.

(4) The

(4) The chief chairman of the Board shall, subject to this Part, hold office for such period as is specified in the instrument of his appointment but shall be eligible for re-appointment.

Senior members.

(5) The Governor in Council shall appoint as many full-time members as he thinks fit as senior members of the Board.

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(6) A person (other than a person appointed as chief chairman of the Board) shall not be appointed to be a member of the Board for more than seven years, but subject to this Part, any person appointed to be a member of the Board shall be eligible for re-appointment.

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Retirement of members.

(7) A person appointed as chief chairman, senior member or member of the Board shall cease to hold office upon attaining the age of 72 years whereupon his office shall become vacant.

Resignation of members.

(8) A member may resign his office as a member of the Board by writing under his hand addressed to the Minister.

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Filling vacancies.

(9) On the occurrence of any vacancy in the Board, the Governor in Council may, subject to this Part, appoint another eligible person to fill the vacancy.

Extraordinary vacancies.

(10) Any person appointed to fill an extraordinary vacancy shall hold office only for the remainder of the term for which his predecessor was appointed but shall be eligible for re-appointment.

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Acting chief chairman.

(11) In the case of illness or absence of the chief chairman the Minister may appoint another member to act for the chief chairman during his illness or absence and the person shall while so acting have all the powers and perform all the duties of the chief chairman.

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Acting members.

(12) Subject to sub-section (10), in the case of illness or absence of any member of the Board the Governor in Council may as occasion arises appoint an eligible person to act for the member during his illness or absence and the person shall while so acting have all the powers and perform all the duties of the member.

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(13) An acting member appointed pursuant to sub-section (12) may sit on a division to hear appeals under this Act and, if so sitting at the expiry of his term of appointment, may continue to act as a member for such time as is necessary for the division to complete the hearing and determination of the appeal.

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(14) The members of the Board shall each be paid such salary and allowances as are determined by the Governor in Council and any person acting for a member shall while so acting receive such remuneration for his services as is determined by the Governor in Council.

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(15) The members of the Board and any person while acting as a member of the Board shall respectively receive such travelling allowances as are determined by the Governor in Council.

6. (1) Members

6. (1) Members shall not in respect of their office as members of the Board be subject to the *Public Service Act 1974*.

Members not subject to *Public Service Act 1974*.

Saving of superannuation rights.

(2) A member who at the the date of his appointment as a member was an officer within the meaning of the *Superannuation Act 1958* or Division 4 of Part IV. of the *Public Service Act 1958* shall, notwithstanding his appointment, be deemed to continue, subject to that Act or division, to be an officer within the meaning of that Act or division.

(3) A member of the Board who at the date of his appointment as a member was an officer of the public service shall, in the event of his office as a member of the Board being determined, be eligible on the recommendation of the Public Service Board, to be appointed to an office in the public service with a classification and emolument corresponding with or higher than those which he held and received in the public service immediately prior to his appointment as a member of the Board as if the period of his service as such member had been service in the public service.

Saving of rights of officers of public service appointed members of Board.

7. (1) Subject to the *Public Service Act 1974* there may be appointed a registrar of the Planning Appeals Board and such officers and employees as may be necessary to assist the registrar or the Board.

(2) The registrar shall keep a register in the prescribed form of all appeals and the determinations of the Board thereon.

8. The Board shall—

- 25 (a) perform the duties; and
(b) determine any matters—

Powers and duties of Board.

which it is required by the provisions of this or any other Act to perform or determine.

9. In addition to any other functions powers and duties conferred on him under this or any other Act the chief chairman shall advise the Minister with respect to any action which he considers would lead to—

- 30 (a) the more convenient economic and efficient disposal of the business of the Board; and
35 (b) the avoidance of delay in hearing appeals or other matters before the Board.

10. (1) The Board shall on or before the 30th day of September in each year submit to the Minister to be laid before both Houses of Parliament a report dealing with the general administration and working of this Act and containing a statistical analysis of

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the appeals and matters dealt with by the Board which indicates the type of appeals and matters coming before the Board and the number of each such type.

(2) The Board may from time to time issue reports or bulletins with respect to its functions under this Act. 5

Board to sit
in divisions.

