

# Subdivision Bill

No.

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# LEGISLATIVE COUNCIL

Read 1° 12 April 1988

*(Brought from the Legislative Assembly)*

## A BILL

*for*

An act relating to the subdivision of land and for other purposes.

### Subdivision Act 1987

The Parliament of Victoria enacts as follows:

#### PART 1—PRELIMINARY

##### What are the purposes of this Act?

1. The purposes of this Act are to—

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

##### When does this Act commence?

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

##### Definitions

15       3. In this Act—

          “Acquiring authority” means any person or body of persons  
          authorised to acquire land compulsorily.

- “Body corporate”** means a body corporate which is incorporated by registration of a plan of subdivision or a plan of strata or cluster subdivision.
- “Building”** includes— 5
- (a) a structure and part of a building or a structure; and
  - (b) fences, 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. 10
- “Council”** means the council of the municipal district in which the land in the plan is located.
- “Encumbrance”** means any encumbrance which can be registered under the *Transfer of Land Act 1958* and is specified in the planning scheme. 15
- “Land”** includes buildings and airspace.
- “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. 20
- “Owner”** means—
- (a) for land under the *Transfer of Land Act 1958*, 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. 25
  - (b) for 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.
- “Plan”** means a plan of— 30
- (a) subdivision; or
  - (b) consolidation; or
  - (c) creation, variation or removal of an easement, restriction or encumbrance.
- “Permit”** means a permit under the *Planning and Environment Act 1987*. 35
- “Plan of subdivision”** means a plan showing the subdivision of land.
- “Planning scheme”** means a planning scheme under the *Planning and Environment Act 1987*. 40
- “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— 45
- (a) for public recreation or public resort; or

- (b) as parklands; or
- (c) for similar purposes.

5       **“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.

**“Registered plan”** means a plan registered or approved by the Registrar under any Act.

10       **“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.

**“Responsible authority”** means a responsible authority under the *Planning and Environment Act 1987*.

15       **“Restriction”** means a restrictive covenant or a restriction which can be registered under the *Transfer of Land Act 1958* and is specified in the planning scheme.

**“Subdivision”** means the division of land into two or more parts which can be disposed of separately.

#### 20   **What does this Act apply to?**

4. (1) This Act applies to—

- (a) subdivision of land; and
- (b) consolidation of land; and
- 25       (c) the creation, variation or removal of any easement, restriction or encumbrance by agreement or implication of law; and
- (d) a body corporate.

30       (2) An easement created by an agreement between a public authority and an owner and identified by reference to location of works of the authority does not require a certified plan unless it is to be registered.

#### **The procedure for certification and registration of plans.**

35       5. (1) In spite of any rule of law to the contrary, the subdivision or consolidation of land, or the creation, variation or removal of an easement, restriction or encumbrance, must be done in accordance with this Act.

(2) An owner who wishes to have a plan registered must—

- (a) prepare a plan in accordance with this Act and the regulations; and
- 40       (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; and

- (d) obtain a statement of compliance from the Council; and
  - (e) lodge the certified plan at the Office of Titles for registration.
- (3) An owner may submit the plan to the Council for certification before obtaining a permit.
- (4) An owner may act through an agent unless the regulations require a personal or sealed declaration, consent or authorisation. 5
- (5) If the land in a subdivision is not in a municipal district, the Minister may carry out the functions of a Council.

#### PART 2—CERTIFICATION OF PLANS

#### What must the Council do? 10

6. (1) The Council must certify a plan within the prescribed period unless sub-section (2) applies.

(2) The Council must refuse to certify a plan if—

- (a) the plan does not comply with the planning scheme, this Act or the regulations; or 15
- (b) the land is not under the *Transfer of Land Act* 1958 and steps have not been taken to bring it under that Act; or
- (c) a referral authority refuses consent; or
- (d) an alteration required by a referral authority has not been made; or 20
- (e) a requirement under section 18 has not been complied with; or
- (f) the regulations require the marking out of lots at ground level and this has not been done; or
- (g) an alteration required by the Council has not been made; or 25
- (h) in the case of a plan of subdivision where the lot boundaries are specified by reference to a building, building works have not reached a stage where the boundaries of the lots can be accurately determined; or
- (i) any lot has access only over Crown land which has not been reserved or proclaimed as a road, unless the Minister administering the *Land Act* 1958 has consented in writing to the use for access. 30
- (j) in the case of a plan which removes or varies an encumbrance, the planning scheme has not directed the removal or variation and there is no court order for the removal or variation; or 35
- (k) in the case of a plan which removes or varies a restriction—
  - (i) the planning scheme has not directed the removal or variation; and 40

- (ii) the Registrar has not declared that the restriction has been released or varied; or
- (l) in the case of a plan which removes or varies the whole or part of an easement—
- 5 (i) the planning scheme has not directed the removal or variation; and
- (ii) the Registrar has not declared that the easement or the part has been abandoned or extinguished; and
- 10 (iii) the easement was set aside for the purpose of a public authority or a Council which has not requested or consented to the removal or variation; and
- (iv) all parties interested in the easement or the part of it have not agreed to the removal or variation.
- (3) If a Council refuses to certify a plan it must give its reasons in writing to the owner within the prescribed time.
- 15

**How long does certification last?**

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

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

- 20 8. (1) The Council must refer a plan to a referral authority within the prescribed time—
- (a) if this is required by the planning scheme or the permit, unless the owner gives the Council satisfactory evidence of the authority's consent dated within the previous 3 months; or
- 25 (b) if the authority is likely to have an interest in an easement, restriction or encumbrance which is to be created, varied or removed.

- (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 33 and shows acquired land without proposing to create additional lots.
- 30

**What must a referral authority do?**

9. (1) The referral authority must inform the Council within the prescribed time that it—
- 35 (a) consents to the plan; or
- (b) requires alterations; or
- (c) refuses consent.
- (2) If the authority requires alterations or refuses consent, it must give written reasons to the owner.

(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 an alteration to a plan, the time permitted for consideration of the plan is suspended until the altered plan is submitted.

**Council may require alterations.**

**10.** (1) Within the prescribed time, the Council may require the owner to alter the plan to make the plan suitable for certification.

(2) The Council may agree to an alteration at the request of the owner.

(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.

(4) If a plan contains all the alterations required by a Council, the Council cannot require any further alterations or refuse to certify the plan.

(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.

**Council may consent to the amendment of a certified plan.**

**11.** (1) 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.

(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.

5 (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

10 (b) advise the owner 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.

15 (9) The certification or re-certification of a plan under sub-section (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 licensed surveyor of the amendment.

**Plan must show easements and other rights.**

12. (1) A plan must specify—

20 (a) existing easements, the purpose of the easements and either the land to which they are attached or the Council, public authority or other person in whose favour they were created; and

25 (b) proposed easements, the purpose of the easements and either the land to which they are to be attached or the Council, public authority or other person in whose favour they are to be created.

30 (2) Where the subdivision is of a building, the following easements and rights over the land in the subdivision as are necessary for reasonable use or enjoyment of any lot or common property in which the lot owner is a tenant in common are implied and attached to each lot and the common property—

(a) support, shelter and protection;

35 (b) passage or provision of water, sewerage, drainage, gas, electricity, garbage, air and all other services of whatever nature (including telephone, radio, television and data transmission);

(c) right of carriageway with or without vehicles;

40 (d) full, free and uninterrupted access to and use of light for windows, doors and other openings enjoyed at the time the plan is registered;

(e) maintenance of overhanging eaves existing when the plan was registered.

(3) Any plan may specify that all or any of the easements and rights in sub-section (2) are implied in favour of a public authority or attached to any lot or common property without defining the location of the easement. 5

(4) Any person, Council or referral authority entitled to use an easement has a right of access to that easement over the common property and any lot and must repair any damage caused in using the easement or right of access. 10

(5) If the easement is registered the person entitled to use the easement is not required to repair damage to buildings or works constructed or located contrary to the easement.

### PART 3—REQUIREMENTS UNDER PLANNING SCHEMES

**Application of Part.** 15

13. This Part does not apply to—

- (a) a plan submitted by an acquiring authority under section 33 unless the plan proposes to create additional lots; or
- (b) a plan submitted by a Minister or government department.