11. (1) The jurisdiction, powers and duties conferred or imposed upon the Board by this Act shall be exercised by divisions of the Board consisting of those members whom the chief chairman assigns in any particular case and the number of members sitting on a division of the Board shall not exceed five. 10

(2) Where an appeal relating to the use or development of any land has been determined by the Board and a further appeal is lodged relating to that use or development the chief chairman shall in assigning members to the division include at least one member of the division which made the earlier determination unless he considers that in the circumstances of the particular case it would be unhelpful, undesirable or impractical to do so. 15

(3) The chief chairman may sit as a member of a division.

(4) A division of the Board may consist of a single member.

(5) Where a division consists of more than one member— 20

(a) if the chief chairman is a member of the division, he shall act as chairman of the division; or

(b) if the chief chairman is not a member of the division, he shall appoint a senior member to act as chairman of the division. 25

(6) A member appointed pursuant to section 12 (2) to conduct compulsory conferences may, subject to sub-section (7), sit as a member of a division to hear an appeal.

(7) Where a compulsory conference is held pursuant to the provisions of Part III. the member who conducts the compulsory conference shall not sit on any division which hears the appeal in respect of which the compulsory conference was held. 30

(8) Subject to sub-section (9) the decision of a majority of members of a division shall be the decision of the Board on any matter before it but in the case of an equality of votes the chairman of the division shall have a casting vote. 35

(9) Any question of law which arises before a division shall be decided by the member or members of the division who is or are barristers and solicitors of the Supreme Court of Victoria.

(10) Where a question of law arises before a division and— 40

(a) no member of the division is a barrister and solicitor of the Supreme Court of Victoria; or

(b) there

(b) there are two or more members of the division who are barristers and solicitors of the Supreme Court of Victoria but such members are unable to agree upon the resolution of the question of law—

5 the chief chairman or such other member of the Board, being a barrister and solicitor of the Supreme Court of Victoria, as the chief chairman nominates, shall determine the question of law.

(11) Where a question of law is referred to the Chief chairman or his nominee pursuant to sub-section (10), the division before
10 which the question of law arose may proceed to hear and determine other matters relating to the appeal unless a request to the contrary is made by any of the parties to the appeal.

(12) Where the hearing of any proceedings has been commenced or completed by a division of the Board but before the appeal
15 has been determined, one or more of the members of the division ceases to be a member of the Board or ceases to be available for the purposes of the proceedings—

(a) where the parties so agree, the hearing and determination may be completed by the remaining member or
20 members of a division; and

(b) where the parties do not so agree, the proceedings shall be re-heard by division of the Board.

(13) Where pursuant to paragraph (b) of sub-section (12) proceedings are re-heard by a division of the Board, the division
25 may, for the purposes of those proceedings, have regard to any record of the earlier proceedings.

(14) Where pursuant to paragraph (a) of sub-section (12) the parties agree to the hearing and determination of the appeal by the remaining members and—

30 (a) there are at least two such remaining members; and

(b) none of the remaining members is the chairman of the division—

the chief chairman shall appoint any one of the remaining members as chairman of the division for the purpose of completing the
35 hearing and determination of the appeal and the division shall not proceed to hear or determine the appeal until such appoint is made.

(15) Subject to this Act and the regulations a division may regulate its own proceedings.

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PART III.—COMPULSORY CONFERENCE

12. (1) The chief chairman may, in respect of any appeal to the Board, order that the parties to the appeal attend a compulsory conference.

Compulsory conference.

(2) The

(2) The Minister shall on the recommendation of the chief chairman appoint as many members as he thinks fit to conduct compulsory conferences pursuant to this Part.

(3) The compulsory conference shall be conducted before a single member, appointed pursuant to sub-section (2), who shall be selected by the chief chairman. 5

(4) The registrar shall in the manner prescribed notify the parties to an appeal that they are required to attend a compulsory conference and the time and place where such compulsory conference shall be held. 10

(5) The compulsory conference shall be held as soon as practicable after the date on which the appeal is lodged or, in the case of appeals by objectors, as soon as practicable after the last date on which appeals may be lodged but shall in any case be held within 28 days of the date on which the appeal is lodged or the last date on which appeals may be lodged or such longer period as the chief chairman may determine. 15

Aims of compulsory conference.

13. The objects of the compulsory conference are inter alia—

(a) to determine what matters are in dispute between the parties; 20

(b) to provide a forum in which the parties may discuss their respective reasons for instituting or resisting the appeal and where possible to settle or resolve the matters in dispute before the appeal is heard before a division of the Board. 25

Determination of appeal at compulsory conference.

14. (1) The member conducting the compulsory conference may determine or strike out the appeal if the parties attending the compulsory conference are agreeable to him so disposing of the matter.

(2) Where a party to an appeal is a municipal corporation (including the city of Melbourne and the city of Geelong), regional planning authority or public statutory body incorporated under any Act the person representing the party at the compulsory conference shall be unable to agree to the member disposing of the appeal pursuant to sub-section (1) unless he is empowered or authorized in writing to do so by the party to the appeal. 30 35

(3) A body corporate may be represented at the compulsory conference by an employee or a director or other officer of the body corporate approved by the member conducting the compulsory conference. 40

(4) An unincorporated association of persons or a member of an unincorporated association of persons may be represented at the compulsory conference by a member or officer of the association approved by the member conducting the compulsory conference. 45

(5) The

(5) The member in disposing of an appeal pursuant to this Part may make any order that may be made by a division of the Board hearing and determining the appeal.

5 (6) Where an appeal is determined or struck out in accordance with this Part, the registrar shall within fourteen days of receiving notification of the decision cause a notice of decision to be served on each party to the appeal.

10 15. Where the appeal in respect of which the compulsory conference remains wholly or partly unresolved at the completion of the compulsory conference, the member who conducted such compulsory conference shall make a written report thereon to the chief chairman.

PART IV.—PROCEDURE

15 16. (1) Every appeal shall be in writing and, except in the case of an appeal against failure to grant a permit, shall state shortly the grounds on which the appeal is based. Notice of appeal.

(2) Every appeal shall be lodged within the time prescribed by or under the Act under which the appeal is brought or, if no such time is so prescribed, the time prescribed in the regulations.

20 (3) Every appeal shall be lodged with the registrar and— Service.

(a) in the case of an appeal brought under the *Town and Country Planning Act 1961* the registrar shall thereupon—

25 (i) cause a copy thereof to be served in the prescribed manner on the responsible authority and, where the responsible authority is not the council of the municipality in whose district the land to which the appeal relates is situated, on the council of that municipality;

30 (ii) in the case of an appeal in relation to a determination pursuant to the provisions of an interim development order or approved planning scheme in respect of which the council of a municipality is the responsible authority and which relates to land forming part of the specified area of a regional planning authority, cause a copy of the appeal to be served on such regional planning authority.

35 (iii) in the case of an appeal by any person aggrieved by a determination (other than the applicant), cause a copy of the appeal to be served in the prescribed manner on the applicant for the permit;

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(iv) in

- (iv) in the case of an appeal by an applicant for a permit, cause notice of the appeal to be served in the prescribed form and in the prescribed manner on every objector together with a copy of the appeal; 5
- (b) in the case of an appeal brought under the *Environment Protection Act 1970*, the *Local Government Act 1958* or the *Port Phillip Authority Act 1966*, the registrar shall thereupon cause a copy of the appeal to be served on any municipal council, public authority or person whom the chief chairman considers may be affected by the appeal. 10
- (c) in the case of an appeal under sub-section (1), sub-section (2), sub-section (3) or sub-section (5) of section 32 or sub-section (1) of section 32A of the *Environment Protection Act 1970*, where it appears to the Board that any person not a party to the appeal is liable to be interested in the subject-matter thereof, the Board may direct either— 15
- (a) that a copy of the appeal be served on any specified person; or 20
- (b) that public notice of the appeal be given in any specified manner—
- and may permit any person making application to the Board in writing for the purpose within 45 days of the service on him of a copy of the appeal or the giving of public notice of the appeal (as the case may be) to be heard as a party upon the hearing of the appeal upon such terms as the Board thinks just in the circumstances. 25 30
- (4) Where an appeal is lodged by an applicant for a permit under the *Town and Country Planning Act 1961*, it shall be sufficient compliance with sub-section (3) (a) (iv) if notice of appeal—
- (a) is served on the person to whom notice of determination was served under section 18C (2) of the *Town and Country Planning Act 1961*; and 35
- (b) is published in a newspaper circulating in the vicinity of the land to which the notice relates.
- (5) Where a copy of an appeal is served upon a regional planning authority pursuant to the provisions of sub-section (3) (a) (ii) such regional authority may lodge with the registrar a notice in writing stating that it intends to contest such appeal and it shall thereupon become a party thereto. 40