**Council or referral authority may require an engineering plan for works.** 20

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

- (2) The Council or referral authority must— 25
- (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 certify the plan, it must at the same time give written reasons to the owner. 30

(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 plan is submitted. 35

(5) If an engineering plan contains all the alterations required by a Council or referral authority, the Council or referral authority must approve the plan.

(6) The Council may make a charge not exceeding the prescribed fee for an engineering plan it prepares.

**Works must comply with standards.**

- 5 15. 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.

**Construction and maintenance of works.**

- 10 16. (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.
- 15 (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.
- 20 (3) The owner must maintain the completed works in good condition and repair for 3 months or any other period which is agreed between the owner and the Council or referral authority.
- (4) After the expiry of the maintenance period, maintenance of the works becomes the responsibility of the Council or the referral authority.

**Council must fix road levels.**

- 25 17. The Council must fix the level of each new road on a certified plan within 60 days of the engineering plan being approved.

**Council may require public open space.**

- 30 18. (1) A Council may require the owner who proposes to create any additional lot by a plan to—
- (a) set aside for public open space in a location to the satisfaction of the Council 6 per cent (or, if another percentage is specified in the planning scheme, that percentage) of all of the land in the subdivision intended to be used for residential, industrial or commercial purposes; or
  - 35 (b) pay to the Council 8 per cent (or, if another percentage is specified in the planning scheme, that percentage) of the site value of all of the land in the subdivision intended to be used for residential, industrial or commercial purposes; or

(c) do a combination of (a) and (b) so that the total contribution is in accordance with the formula specified in Schedule 1.

(2) In the case of a staged subdivision, the Council may limit its requirement to the particular stage which it is approving.

(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. 5

(4) The owner may agree with the Council to set aside or pay a higher percentage than the set percentage. 10

(5) A public open space requirement may be made only once in respect of the land to be subdivided.

(6) A further open space requirement may only be made when a building is subdivided if 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. 15

#### **Valuation of land for public open space.**

19. (1) The Council may obtain a valuation of the land from a registered valuer at the expense of the owner if the value is not agreed.

(2) The land is to be valued as at the date the plan is submitted for certification. 20

(3) The Council must give the owner of the land a copy of the valuation.

(4) An appeal against the valuation may be made under Part III of the *Valuation of Land Act* 1958 as if the valuation had been made under Part X of the *Local Government Act* 1958. 25

(5) If the plan is not certified within 12 months after it is submitted, the Council may obtain another valuation at the owner's expense and vary the amount of the payment accordingly.

#### **What must the Council do with public open space? 30**

20. (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 or the proceeds of any sale of public open space to—

(a) buy land for use as public open space; or 35

(b) improve land already set aside for use as public open space.

(3) A Council may not sell public open space unless the land meets the minimum lot size requirements in the planning scheme.

(4) The Council may sell public open space to the owner of adjoining land if the owner consolidates the open space and the adjoining land.

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

**Statement of compliance with statutory requirements.**

21. (1) A Council must issue a statement of compliance to the owner in the prescribed form as soon as possible after—

- 10 (a) the owner has given it the prescribed information; and  
(b) it is satisfied that the requirements of this Act have been met.

15 (2) If a boundary of a lot in a subdivision is specified by reference to a building, the Council cannot issue a statement of compliance until a certificate of occupancy has been issued under the *Building Control Act* 1981.

**PART 4—REGISTRATION OF CERTIFIED PLANS**

**When can the Registrar register a plan?**

22. The Registrar may register a plan if—

- 20 (a) the plan appears to the Registrar to have been certified or sealed by the Council and the certification or sealing remains valid; and  
25 (b) the owner provides a statement of compliance or an acquiring authority, Minister or government department submits a statement that the plan is exempt from Part 3; and  
30 (c) each person who lodged a mortgage or charge before the plan consents in writing to its registration; and  
(d) notice has been sent to every person who lodged a caveat before the plan claiming a mortgage or charge and either the period in the notice has expired or the person has consented to registration of the plan; and  
(e) the land is under the *Transfer of Land Act* 1958.

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

35 23. (1) If a planning scheme directs the creation, removal or variation of easements, restrictions or encumbrances, the person directed under the planning scheme must lodge a plan in the Office of Titles for registration.

40 (2) The consent of any other person who has an estate, interest or claim in the land is not required.

**What is the effect of registration?**

24. (1) The registration of a plan takes effect from the time that the Registrar notes on the plan that it has been registered.

(2) Upon registration—

- (a) land set aside as a reserve vests in the body named in the plan; and 5
- (b) land set aside as a road vests in the Council or any other person or body identified for that purpose in the plan; and
- (c) any road vested in the Council becomes a public highway; and 10
- (d) any easement, restriction, encumbrance or other right is created, varied or removed as specified in the plan; and
- (e) any implied easements are created; and
- (f) the registered plan replaces or modifies any previous registered plan. 15

(3) The Registrar must issue a certificate of title for—

- (a) each lot; and
- (b) each part of the land set aside as a reserve.

(4) However, the Registrar may decide not to issue a certificate of title if— 20

- (a) a document required by the Registrar has not been produced or lodged;
- (b) there is an order of a court or the Administrative Appeals Tribunal prohibiting the issue of the certificate;
- (c) the certificate is not required by the owner and its issue would not be desirable; or 25
- (d) in the opinion of the Registrar, other special circumstances make the issue of the certificate undesirable or unnecessary.

(5) Upon the issue of a certificate of title for any land set aside as a road or reserve the land is discharged from any mortgage, charge, lease or sub-lease. 30

**Notification of Councils and referral authorities.**

25. (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. 35

(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.

**Boundary plans.**

5       **26.** (1) An owner 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) abutments; and
- (c) any other matter required by the Registrar.

10       (2) The Registrar must—

- (a) approve the plan; or
- (b) reject the plan giving reasons in writing—

within the prescribed time.

**PART 5—SUBDIVISIONS WITH BODIES CORPORATE**

15       **How is a body corporate created?**

27. (1) A plan may provide for the creation of one or more bodies corporate consisting of the owners of specified lots.

(2) A plan which contains common property must provide for the creation of one or more bodies corporate.

20       (3) The plan must specify details of lot entitlement and liability and contain the prescribed information.

**What is the effect of registration of a plan containing common property?**

25       **28.** In addition to section 24, when a plan containing common property is registered—

- (a) the bodies corporate are incorporated; and
- (b) the owners of the specified lots become the body corporate; and
- (c) the common property vests in those owners as tenants in common in shares proportional to their lot entitlement; and
- (d) the Registrar must issue certificates of title to the common property in the names of the bodies corporate as nominees for those owners.

30

**Provisions applying to bodies corporate.**

29. (1) A body corporate has perpetual succession and is capable of suing and being sued in its own name.

(2) A body corporate and its members have the constitution, duties, functions, powers, rights and liabilities specified in the regulations. 5

(3) The *Companies (Victoria) Code* does not apply to a body corporate.

(4) A member of a body corporate is not personally liable in any civil action arising from the body corporate carrying out or failing to carry out its duties, functions or powers under this Act or the regulations. 10

**How can a subdivision containing a body corporate be altered?**

30. (1) If there is a unanimous resolution of the members, the body corporate may proceed under this section to—

- (a) dispose of all or part of the common property; or
- (b) purchase and consolidate land adjoining or adjacent to the common property with the common property; or 15
- (c) increase or decrease the number of lots; or
- (d) alter the common property or the lots; or
- (e) create, vary or remove any easement or restriction (whether or not it is specified in a planning scheme), encumbrance or other right over the common property or any lot, as if it were the owner of the land. 20

(2) The body corporate must submit a plan for certification on behalf of the owners showing that part of the subdivision which is being changed and containing details of any changes in the lot entitlement and liability. 25

(3) The modification of a registered plan does not affect the legal identity or continuity of operation of the body corporate.

**How can lot entitlement and liability be altered?**

31. If there is a unanimous resolution of the members, the body corporate may apply to the Registrar in the prescribed form to alter the lot entitlement. 30

**Recording of changes to a plan.**

32. (1) The Registrar must record all changes and alterations on the plan. 35

(2) The body corporate must inform the Registrar of any change of its address.