(6) Where

(6) Where an appeal is lodged against a determination of a responsible authority to grant or to refuse to grant a permit to use any land for the purpose of carrying on an extractive industry within the meaning of the *Extractive Industries Act 1966* or against the failure of a responsible authority to grant such a permit or against any condition specified in any such permit, the registrar shall forthwith cause the Secretary for Minerals and Energy to be notified of the appeal and the Secretary for Minerals and Energy shall submit to the Board prior to the hearing of the appeal a copy of the report of the Extractive Industries Advisory Committee furnished under the said Act in respect of the land and the Board shall take the report into consideration in determining the appeal.

(7) Where an appeal against refusal or failure to issue a permit under the *Town and Country Planning Act 1961* is lodged in any case in which notice of the application for the permit was not given or published pursuant to section 18B of that Act, the chief chairman or a member conducting a compulsory conference pursuant to Part III. in respect of that appeal may, at any time prior to the commencement of the hearing of the appeal before a division of the Board, by writing require—

- (a) the applicant for the permit to serve a copy of the appeal on any person or to publish notice of the appeal in such manner and within such time as the chief chairman or member may direct or to do both those things; or
- (b) the responsible authority at the applicants expense to give or publish notice of the appeal—

and where the applicant fails to comply with a requirement under paragraph (a) the appeal will lapse.

(8) Any appeal may be withdrawn by notice in writing lodged with the registrar.

Withdrawal
of appeal.

(9) The registrar shall give notice in writing to every appellant and to every person served with a copy of the appeal of the time and place fixed for the hearing of the appeal unless the chief chairman in his absolute discretion dispenses with this requirement.

Respondent
to lodge and
serve statement
of grounds
relied on.

(10) Every person who desires to contest an appeal (except a responsible authority where the appeal is against a determination by it refusing to grant a permit or to consider an application for a permit or to extend the time within which any development is to be commenced or completed or against the failure to grant a permit) shall lodge with the registrar a short statement of the grounds on which he intends to rely at the hearing of the appeal and shall deliver a copy thereof to the appellant not less than seven days before the day appointed for the hearing.

(11) Where

(11) Where a person who desires to contest an appeal fails to comply with the provisions of sub-section (9) the Board may permit him to be heard after the views of the appellant with regard to his being heard have been obtained and considered and where the Board thinks fit it may adjourn the hearing, subject to such terms with respect to the payment of costs or otherwise as it may think just, to ensure that the other parties have a reasonable opportunity of considering and replying to the grounds on which he relies. 5

Certain appeals may be dealt with together.

(12) Where— 10

- (a) an applicant for a permit and any one or more objectors or persons aggrieved by a determination to grant a permit appeal;
- (b) two or more objectors or persons so aggrieved appeal; or
- (c) with respect to two or more appeals whether under the same Act or different Acts the chief chairman so directs— 15

the appeals shall be dealt with together.

17. (1) Subject to sub-section (2), the Minister shall have power to extend the time appointed or allowed by this or any other Act or by the exercise of such power of extension under this section for the lodging of an appeal to the Board and any such extension may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed. 20

(2) Notwithstanding sub-section (1), the Minister shall not, pursuant to that sub-section, extend the time appointed or allowed for the lodging of an appeal if the appeal in respect of which the extension was sought has been set down for hearing. 25

Hearing of appeal.

18. On the hearing of an appeal the Board—

- (a) shall act according to the substantial merits of the case and without regard to legal forms and technicalities and shall not be bound by the rules of evidence but, subject to the requirements of justice, may inform itself on any matter in any manner it thinks fit; 30
- (b) shall take account of and give effect to statements of planning policy approved under the *Town and Country Planning Act 1961* and environment protection policies declared under section 16 (1) of the *Environment Protection Act 1970*; 35
- (c) may take into account any matter which it could take into account when hearing any appeal under any Act. 40

19. Where all parties to an appeal inform the registrar that they do not desire to be heard or to make any written submissions, the registrar shall refer the appeal to the chief chairman who shall

determine

determine the appeal without hearing any party and the determination of the chief chairman shall have the same force and effect as a determination of the Board.

20. For the purposes of an appeal the Board or any member of
5 the Board may at all reasonable times enter into and upon and inspect— Inspection of property.

(a) the land or building to which the appeal relates; and

(b) any other land or building—

(i) with the consent of the occupier; or

10 (ii) in the absence of such consent, after two clear days' notice has been given to the occupier thereof (if any)—

and any person who obstructs or hinders any member of the Board in so doing or refuses admission to any land or building pursuant
15 to notice given under this sub-section shall be guilty of an offence against this Act.

Penalty: \$500.

21. (1) Any party to an appeal may appear and be heard before
20 the Board personally or by a barrister and solicitor or by a person authorized in that behalf by the party. Appearance of parties.

(2) A body corporate may be represented at the hearing of the appeal by an employee or a director or other officer of the body corporate approved by the division hearing the appeal.

25 (3) An unincorporated association of persons or a member of an unincorporated association of persons may be represented at the hearing of the appeal by a member or an officer of the association approved by the division hearing the appeal.

(4) Any submission may be made to the Board orally or in
writing or both orally and in writing. Submissions.

30 (5) Upon the hearing of an appeal the appellant shall not be restricted to the grounds stated in his appeal nor shall the responsible authority, authority, protection agency or council be restricted to the grounds for revocation, variation or refusal to grant a licence or permit or the failure or refusal to seal a plan
35 of subdivision or plan of consolidation stated in the respective notification thereof but where any new ground or matter not so stated is raised on the appeal or where any existing ground is amended the Board (unless it is of opinion that the new ground or matter is of no substance or irrelevant) shall ensure that the other
40 party to the appeal has a reasonable opportunity of considering and replying to that ground or matter and for that purpose may adjourn the hearing subject to such terms as to costs or otherwise as it thinks just in the circumstances.

(6) Where

Non-
appearance.

(6) Where a party to an appeal does not appear at the hearing of the appeal and he has not indicated at the compulsory conference his intention not to resist or pursue the appeal or has not withdrawn his appeal by written notification to the registrar not less than seven days before the date of the hearing, the Board may upon the application of the other party to the appeal order that the party who fails to appear shall pay any reasonable costs that he has incurred in respect of the appeals. 5

Ministerial
submission.

22. (1) Where it appears to the chief chairman or the division hearing the appeal that an appeal may be determined in a way which will have a substantial effect on the future planning of the area in which the land the subject of the appeal is situated the chief chairman or the division hearing the appeal may invite the Minister to make a submission as to matters which he considers to be relevant to the issues before the Board. 10

(2) Where it appears to the Minister that any appeal may be determined in a way which will have a substantial effect on the future planning of the area in which the land the subject of the appeal is situated the Minister may make a submission to the Board as to matters which he considers to be relevant to the issues before the Board. 15 20

(3) Any such submission may be made by the Minister in writing or orally on his behalf by a representative who appears at the hearing of the appeal and may be made at any time before the determination of the appeal. 25

(4) Where any such submission has been made by the Minister in writing a copy shall be given to the Board and to the parties or the representatives of the parties to the appeal.

(5) Where any such submission has been made by the Minister in writing after the hearing of the appeal the Board shall afford the parties the opportunity of making further submissions to the Board. 30

(6) In determining the appeal the Board shall have due regard to any submission made by the Minister.

(7) Where it appears to the Board that any appeal raises a major issue of policy and that the determination of the appeal may have a substantial effect on the achievement of planning objectives or the development of planning objectives within the region in which the land the subject of the appeal is situated or in other parts of Victoria, the Board shall hear the appeal but shall not make a determination thereon. 35 40

(8) Where it appears to the Minister that any appeal raises a major issue of policy and that the determination of the appeal may have a substantial effect on the achievement of planning objectives

objectives or the development of planning objectives within the region in which the land the subject of the appeal is situated or in other parts of Victoria, he may direct the Board to hear the appeal but not to make a determination thereon.

5 (9) As soon as practicable after the completion of the hearing of an appeal referred to in sub-section (7) or (8) the Board shall advise the Minister of its opinion thereon and the Minister shall within 30 days refer the appeal to the Governor in Council for determination and the determination of the Governor in Council
10 shall operate in all respects as the determination of the Board.

(10) In this section "Minister" means the Minister administering the Act under which the appeal is made.

23. All costs awarded to a party in respect of an appeal shall be a debt due to that party and recoverable in any court of
15 competent jurisdiction. Costs.