(3) A notice to a body corporate may be served by post and is properly addressed if the address in the notice is the one shown on the registered plan.

#### PART 6—MISCELLANEOUS

### 5 Compulsory acquisition of land.

10 33. (1) If an acquiring authority has compulsorily acquired a part of the land in a Crown grant or a certificate of title or a part of a lot, reserve or common property specified in a registered plan, it must submit a plan to the Council for certification, as if the authority were the owner of the land which has been subdivided.

(2) If an acquiring authority has compulsorily acquired part of the land of a member of a body corporate, the authority must submit a plan for all the land of the members of that body corporate.

15 (3) The plan submitted by the authority may propose to either—  
(a) maintain or reduce the number of separately disposable parcels of land in the area covered by the plan, excluding the acquired land; or  
(b) create additional lots.

20 (4) The acquiring authority must lodge the certified plan with the Registrar for registration.

(5) The acquiring authority may lodge the necessary documents to have land in a plan brought under the *Transfer of Land Act 1958*.

25 (6) A person who acquires land through a vesting order under section 62 of the *Transfer of Land Act 1958* must submit and lodge a plan as if the person were an acquiring authority if the land could not be disposed of without being subdivided before the acquisition.

### Power of owner to acquire or remove easements.

30 34. (1) If a Council decides that the economical and efficient subdivision, consolidation or servicing of any land requires that the owner of the land acquire or remove an easement over any land in the subdivision or consolidation or any land in the vicinity, the owner may apply to the Administrative Appeals Tribunal for leave to acquire or remove the easement compulsorily.

35 (2) If leave is given, the owner may compulsorily acquire or remove the easement and the Land Acquisition and Compensation Act 1986 applies as if this Act is the special Act and the owner is the Authority.

(3) A referral authority may request the Council to apply this section to any land.

**Staged development.**

35. (1) If a plan is for part of a staged development, the plan must contain the prescribed information.

(2) The lot entitlement and liability on a registered plan may be changed by registration of a plan for a subsequent stage in the development. 5

**Disputes relating to bodies corporate.**

36. (1) If a dispute arises between—

(a) a body corporate and a member of the body corporate; or

(b) members of a body corporate— 10

the body corporate or member may apply to a Magistrates' Court for a declaration or for arbitration of the dispute.

(2) A member of the body corporate may apply to the Supreme Court, the County Court or the Administrative Appeals Tribunal for an order requiring the body corporate to alter the plan in any of the ways set out in section 30 (1). 15

(3) A body corporate, a creditor of the body corporate or any person with an interest in land affected by the body corporate may apply to the Supreme Court or the County Court for the appointment of an administrator to replace the body corporate. 20

(4) The Court may appoint an administrator and set down terms and conditions of the appointment.

(5) The members of the body corporate must pay the remuneration and expenses of the administrator and the Court may make an order for payment of costs relating to an application under sub-section (3). 25

(6) An administrator—

(a) must lodge with the Registrar a copy of the court order of appointment without delay;

(b) may proceed to alter the plan in any of the ways set out in section 30 (1) only in accordance with an order of a Court or the Administrative Appeals Tribunal; 30

(c) subject to any court order, may do anything which the body corporate or the committee can do;

(d) may delegate in writing any power.

**Other disputes arising under this Act. 35**

37. (1) An owner, a Council or a referral authority may refer a dispute arising under this Act to the Administrative Appeals Tribunal for its determination.

(2) Sub-section (1) does not apply to a dispute—

(a) under section 33 or referred to in section 36; or 40

(b) referred to in section 86 of the *Planning and Environment Act 1987*; or

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

5 (d) relating to an agreement under section 173 of that Act.

(3) On the application of any person, a referral authority, a responsible authority or the Minister, the Administrative Appeals Tribunal may order that the registration of a certified plan be stopped if there has been—

10 (a) a material mis-statement or concealment of fact in the application for certification or 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

15 (c) any failure to give notice under section 22 (1) (c).

(4) In an urgent case, the Tribunal may make an interim order under sub-section (3) without first giving notice to any person.

20 (5) Any dispute under section 33 must be referred to the Minister, whose decision takes the place of the decision of the Council or a referral authority.

**Appeals against refusal or failure to decide.**

38. (1) An owner may appeal to the Administrative Appeals Tribunal if—

25 (a) a Council refuses or fails to—

(i) certify or re-certify a plan; or

(ii) approve an engineering plan; or

(iii) issue a statement of compliance; or

(iv) fix the level of a new road; or

(b) a referral authority—

30 (i) refuses to consent to the certification or amendment of a plan; or

(ii) refuses or fails to approve an engineering plan; or

(c) a Council or referral authority requires alterations to a plan.

35 (2) The Tribunal may substitute its decision for the decision of referral authority or the Council.

(3) If the Tribunal finds that a Council or a referral authority has refused or failed to take any action, the Tribunal may direct that the action be carried out by another person, wholly or partly, at the cost of the Council or referral authority.

40 (4) If a Council or referral authority makes a decision on a matter in respect of which an appeal against the failure to decide has been made, the Council or referral authority must tell the Registrar of the

Administrative Appeals Tribunal of the decision and the Registrar must notify the appellant of the decision.

(5) An appellant may give notice to the Registrar of the Administrative Appeals Tribunal within the prescribed time electing to continue with the appeal in spite of the decision. 5

(6) A responsible authority, Council or planning authority or an owner affected by the planning scheme may appeal to the Administrative Appeals Tribunal against the failure of a person to comply with section 23 (1).

(7) If the Administrative Appeals Tribunal Act 1984 or the Planning Appeals Act 1980 is inconsistent with this Act, this Act prevails to the extent of the inconsistency. 10

#### **Delegation by the Council.**

39. (1) A Council may delegate in writing to one or more Council officers all of its powers, duties and functions under this Act except under this section and under sections 20 (3), 20 (4) and 34. 15

(2) A delegate must report to the Council the decisions made under the delegation.

#### **Delegation by the Minister.**

40. (1) The Minister may delegate in writing any powers, duties or functions under this Act to a Chief Administrator or any officer of the public service. 20

(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. 25

#### **Regulations.**

41. (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  
 (c) prescribing what constitutes evidence of completion; and 30

(d) prescribing time limits; and  
 (e) prescribing the time within which any appeal may be made; and  
 (f) prescribing standards for plans, survey marks and the laying out of subdivisions; and 35

(g) prescribing the manner of keeping any register or records under this Act; and

(h) prescribing the keeping of land information on Landata; and 40

- (i) prescribing the constitution, duties, functions, powers, rights and liabilities of a body corporate and its members; and
- (j) prescribing transitional provisions for by-laws of bodies corporate; and
- 5 (k) prescribing fees for any thing done under this Act; and
- (l) prescribing penalties not exceeding 20 penalty units or 6 months imprisonment for a contravention of the regulations; and
- 10 (m) any other matter which is authorised or required to be prescribed or necessary to be prescribed to carry out this Act.

(2) The regulations may—

- (a) prescribe different fees for different classes of applications, determinations, documents or of any thing; and
- 15 (b) prescribe composite fees payable to the responsible authority for consideration of an application by the responsible authority and any referral authority or Council; and
- (c) require a responsible authority to give a referral authority or Council the fees collected on its behalf; and
- 20 (d) empower a responsible authority, referral authority or Council to waive or rebate the payment of a fee in specified circumstances; and
- (e) require the making of a statutory declaration; and
- 25 (f) empower a responsible authority to make an administration charge not exceeding the prescribed amount for collecting fees referred to in paragraph (c).

(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—

- 30 (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.

35 **Repeals and savings.**

42. (1) The following are repealed—

- (a) the *Strata Titles Act* 1967;
- (b) the *Cluster Titles Act* 1974;
- 40 (c) sections 509 (1B), 569AA, 569AB, 569, 569A, 569B, 569BAA, 569C, 569D, 569E, 569F, 569G, 569H, 569I, 570, 571, 572 (1), 656F, 656G, 693A, 693B and 696AA of the *Local Government Act* 1958.