24. The Board shall within a reasonable time of making its determination furnish each party to the appeal with a written statement of its reasons for the determination.

25 20 25 Subject to section 26 the determination of any appeal by the Board shall be final and shall be given effect to by every body or person affected thereby. Determination of appeal to be final.

26. (1) The Board may, if it thinks fit, of its own motion or on the application of any party refer any question of law to the Supreme Court and the Supreme Court shall give its opinion thereon. Reference to Supreme Court.

(2) Subject to the *Supreme Court Act* 1958 the Judges of the Supreme Court may make rules for or with respect to references to the Court under sub-section (1) including rules with respect to costs.

30 35 (3) Any party may within 28 days after the determination of any appeal by the Board and after having first served notice of his intention to do so on every other party and the registrar appeal to the Supreme Court against the determination on a question of law only as if the determination were an order of a magistrates' court, and the provisions of Part XI. of the *Magistrates' Courts Act* 1971 shall with such adaptations as are necessary apply accordingly.

(4) Except as provided in sub-section (3) there shall be no appeal against a determination of the Board.

40 PART V.—REGULATIONS

27. (1) The Governor in Council on the recommendation of
the Minister may make regulations for or with respect to— Regulations.

(a) the

- (a) the constitution of divisions of the Board;
 - (b) prescribing fees and allowances to be paid to the Chief Chairman and members of the Board;
 - (c) prescribing procedures for the conduct of any hearing before a division of the Board; 5
 - (d) prescribing procedures for the conduct of any compulsory conference;
 - (e) prescribing the form of any document, application, notice, notification or other communication required to be issued under this Act; 10
 - (f) prescribing the manner in which service of any document, notice, notification or other communication shall be effected including the prescribing of time limits for effecting such service where not otherwise provided for in this or any other Act; 15
 - (g) the listing of appeals including any separate listing of appeals requiring parties to attend for a hearing within a prescribed time or on a prescribed period of notice;
 - (h) subject to this Act, prescribing the time within which appeals shall be lodged; 20
 - (i) generally, prescribing all such matters and things as are authorized or required to be prescribed or as are necessary or convenient to be prescribed for carrying into effect the purposes of this Act.
- (2) Where any form is prescribed under sub-section (1) 25
substantial compliance therewith shall be sufficient for the purposes of this Act.

PART VI.—AMENDMENTS TO CERTAIN ACTS

28. Section 9 of the *Port Phillip Authority Act 1966* shall be amended as follows: 30
- (a) After the expression “9” there shall be inserted the expression “(1)”;
 - (b) For the words “Minister against the decision of the Authority and the decision of the Minister shall be final and conclusive” there shall be substituted the words “Planning Appeals Board established under the *Planning Appeals Board Act 1979*”; 35
 - (c) At the end of the section there shall be inserted the following sub-section:
 - “(2) An appeal shall be lodged within the prescribed time.”. 40

29. In the *Town and Country Planning Act 1961* for section 22E and the heading preceding that section there shall be substituted the following section:

5 “22E. Where a planning scheme or an interim development order specifies or a permit contains a condition that any specified matter or thing be done to the satisfaction of the responsible authority and any dispute arises in relation thereto, the owner user or developer of the land or the responsible authority may lodge a notice with the registrar specifying the matters in dispute
10 and referring those matters to the Planning Appeals Board for decision and the decision of the Planning Appeals Board shall be final and shall be given effect to by every responsible authority and other person affected thereby.”.

15 30. The *Town and Country Planning Act 1961* shall be amended as follows:

(a) In section 3 (1) the interpretation of “Appeals Tribunal” or “Tribunal” is repealed;

(b) In section 3 (1) after the interpretation of “Owner” there shall be inserted the following interpretation:

20 ““Planning Appeals Board” means the Planning Appeals Board established under the *Planning Appeals Board Act 1979*.”;

(c) In section 3 (1) after the interpretation of “Public authority” there shall be inserted the following interpretation:

25 ““Registrar” means the registrar of the Planning Appeals Board appointed under the *Planning Appeals Board Act 1979*.”;

(d) In sections 19 (1); 20 (4); 20 (4D); 22 (1A), (4) and 24 (2A) for the word “Tribunal” (wherever occurring) there shall be substituted the words “Planning Appeals Board”;