(2) Any plan of subdivision or consolidation which has been sealed by a Council before the commencement of this section is valid for a period of 5 years from its sealing or 12 months after the commencement of this section, whichever is later, and may be lodged in the Office of Titles for registration as if it were a certified plan.

5

(3) An application for the sealing, registration or approval of a subdivision made before the commencement of this section under the *Local Government Act 1958*, the *Strata Titles Act 1967*, the *Transfer of Land Act 1958* or the *Cluster Titles Act 1974* is to be treated as an application under this Act and, for this purpose, a statement under section 569E of the *Local Government Act 1958* and a statement of compliance are to be treated as equivalent.

10

(4) Any plan of cluster subdivision or strata subdivision registered before the commencement of this section remains subject to any notice of restriction on the plan.

15

(5) Bodies corporate created on registration of a plan of strata or cluster subdivision become bodies corporate under this Act and their legal identity and continuity of operation are not affected.

(6) The provisions of the *Sale of Land Act 1958*, the *Strata Titles Act 1967* and the *Local Government Act 1958* relating to sale of land before plans are approved or registered by the Registrar continue to apply to any valid plan of subdivision sealed by the Council before the commencement of this section.

20

(7) Subject to this section, any application, instrument or other dealing lodged under the *Transfer of Land Act 1958* prior to the commencement of this Act must be dealt with by the Registrar as if this Act had not commenced.

25

#### **Consequential amendments.**

43. The Acts specified in Schedule 2 are amended as specified in that Schedule.

30

#### **Amendment of *Sale of Land Act 1962*.**

44. After section 9AF of the *Sale of Land Act 1962* insert—

#### **Sale of part of land in a declared project before the plan of subdivision is certified.**

“9AG. (1) This section applies to the sale of any land which the Governor in Council declares to be special land for the purposes of this section.

35

(2) The registered proprietor of declared special land may sell any part of that land although that part is not on a plan of subdivision that has been certified under the *Subdivision Act 1987*.

40

(3) A contract for the sale of land under sub-section (2) must provide that the deposit money and all other money payable by the purchaser are paid to a solicitor or a licensed estate agent named or specified in the contract.

5 (4) The deposit and any other money paid by a purchaser of any part of the declared project land before a plan of subdivision on which that part is a lot is registered by the Registrar under the *Subdivision Act* 1987—

10 (a) must be paid to the solicitor or licensed estate agent named or specified in the contract; and

(b) must be held by that person on trust for the purchaser until a plan of subdivision is certified and registered.

(5) If this section is not complied with, the purchaser may, at any time before the plan has been registered, avoid the sale.

15 (6) If the plan is not registered within the period of 18 months after the contract of sale is entered into, the purchaser may, at any time after that period and before the plan is registered, avoid the sale.

20 (7) If the purchaser avoids the sale under this section, all money paid by the purchaser under the contract is recoverable by the purchaser except for any money paid by the purchaser as an occupation rent for any period during which the purchaser was in actual occupation of the land the subject of the contract.

(8) Sections 8A, 9AA, 9AB, 9AC, 9AD, 9AE and 9AF do not apply to a sale of land under this section.”.

## 25 Amendment of *Building Control Act* 1981.

45. After section 22 of the *Building Control Act* 1981 insert—

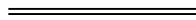
### **Governor in Council may declare special land.**

“22A. (1) This section applies to special land under section 9AG of the *Sale of Land Act* 1962.

30 (2) The Governor in Council may, by Order, declare that one or more parts of the land in a certified or registered plan of subdivision are to be regarded as one lot for the purposes of this Act and the building regulations.”.

### **Repeal of *Southgate Project Act* 1986.**

35 46. The *Southgate Project Act* 1986 is repealed.



## SCHEDULES

## SCHEDULE 1

Section 18

## PUBLIC OPEN SPACE FORMULA

## FORMULA

The formula is as follows:

(a) For a given percentage of land to be set aside, the percentage of the site value

of the land to be contributed is  $D \frac{(C-A)}{C}$  where:

A represents the percentage of the land to be set aside;

C represents the percentage under section 18 (1) (a);

D represents the percentage under section 18 (1) (b);

(b) For a given percentage of the site value of the land to be contributed, the

percentage of land to be set aside is  $C \frac{(D-B)}{D}$  where:

B represents the percentage of the site value of the land to be contributed;

C represents the relevant percentage under section 18 (1) (a);

D represents the relevant percentage under section 18 (1) (b).

## EXAMPLE

Assuming that the relevant percentages "(C)" and "(D)" are "6 per cent" and "8 per cent" as set out in section 18 (1) (a) and 18 (1) (b), if it is proposed to set aside 3 per cent of the land in the subdivision being used for or intended to be used for residential, industrial or commercial purposes "(A)" the percentage of the site value of the land to be contributed is calculated as follows:

$$8 \frac{(6-3)}{6} = 4$$

The percentage of the site value of the land to be contributed is not to exceed 4 per cent.



## SCHEDULE 2

## Section 43

## CONSEQUENTIAL AMENDMENTS

<i>Item</i>	<i>Act No.</i>	<i>Short Title</i>	<i>Amendment</i>
1	8520	<i>Albury-Wodonga Agreement Act 1973</i>	In section 15 for sub-section (5) substitute— “(5) The Corporation must comply with the <i>Subdivision Act 1987</i> and is the Council for the purposes of that Act.”
2			In section 15 (6) for “but the provisions of sub-section (5) shall not apply to the Corporation when it is exercising such powers or carrying out such functions in relation to such lands nor shall sub-section (12)” substitute “and sub-section (12) shall not”.
3	9720	<i>Building Control Act 1981</i>	After section 21 insert— <b>Requirement relating to public resort and recreation.</b> “21A. (1) This section applies if— (a) a person proposes to construct any building or buildings on any land; and (b) the council is of the opinion that the building or buildings or any part or parts thereof is or are likely to be used and occupied when constructed for— (i) two or more dwellings used for residential purposes; or (ii) an apartment house containing two or more apartments; or (iii) a lodging or boarding house containing more than five bedrooms; or (iv) any combination of the foregoing having more than five bedrooms— (whether or not the building or buildings or any part or parts thereof is or are also likely to be used for any other purpose). (2) The council may refuse to allow the construction of the building or buildings until that person pays to the council or gives to the council security to its satisfaction for an amount not greater than 8 per cent of the sum which bears the same relation to the site value of the land as the total of the areas of the building or buildings (whether on one or more levels) which the council is of the opinion is or are likely to be used and occupied for any of the purposes specified in subparagraphs (i), (ii), (iii) and (iv) of

## SCHEDULE 2—continued

<i>Item</i>	<i>Act No.</i>	<i>Short Title</i>	<i>Amendment</i>
3	9720	<i>Building Control Act</i> 1981—continued	<p>paragraph (b) of sub-section (1) bears to the total of all the areas of the building or buildings (whether on one or more levels) excluding passages, stairways and other areas which the council is satisfied are not intended to be used and occupied by one or more persons to the exclusion of others.</p> <p>(3) Sub-section (2) does not apply by reason only that a building or any part or parts of a building is or are used or are likely to be used as a hostel associated with a college, school or university or as a hotel, motel or residential club nor shall any part of a building used for such a purpose be included in calculating the total of the areas of a building used for any of the purposes specified in sub-paragraphs (i), (ii), (iii) and (iv) of paragraph (b) of sub-section (1).</p> <p>(4) Where the council requests a person to pay or give security for any amount under sub-section (2), it must make available to that person a copy of a valuation of the land concerned which the council has had made for the purpose by a person qualified to make valuations for the council.</p> <p>(5) A valuation made under sub-section (4)—</p> <p>(a) must be made as at the date on which an application for building approval is made in respect of the construction of the building or buildings concerned; and</p> <p>(b) is for the purposes of this section deemed to be a valuation made under Part X. of the <i>Local Government Act</i> 1958 and to give rise to a right of appeal under Part III. of the <i>Valuation of Land Act</i> 1960 accordingly.</p> <p>(6) Any amount paid to the council under sub-section (2) must be applied only for the purchase of land for places of resort and recreation or for the improvement of places of public resort and recreation.</p> <p>(7) Where any amount is paid to the council under sub-section (2) and the council is satisfied that it is no longer intended to build the building for which the amount was paid, the council may repay the amount so paid.”</p>

SCHEDULE 2—continued

Item	Act No.	Short Title	Amendment
3	9720	Building Control Act 1981—continued	<p><b>Council may refuse building permit where land may be subdivided.</b></p> <p>“21B. (1) Notwithstanding anything to the contrary in this Act or in any other Act or law, a council may refuse to allow the construction of a building on land within its municipal district in any case where—</p> <p>(a) the owner from time to time of the land may dispose of part of that land without notice to the council; and</p> <p>(b) the council is satisfied that if part of the land were disposed of before the council considered the matter the building to be constructed would not comply with the provisions of any by-law or regulation made under this Act with respect to the dimensions or area of the land, the proportion of the area of land on which buildings are to be constructed which may be covered by buildings or the provision of open space on the land.</p> <p>(2) A council must not refuse under sub-section (1) to allow the construction of a building on the sole ground that the owner may without notice to the council dispose of part of the land to the Crown or to a public statutory body constituted under a law of the State or of the Commonwealth.</p> <p>(3) Any person who constructs a building which the council has under this section refused to allow to be constructed is guilty of an offence.”</p>
4	6228	Country Fire Authority Act 1958	Section 110 (1) (za) is repealed.
5	7060	Dandenong Valley Authority Act 1963	<p>For section 17A substitute—</p> <p>“17A. Where any proposal for subdivision of land is referred to the Authority under the <i>Planning and Environment Act 1987</i> the Authority may require easements for the use of the Authority for any one or more of the purposes set out in the Third Schedule.”</p>
6			Section 17B is repealed.
7			<p>In section 17C (1) after “section)” insert “which has been sealed before the commencement of section 42 of the <i>Subdivision Act 1987</i>”.</p>
8			<p>In section 17C (2) omit “under sub-section (1) or section 17B”.</p>

SCHEDULE 2—continued

Item	Act No.	Short Title	Amendment
9	7060	<i>Dandenong Valley Authority Act 1963—continued</i>	In section 22A (2) (d) omit “whether entered into before or after the commencement of the <i>Local Government (Subdivision of Land) Act 1973</i> ” where twice occurring.
10			For section 22A (3) substitute— “(3) Where any proposal for subdivision of land is referred to the Authority under the <i>Planning and Environment Act 1987</i> the Authority may require the owner to enter into an agreement under sub-section (1).”.
11	10020	<i>Housing Act 1983</i>	In section 4 (1) in the definition of “Development” omit all words in paragraph (d) after “disposed of” where secondly occurring.
12	6299	<i>Local Government Act 1958</i>	In section 569BA (2) omit “pursuant to section 569B (8) (l) or sub-section (1)”.
13			In section 575 (3) after “Office of Titles” insert “or certified under the <i>Subdivision Act 1987</i> ”.
14			In section 576 omit “under the <i>Strata Titles Act 1967</i> ”.
15	6310	<i>Melbourne and Metropolitan Board of Works Act 1958</i>	In section 184C (2) (d) omit “whether entered into before or after the commencement of the <i>Local Government (Subdivision of Land) Act 1973</i> ” where twice occurring.
16			For section 184C (3) substitute— “(3) Where any proposal for subdivision of land is referred to the Board under the <i>Planning and Environment Act 1987</i> the Board may require the owner of the land to enter into an agreement under sub-section (1).”. For section 258BA substitute— “258BA. Where any proposal for subdivision of land is referred to the Board under the <i>Planning and Environment Act 1987</i> the Board may require easements for the use of the Board for any one or more of the purposes set out in Schedule 11B.”.
18			Sections 258BB (1) and 258BB (2) are repealed.
19			In section 258BB (3) after “section)” insert “which has been sealed before the commencement of section 42 of the <i>Subdivision Act 1987</i> ”.
20			In section 258BB (4) omit “under sub-section (1) or sub-section (3)”.

## SCHEDULE 2—continued

<i>Item</i>	<i>Act No.</i>	<i>Short Title</i>	<i>Amendment</i>
21	6310	<i>Melbourne and Metropolitan Board of Works Act 1958—continued</i>	In section 269A (d) omit “whether entered into before or after the commencement of the <i>Local Government (Subdivision of Land) Act 1973</i> ” where twice occurring.
22			For section 269A (3) substitute— “(3) Where any proposal for subdivision of land is referred to the Board under the <i>Planning and Environment Act 1987</i> the Board may require the owner of the land to enter into an agreement under sub-section (1).”.
23	6316	<i>Mildura Irrigation Trusts and Sunraysia Water Board Act 1958</i>	For sub-sections (1) to (7) of section 35E, substitute— “(1) Where a proposed subdivision of land is referred to the Trust under the <i>Planning and Environment Act 1987</i> , the Trust must refer the proposal to the Board if the subdivision creates lots for residential or commercial purposes. (2) The Trust may require the applicant for the subdivision to pay to the Trust— (a) the cost of construction of all works necessary for— (i) supply of water to the subdivided land and the measurement of water supplied; (ii) drainage of the subdivided land; and (iii) access by means of crossings or other structures; and (b) the net capital depreciation (if any) of the works; and (c) the prescribed fees. (3) In sub-section (2), “net capital depreciation” means the amount determined by the Trust as necessary to be set aside for the maintenance and renewal of the works in perpetuity, less the amount of revenue of the Trust or the Board which in the opinion of the Trust will arise by reason of the works. (4) When a plan of subdivision has been certified by the Council and any amounts required under sub-section (2) have been paid to the Trust, the Trust must—

## SCHEDULE 2—continued

<i>Item</i>	<i>Act No.</i>	<i>Short Title</i>	<i>Amendment</i>
23	6316	<i>Mildura Irrigation Trusts and Sunraysia Water Board Act 1958—continued</i>	<p>(a) construct the required works; or</p> <p>(b) if the land is to be included within the districts administered by the Board, hold the amounts received for costs of construction and net capital depreciation until the land is included, then pay these amounts to the Board.</p> <p>(5) When land is included in the districts administered by the Board and it has received the amounts under sub-section (4), the Board must construct the required works.</p> <p>(6) The constructed works form part of the works of the Trust or the Board.”.</p>
24			In section 78A (3) (d) omit “whether entered into before or after the commencement of the <i>Local Government (Subdivision of Land) Act 1973</i> ” where twice occurring.
25			<p>For section 78A (4), substitute—</p> <p>“(4) Where any proposal for subdivision of land is referred to the Trust under the <i>Planning and Environment Act 1987</i>, the Trust may require the owner of the land to enter into an agreement under sub-section (1).”.</p>
26	45/1987	<i>Planning and Environment Act 1987</i>	<p>In section 3 in the definition of “Development” for paragraph (d) substitute—</p> <p>“(d) the subdivision of land, including buildings or airspace; and</p> <p>(da) the creation, variation or removal of an easement, restriction or encumbrance; and”.</p>
27			<p>In section 3 for the definition of “Subdivision” substitute—</p> <p>““Subdivision” means the division of any land, including buildings or airspace into two or more parts which can be disposed of separately.’.</p>
28			In section 6 (2) (k) for the words “under section 173” substitute “with the responsible authority or a referral authority”.