(e) In section 21A (1)—

35 (i) for the words “the Tribunal” (where first occurring) there shall be substituted the words “a division of the Planning Appeals Board”;

(ii) for the words “the Tribunal” (where second and third occurring) there shall be substituted the words “the division of the Planning Appeals Board”;

40 (f) In sections 22 (1); 22C and 24 (2A) for the words “Appeals Tribunal” there shall be substituted the words “Planning Appeals Board”;

(g) In

- (g) In section 24 (3) for the word "Tribunal" there shall be substituted the words "the Planning Appeals Board";
- (h) For section 20 (4A) there shall be substituted the following sub-section:
 "(4A) Upon receipt of notice from the registrar that an appeal against failure to issue a permit has been lodged with the Planning Appeals Board the responsible authority may determine the application.";
- (i) In section 20 (4D)—
- (i) for the words "its determination" there shall be substituted the words "the determination of the Planning Appeals Board";
- (ii) for the word "accordingly" there shall be substituted the words "within three working days thereafter";
- (j) Sections 19 (2); 19A; 19B; 19C; 19D; 20 (1), (2), (2A), (2B), (2C), (3), (5), (5A), (6), (7), (8), (9); 21; 22 (2), (2A), (3); 22A and 22B are repealed.

31. The *Environment Protection Act 1970* shall be amended as follows:

- (a) In section 4 (1) in the interpretation of "Board" for the words "Environment Protection Appeals Board" there shall be substituted the words "Planning Appeals Board established under the *Planning Appeals Board Act 1979*.";
- (b) In section 5—
- (i) at the end of paragraph (a) there shall be inserted the word "and";
- (ii) the word "and" at the end of paragraph (b) is repealed; and
- (iii) paragraph (c) is repealed;
- (c) Sections 8; 12; 12A; 13 (4); 32 (7), (8); 33 (1); 34; 34A; 35 (2), (3); 36 and 37 are repealed;
- (d) In section 9 the words "and the Board" are repealed;
- (e) In section 15 for the expression "the Authority, the Council and the Board" there shall be substituted the words "the Authority and the Council";
- (f) In section 32 (1) the words "Environment Protection Appeal" are repealed.

32. The *Local Government Act 1958* shall be amended as follows:

- (a) In sections 569AA (1) and 575 (1) the interpretation of "Arbitrator" is repealed;

(b) In

- (b) In section 569AA (1) after the interpretation of "Last approved plan of subdivision" and in section 575 (1) after the interpretation of "Construct" the following interpretation shall be inserted:

5 "Planning Appeals Board" means the Planning Appeals Board established under the *Planning Appeals Board Act 1979*;

- 10 (c) In sections 569B (8AC) (b); 569E (9), (10); 569I (1); 570 (1), (3); 571 (1) and 573A (a), (b) for the words "an arbitrator" (wherever occurring) there shall be substituted the words "the Planning Appeals Board";

- (d) In sections 569E (9); 569I (3) and 579 (5) for the words "he thinks fit" there shall be substituted the words "it thinks fit";

- 15 (e) In sections 569 (5) (b); 569E (9AA), (9AC), (9AE), (9AF); 569I (3); 570 (1A), (1C), (2); 579 (4), (5) and 580 (1) (b) (ii) for the word "arbitrator" (wherever occurring) there shall be substituted the words "Planning Appeals Board";

- 20 (f) In section 569I (1) for the words "the arbitrator" there shall be substituted the words "the Planning Appeals Board";

- 25 (g) In sections 569I (1C) and 570 (1C) for the words "he is satisfied" there shall be substituted the words "it is satisfied";

- (h) In section 570 (3) for the words "he may if he thinks fit" there shall be substituted the words "it may if it thinks fit";

- 30 (i) In section 579 (3) for the words "an arbitrator and the arbitrator" there shall be substituted the words "the registrar of the Planning Appeals Board and the registrar";

- (j) Sections 569AA (1A), (1B), (1C), (1D), (1DA), (1E), (1EA), (1F), (1FA), (1G) and 579 (6), (8), (9) are repealed.

- 35 33. At the end of section 6 (7) of the *Strata Titles Act 1967* there shall be inserted the words "as if a reference in section 570 of the *Local Government Act 1958* to the Planning Appeals Board were a reference to an arbitrator".