## SCHEDULE 2—continued

<i>Item</i>	<i>Act No.</i>	<i>Short Title</i>	<i>Amendment</i>
29	45/1987	<i>Planning and Environment Act 1987—continued</i>	After section 62 (2) (j) insert— “; and (k) a condition requiring the subdivision of any part of a building to comply with a specified regulation or standard.”.
30			In section 68 (1) (b) after “issue of the permit” insert “or in the case of a subdivision within 5 years of the certification of the plan of subdivision under the <i>Subdivision Act 1987</i> ”.
31			After section 68 (3) insert— “(3A) If a permit for the use of land or the development and use of land requires the certification of a plan under the <i>Subdivision Act 1987</i> — (a) the use or development of any stage is to be taken to have started when the plan is certified; and (b) the permit expires if the plan is not certified within two years of the issue of the permit.”.
32			After section 91 (3) insert— “(4) If a cancelled permit relates to a subdivision any plan certified under the <i>Subdivision Act 1987</i> must be forfeited to the responsible authority. (5) A permit which relates to a subdivision cannot be cancelled if the plan of subdivision has been registered under the <i>Subdivision Act 1987</i> .”.
33	9512	<i>Planning Appeals Act 1980</i>	In the Schedule omit “ <i>Cluster Titles Act 1974</i> ”.
34			In the Schedule for “ <i>Strata Titles Act 1967</i> ” substitute “ <i>Subdivision Act 1987</i> ”.
35	6975	<i>Sale of Land Act 1962</i>	For section 2 (2) substitute— “(2) This Act does not bind the Crown but applies to any statutory body or authority in respect of any subdivision of land.”.
36			In section 8 for “allotments” (wherever occurring) substitute “lots”.
37			In section 8 for “allotment” (wherever occurring) substitute “lot”.
38			For section 8A substitute—

## SCHEDULE 2—continued

<i>Item</i>	<i>Act No.</i>	<i>Short Title</i>	<i>Amendment</i>
38	6975	<i>Sale of Land Act 1962— continued</i>	<p><b>Land which can be disposed of without being subdivided.</b></p> <p>“8A. (1) The following land can be dealt with without being subdivided:</p> <p>(a) Any land under the operation of the <i>Transfer of Land Act 1958</i> which is—</p> <ul style="list-style-type: none"> <li>(i) a lot on a plan of subdivision certified or registered under the <i>Subdivision Act 1987</i>; or</li> <li>(ii) an allotment on any Crown plan for disposal in fee simple of Crown land; or</li> <li>(iii) an allotment on a plan of subdivision approved by the Registrar under section 97 of the <i>Transfer of Land Act 1958</i> or on any map or plan deposited or lodged under any corresponding previous enactment; or</li> <li>(iv) a unit on any registered plan within the meaning of the <i>Strata Titles Act 1967</i>, subject to any restriction on the plan; or</li> <li>(v) a lot on any registered plan within the meaning of the <i>Cluster Titles Act 1974</i>, subject to any restriction on the plan; or</li> <li>(vi) a parcel of land for which a declaration has been given under section 569D (3A) of the <i>Local Government Act 1958</i> if the registration of any instrument or dealing to which the declaration relates occurs within 5 years of the commencement</li> </ul>



## SCHEDULE 2—continued

Item	Act No.	Short Title	Amendment
38	6975	Sale of Land Act 1962— continued	<p>of section 42 of the Subdivision Act 1987; or</p> <p>(vii) the whole of the land comprised in a Crown grant or certificate of title which is not the subject of a later plan of subdivision; or</p> <p>(b) Any land not under the Transfer of Land Act 1958 which is—</p> <p>(i) an allotment on a Crown plan for disposal in fee simple of Crown land;</p> <p>(ii) a parcel of land granted by a conveyance dated more than 15 years before the commencement of section 42 of the Subdivision Act 1987; or</p> <p>(iii) a parcel of land on a plan of subdivision sealed under section 569B of the Local Government Act 1958.”.</p>
39			Section 9 is repealed.
40			In section 9AA (1) for “Section 9 (1) (d) (ii) does not apply to the sale of an allotment on a plan of subdivision where” substitute “A person shall not sell a lot in a plan of subdivision to anyone except a statutory body or authority if the plan has not been registered by the Registrar, unless the plan has been certified by the Council and”.
41			In sections 9AA (1) (a) and 9AA (1) (b) for “allotment” substitute “lot”.
42			In sections 9AA (1) and 9AA (2) for “approval” (wherever occurring) substitute “registration”.
43			In section 9AA (2) for “an allotment” substitute “a lot”.
44			Section 9AA (5) is repealed.
45			In section 9AA (6) for “an allotment” substitute “a lot”.
46			In section 9AA (6) for “the allotment” substitute “the lot”.

SCHEDULE 2—*continued*

<i>Item</i>	<i>Act No.</i>	<i>Short Title</i>	<i>Amendment</i>
47	6975	<i>Sale of Land Act 1962— continued</i>	In section 9AB (1) for “sealing” substitute “certification”.
48			In sections 9AB (1) and 9AB (2) for “an allotment” substitute “a lot”.
49			In sections 9AB (1) and 9AB (2) for “the allotment” (wherever occurring) substitute “the lot”.
50			In section 9AB (2) for “approval” (where twice occurring) substitute “registration”.
51			In section 9AC (1) for “approval” substitute “registration”.
52			In section 9AC (2) for “allotment” substitute “lot”.
53			In section 9AD for “allotment” substitute “lot”.
54			In sections 9AD (1) and 9AD (2) for “approval” substitute “registration”.
55			In sections 9AE (1) and 9AE (2) for “an allotment” substitute “a lot”.
56			In section 9AE (1) for “approval” substitute “registration”.
57			In section 9AE (2) for “approved” (where twice occurring) substitute “registered”.
58			In section 9AF (1) for “an allotment” (where twice occurring) substitute “a lot”.
59			For sections 9A, 10 and 11 substitute—

**Amendment affecting pre-sold lots.**

“10. (1) If any amendment to a plan of subdivision is made after a contract of sale of a lot is entered into which restricts or limits the use of the lot the purchaser may avoid the sale at any time before the plan of subdivision is registered unless the amendment results from any recommendation of a public authority or government department.

(2) A contract of sale may provide that sub-section (1) does not apply in respect of the final location of an easement shown on a certified plan.”

## SCHEDULE 2—continued

<i>Item</i>	<i>Act No.</i>	<i>Short Title</i>	<i>Amendment</i>
59	6975	<i>Sale of Land Act 1962— continued</i>	<p><b>Body corporate must have insurance policy.</b></p> <p>“11. (1) A person cannot sell a lot affected by a body corporate unless the body corporate has a current insurance policy in accordance with the regulations under the <i>Subdivision Act 1987</i>.</p> <p>(2) If a lot is sold in contravention of sub-section (1) the purchaser may avoid the sale at any time before the contract is completed.”</p>
60			Section 14A is repealed.
61			In section 27 (11) for “pursuant to the provisions of section 7 of the <i>Strata Titles Act 1967</i> or sections 8A, 9AA and 9A of this Act” substitute “under section 8A or 9AA”.
62			In section 32 (2) (e) after the word “order” insert— “declaration, report or recommendation of a public authority or government department”.
63			In section 32 (2) after paragraph (g) insert— “(h) In the case of land in a subdivision containing a body corporate particulars of any payment or non payment of any sum by the registered proprietor in respect of the maintenance fund or the undertaking of any repairs on the lot by the body corporate.”
64			In section 32 (3) for paragraphs (ba), (c), (d) and (e) substitute— “(c) In the case of land which is the subject of a sealed or certified subdivision a copy of the registered or approved plan or if the plan of subdivision has not been registered or approved, a copy of the certified or sealed plan of subdivision together with any proposed amendments.”
65	6368	<i>Sewerage Districts Act 1958</i>	In section 152A (3) (d) omit “whether entered into before or after the commencement of the <i>Local Government (Subdivision) Act 1973</i> ” (where twice occurring).

## SCHEDULE 2—continued

<i>Item</i>	<i>Act No.</i>	<i>Short Title</i>	<i>Amendment</i>
66	6368	<i>Sewerage Districts Act 1958—continued</i>	For section 152A(4) substitute— “(4) Where any proposal for subdivision of land is referred to the Authority under the <i>Planning and Environment Act 1987</i> the Authority may require the owner of the land to enter into an agreement under sub-section (2).”.
67	10153	<i>South Yarra Project Act 1984</i>	In section 6 (1) for “section 569B (8A) of the <i>Local Government Act 1958</i> ” substitute “section 18 of the <i>Subdivision Act 1987</i> ”.
68	10215	<i>South Yarra Project (Subdivision and Management) Act 1985</i>	In section 3 after “3.” insert “(1)”.
69			At the end of section 3 insert— “(2) A reference in this Act to the <i>Strata Titles Act 1967</i> or a provision of the <i>Strata Titles Act 1967</i> is a reference to that Act or provision as in force immediately before the commencement of section 42(1) of the <i>Subdivision Act 1987</i> and notwithstanding the repeal of the <i>Strata Titles Act 1967</i> has effect as if the relevant provision was incorporated in this Act.”
70	6377	<i>State Electricity Commission Act 1958</i>	Section 103A (6) is repealed.
71			For section 103B substitute— “103B. Where any proposal for subdivision of land is referred to the Commission under the <i>Planning and Environment Act 1987</i> the Commission may require easements for the use of the Commission for any one or more of the purposes set out in the Seventh Schedule.”.
72	9180	<i>Surveyors Act 1978</i>	In section 3 in the definition of “Cadastral survey” for “the <i>Strata Titles Act 1967</i> , the <i>Cluster Titles Act 1974</i> ” substitute “the <i>Subdivision Act 1987</i> ”.
73	6399	<i>Transfer of Land Act 1958</i>	In section 4 (1) the definition of “Allotment” is repealed.
74			For section 32 (1) substitute— “(1) On the application of any registered proprietor or person entitled to be registered as proprietor of land under one or more Crown grants or certificates of title, the Registrar may, on surrender of the duplicates, issue certificates of title to parts of the

## SCHEDULE 2—continued

<i>Item</i>	<i>Act No.</i>	<i>Short Title</i>	<i>Amendment</i>
74	6399	<i>Transfer of Land Act 1958—continued</i>	land that can be disposed of separately without subdivision, cancelling the grants or previous certificates.”.
75			For section 32 (1A) substitute— “(1A) The Registrar shall not issue a single certificate of title for any land, part of which can be disposed of separately without subdivision, unless the Registrar believes there are special circumstances.”.
76			In section 54, for the words “application in an appropriate approved form” substitute “lodgement of a certified plan under the <i>Subdivision Act 1987</i> ”.
77			In section 62 (2) for “as aforesaid.” substitute “as aforesaid—provided that, if the land cannot be disposed of without subdivision, the Registrar has first registered a certified plan under the <i>Subdivision Act 1987</i> .”.
78			Section 72 (2) is repealed.
79			In section 73 (1) for “the removal from the Register Book of” substitute “a declaration in respect of”.
80			In section 73 for sub-section (2) for “appropriate entries and amendments in the Register Book” substitute “a written declaration to that effect to the applicant”.
81			In section 88 (1) for “to cancel or alter any such memorandum”, substitute “the Registrar shall issue to any applicant a written declaration to that effect”.
82			After section 88 (1) insert— “(1A) The Registrar may enter, cancel or alter any memorandum of a restrictive covenant only by registration of a plan under the <i>Subdivision Act 1987</i> .”.
83			For section 97 (1) substitute— “(1) In dealing with any matter under the <i>Subdivision Act 1987</i> , the Registrar has the same powers, duties, functions and discretions as if it were a matter under this Act.”.
84			In section 97 sub-sections (2A), (2B) and (3) are repealed.
85			In section 97 (4) for “approved” substitute “approved or registered”.
86			In section 97 (4) for “allotments” substitute “allotments or lots”.
87			In section 97 (4) for “allotment” substitute “allotment or lot”.
88			In section 97 (4A) (where first occurring) for “approved” substitute “approved or registered”.

## SCHEDULE 2—continued

<i>Item</i>	<i>Act No.</i>	<i>Short Title</i>	<i>Amendment</i>
89	6399	<i>Transfer of Land Act 1958—continued</i>	In section 97 (4A) (where first occurring) for “allotment” (where twice occurring) substitute “allotment or lot”.
90			In section 97 (4B) for “an allotment” substitute “an allotment or a lot”.
91			In section 97 (4B) for “the allotment” (where twice occurring) substitute “the allotment or lot”.
92			In section 97 (4A) (where secondly occurring) for “(4A)” substitute “(4C)”.
93			In section 97 (4A) (where secondly occurring) for “approved” substitute “approved or registered”.
94			In section 97 (4A) (where secondly occurring) for “an allotment” (where twice occurring) substitute “an allotment or a lot”.
95			Section 97 (5) is repealed.
96			Section 97A (1) is repealed.
97			In section 97A (2), after “approves” insert “or registers”.
98			In sections 97A (3) and (3A) for “approved by the Registrar under this section”, substitute “approved or registered by the Registrar”.
99			Section 97B is repealed.
100			In section 98 after “subdivision” insert “or a lot shown on a registered plan”.
101			In section 98 after “the allotment” (wherever occurring) insert “or the lot”.
102			In section 98 for “other allotments” insert “or other lots”.
103			After section 98c insert— <b>Conversion of building subdivisions.</b> “98CA. (1) A service company or the registered proprietor of an allotment shown on the plan of building subdivision may apply to the Registrar to have the plan of building subdivision cancelled and a plan of subdivision prepared under the regulations under the <i>Subdivision Act 1987</i> registered. (2) The application must be— (a) in the prescribed form; and (b) contain the prescribed particulars; and (c) accompanied by a plan of subdivision under the regulations under the <i>Subdivision Act 1987</i> ; and

## SCHEDULE 2—continued

Item	Act No.	Short Title	Amendment
103	6399	Transfer of Land Act 1958—continued	<p>(d) if a service company operates in relation to the building subdivision but is not the applicant, the consent under seal of the service company to the granting of the application or, if no service company operates in relation to the building subdivision, the consent in writing of the registered proprietors of not less than one-half of the allotments on the plan of building subdivision to the granting of the application.”</p> <p><b>Procedure if Registrar is satisfied that plan is suitable for registration.</b></p> <p>“98CB. (1) If the Registrar is satisfied that—</p> <p>(a) the boundaries of the allotments on the plan of building subdivision other than those determined by levels substantially agree with the corresponding boundaries of the lots on the certified plan of subdivision; and</p> <p>(b) the plan of subdivision is suitable for registration under the <i>Subdivision Act 1987</i>—</p> <p>the Registrar must comply with subsection (2).</p> <p>(2) The Registrar must—</p> <p>(a) serve a copy of the application, the plan of building subdivision and the plan of subdivision on each person appearing from the Register Book or from any instrument or application lodged in the Office of Titles as at the time of the lodging of the application to have or to claim to have an interest in any part of the land in the building subdivision; and</p> <p>(b) require each person served under paragraph (a) to notify the Registrar in writing whether that person consents to the granting of the application; and</p> <p>(c) if there is a service company, serve a notice in the prescribed form on the—</p>

## SCHEDULE 2—continued

<i>Item</i>	<i>Act No.</i>	<i>Short Title</i>	<i>Amendment</i>
103	6399	<i>Transfer of Land Act 1958—continued</i>	<p>(i) Commissioner for Corporate Affairs, if the service company is a company within the meaning of the <i>Companies (Victoria) Code</i>; or</p> <p>(ii) Registrar of Co-operative Societies if the service company was registered under the <i>Co-operation Act 1981</i>.</p> <p>(3) Sub-section (2) (a) does not apply to—</p> <p>(a) the applicant; or</p> <p>(b) any person who has consented in writing to the application; or</p> <p>(c) any person who since the application was lodged has ceased to appear from the Register Book or from any instrument or application lodged in the Office of Titles to have or to claim to have an interest in any part of the land in the building subdivision.</p> <p>(4) The Registrar may with the consent of the parties who have consented to the application under section 98CA (2) (d) amend the application and the plan of subdivision before complying with this section.”</p> <p><b>Cancellation of plan of building subdivision and registration of the plan of subdivision.</b></p> <p>“98CC. (1) If the Registrar is satisfied that every person served under section 98CB (2) (a) has consented in writing to the application the Registrar may—</p> <p>(a) cancel the plan of building subdivision; and</p> <p>(b) register the plan of subdivision under the <i>Subdivision Act 1987</i>; and</p> <p>(c) cancel all certificates of title to the land in the building subdivision and issue certificates of title for each lot and the common property; and</p>



## SCHEDULE 2—continued

<i>Item</i>	<i>Act No.</i>	<i>Short Title</i>	<i>Amendment</i>
103	6399	<i>Transfer of Land Act 1958—continued</i>	<p>(d) where a service company operated in relation to the building subdivision serve a notice in the form prescribed by the regulations—</p> <p>(i) on the Commissioner for Corporate Affairs, if the service company is a company within the meaning of the <i>Companies (Victoria) Code</i>; or</p> <p>(ii) on the Registrar of Co-operative Societies, if the service company was registered under the <i>Co-operation Act 1981</i>; and</p> <p>(e) do any other act, matter or thing as may be necessary to give effect to the conversion.</p> <p>(2) The Registrar must not register the plan of subdivision unless—</p> <p>(a) there has been produced to the Registrar the duplicate certificate of title to every part of the land comprised in the building subdivision and the duplicate instrument (if any) of every registered service agreement, mortgage, charge, lease or sub-lease relating to any part of the land comprised in the building subdivision; and</p> <p>(b) the Registrar has reasonable grounds for believing that any service company which operates in relation to the building subdivision is not the proprietor of any real estate or chattel real other than the residual land in the building subdivision and that there is no subsisting security over the residual land.</p> <p>(3) The Registrar may dispense with the production of any document referred to in sub-section (2) (a) or may be directed to dispense with the production of any document referred to in sub-section (2) (a) under section 98CE.”</p>

## SCHEDULE 2—continued

<i>Item</i>	<i>Act No.</i>	<i>Short Title</i>	<i>Amendment</i>
103	6399	<i>Transfer of Land Act 1958—continued</i>	<p><b>Effect of registration of plan of subdivision.</b></p> <p>“98CD. (1) The following provisions apply as from the registration of the plan of subdivision:</p> <p>(a) If a service company operated, all rights and obligations arising under any service agreement are extinguished and any charge given to the service company affecting any land in the subdivision is discharged;</p> <p>(b) All easements affecting any land in the subdivision are extinguished to the extent that they are appurtenant to any land in the subdivision;</p> <p>(c) All restrictions and obligations arising under any covenant or otherwise which affect any land in the subdivision imposed for the benefit of any land or the owner of any land in the subdivision are discharged;</p> <p>(d) Any lease or other right of occupancy in any part of the common property other than a registered lease or a lease lodged for registration prior to the lodging of the plan of subdivision is determined;</p> <p>(e) Any reference in any document to an allotment on the plan of building subdivision is to be construed as a reference to the corresponding lot on the registered plan of subdivision together with any right over the common property;</p> <p>(f) Any service company operating under the plan of building subdivision is dissolved and the body corporate registered under the plan of subdivision is the successor in law of the service company.</p> <p>(2) Without limiting sub-section (1), the following provisions apply as from the registration of the plan of subdivision:</p>

## SCHEDULE 2—continued

<i>Item</i>	<i>Act No.</i>	<i>Short Title</i>	<i>Amendment</i>
103	6399	<i>Transfer of Land Act 1958—continued</i>	<p>(a) The property, rights and other assets that immediately before the registration were those of the service company vest in the body corporate;</p> <p>(b) The debts, obligations and liabilities of the service company immediately before the registration become the debts, obligations and liabilities of the body corporate;</p> <p>(c) The body corporate by force of this section becomes party to any proceedings pending in any court in which the service company was a party immediately before the registration;</p> <p>(d) The body corporate by force of this section becomes a party to any arrangement or contract entered into by or on behalf of the service company as a party and in force immediately before the registration;</p> <p>(e) Except so far as they are altered or modified expressly or by necessary implication by reason of the registration the rights, interests, duties, obligations and liabilities of the members of the service company existing immediately before its dissolution continue in existence in relation to the body corporate;</p> <p>(f) All acts, matters and things of a continuing nature made, done or commenced by or on behalf of the service company and immediately before its dissolution of any force or effect or capable of acquiring any force or effect are taken to have been done or commenced by or on behalf of the body corporate;</p>

## SCHEDULE 2—continued

<i>Item</i>	<i>Act No.</i>	<i>Short Title</i>	<i>Amendment</i>
103	6399	<i>Transfer of Land Act 1958—continued</i>	(g) Any reference to the service company in any notice, demand, order, legal or other proceeding, deed, contract, agreement, instrument or document if not inconsistent with the context or subject-matter is to be taken to refer to the body corporate."

**Power of courts to consent or dispense.**

"98CE. (1) If any person whose consent is required to the granting of an application is dead or cannot be found or refuses to consent or does not consent within a reasonable time or where for any reason it is impracticable to obtain the consent of the person the Court or court of competent jurisdiction, as the case may be, on the application of any applicant, may if it thinks fit consent to the granting of the application on behalf of that person.

(2) When the Court or court of competent jurisdiction consents to the granting of an application it may by the same or by any subsequent order require any person having the custody or control of any duplicate certificate of title or instrument to produce the same to the Registrar or authorise the Registrar to dispense with the production thereof."

**Special provisions.**

'98CF. (1) In this section "specified date" means 31 March 1966.

(2) If an application is made in respect of a building subdivision the plan of which was approved on or before the specified date and in respect of which no service company operates and the Registrar is satisfied—

(a) that one or more lots on the plan of building subdivision had been sold on or before the specified date; and

(b) that on or before the specified date there was in existence a scheme of development under which the proprietors of allotments on the plan of building subdivision enjoyed or were intended to enjoy exclusive use and possession of parts of the common property on the proposed plan—

## SCHEDULE 2—continued

<i>Item</i>	<i>Act No.</i>	<i>Short Title</i>	<i>Amendment</i>
103	6399	<i>Transfer of Land Act 1958—continued</i>	there may be included in a lot on the proposed plan a stratum of any land the exclusive use and possession of which under the scheme is or was intended to be enjoyed by the owner of the corresponding allotment on the plan of building subdivision and the proposed plan may be registered notwithstanding that to that extent the boundaries of the allotments on the plan of building subdivision do not substantially correspond with the boundaries of the lots on the plan of subdivision.’.
104			In section 104 (3A) after paragraph (a) insert— “(a) a certified plan under the <i>Subdivision Act 1987</i> and after “is produced” insert “or lodged” and after “transferee” insert “or owner”.
105			In section 106, after paragraph (a), insert— “(b) may, in respect of any instrument, dealing or plan, require the consent of the council of the municipality in the municipal district of which the land is situated before registering the instrument dealing or plan.”.
106			In section 109 (2), for “damages.” in paragraph (c) substitute “damages,” and add the following paragraph— “(d) for any loss or damage arising out of the registration by the Registrar of a plan under the <i>Subdivision Act 1987</i> which appeared to the Registrar to be certified by the Council under that Act, unless the damage arose from an act or omission of the Registrar or any officer after the date of apparent certification.”.
107	9320	<i>Urban Land Authority Act 1979</i>	In section 15 (1) (a) for “extinguished” substitute “removed”.
108			In section 15 for “extinguishment” (wherever occurring) substitute “removal”.
109			In section 15 (1) for “extinguish” substitute “remove”.
110			In section 16 (2) for “extinguishing” substitute “removing”.

## SCHEDULE 2—continued

<i>Item</i>	<i>Act No.</i>	<i>Short Title</i>	<i>Amendment</i>
111	9320	<i>Urban Land Authority Act 1979—continued</i>	In section 17 (3) for “extinguishing” substitute “removing”.
112			In section 17 (3) for “extinguished” substitute “removed”.
113			In section 17 (5) for “extinguishing” substitute “removing”.
114	6413	<i>Water Act 1958</i>	For section 32A substitute— “32A. Where any proposal for subdivision of land is referred to the Director-General or the Rural Water Commission under the <i>Planning and Environment Act 1987</i> the Director-General or the Commission may require easements for the use of the Director-General or the Commission for any one or more of the purposes set out in Schedule Two A.”.
115			In section 307AA (3) (d) omit “whether entered into before of after the commencement of the <i>Local Government (Subdivision of Land) Act 1973</i> ” where twice occurring.
116			For section 307AA (4) substitute— “(4) Where any proposal for subdivision of land is referred to the Authority under the <i>Planning and Environment Act 1987</i> the Authority may require the owner of the land to enter into an agreement under sub-section (1).”.



