

Subdivision (Amendment) Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1^o 12 April 1989

(Brought in by Mr Roper and Mr Rowe)

A BILL

to amend the *Subdivision Act* 1988 and various related Acts, to amend the *Building Control Act* 1981 and for other purposes.

Subdivision (Amendment) Act 1989

The Parliament of Victoria enacts as follows:

Purpose

1. The purpose of this Act is to make further provision concerning the subdivision and consolidation of land and related matters, to clarify the relationship between planning schemes and siting regulations for buildings and to make amendments to various Acts concerning the subdivision and consolidation of land.

Commencement

2. This Act comes into operation on the day on which it receives the Royal Assent.

Principal Act

3. In this Act the *Subdivision Act* 1988 is called the Principal Act.

No. 53/1988.

Land acquisition

4. (1) In section 3 of the Principal Act—
(a) before the definition of “Acquiring authority” insert—
“Acquire” in relation to an acquiring authority, means acquire by agreement after service of a notice of intention to acquire or by compulsory process; and

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(b) after the definition of “Subdivision” insert—

‘ “Vesting date” means the date on which a notice of acquisition under the *Land Acquisition and Compensation Act 1986* is published in the *Government Gazette* or, if land is acquired by agreement after service of notice of intention to acquire, the date on which the land vests in or is registered in the name of the acquiring authority under the agreement.’ 5

(2) The Principal Act is amended as follows: 10

(a) In section 5 for sub-section (2) substitute— 10

“(2) If there is a subdivision by acquisition by an acquiring authority under the *Land Acquisition and Compensation Act 1986*—

(a) if all the land on the plan to be acquired is to be acquired on the same vesting date, the authority must under section 35 submit the plan for certification as soon as possible after that vesting date; and 15

(b) if parts of the land on the plan vest in or are registered in the name of the authority on different vesting dates, the authority must under section 35 submit a plan for certification— 20

(i) not earlier than the first of those vesting dates; and

(ii) not later than the last of those vesting dates; and

(c) the authority is not required to submit any other plan of the land except a plan under section 35.”; 25

(b) In section 6 (1) (k) after sub-paragraph (iv) insert—
“; or

(v) the Administrative Appeals Tribunal has given leave under section 36 to remove the easement and, if leave is given subject to conditions relating to the plan, those conditions have been met”. 30

(3) For section 35 of the Principal Act substitute—

Acquisition of land by acquiring authority

“35. (1) If an acquiring authority has under the *Land Acquisition and Compensation Act 1986* given notice of intention to acquire land that cannot be disposed of without being subdivided, it must in accordance with section 5 (2) submit a plan to the Council for certification as if the 35

authority were the owner of all the land to be subdivided by the acquisition.

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

(3) A plan submitted by an acquiring authority—

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(a) may do one or more of the following:

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(i) Maintain without alteration of boundaries except for the purposes of acquisition the number of separately disposable parcels of land in the area covered by the plan, excluding the land to be acquired;

(ii) Reduce the number of separately disposable parcels of land in the area covered by the plan, excluding the land to be acquired;

(iii) Create additional lots;

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(iv) Include land that the authority does not intend to acquire and that abuts other land in the plan;

(v) Include land abutting land in the plan that is either vested in or registered in the name of the authority;

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(vi) Alter the lot entitlement or liability of land on the plan; and

(b) must state which of the lots are to be acquired by the authority and whether they are to be acquired free from or subject to encumbrances.

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(4) A plan may do any of the things listed in sub-section (3) (a) (ii) (iii) (iv) or (vi) only if the owner and any mortgagee of the land whose mortgage was lodged before the lodging of the plan for registration consent.

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(5) Sections 5 (3) (b), 6 (1) (b), 22 (1) (c) and 22 (1) (e) do not apply to the land in a plan submitted by an acquiring authority under this section.

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

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

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- (b) the Registrar must record the vesting dates advised by the authority; and
- (c) section 24 (2) applies to all land in the plan except land to be acquired by the authority which has not vested in it; and 5
- (d) section 24 (2), (3), (4) and (5) applies to land that vests in the authority after the registration of the plan as if a plan of that land were registered when the Registrar records the vesting date of that land; and 10
- (e) the holder of any relevant certificate of title for land in the plan must, if requested, deliver it to the Registrar; and
- (f) if not already under the operation of the *Transfer of Land Act 1958*, land in the plan is, on the registration of the plan, to be brought under the operation of that Act by direction under Part II of that Act.”. 15
- (4) Section 36 of the Principal Act is amended as follows:
- (a) After sub-section (1) insert— 20
- “(1A) The Administrative Appeals Tribunal may give leave subject to any conditions it thinks fit”;
- (b) For sub-section (2) substitute—
- “(2) If leave is given—
- (a) in accordance with any conditions to which the leave is subject, the owner may compulsorily acquire the easement and— 25
- (i) a plan must be submitted for certification and lodged for registration under section 35, and this Act applies to the plan as if the owner were an acquiring authority; and 30
- (ii) the *Land Acquisition and Compensation Act 1986* applies to the acquirement of the easement, and for that purpose this section is the special Act and the owner is the Authority; 35
- or
- (b) in accordance with any conditions to which leave is subject, the owner may submit for certification

and lodge for registration a plan to remove the easement and—

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

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

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(5) In Schedule 2 to the Principal Act, for items 82 and 83 substitute—

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In section 54 for “upon application” substitute “and a plan of subdivision is not required by section 35 of the *Subdivision Act 1988*, upon the granting of an application made”.

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After section 62 (3) insert—

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“(4) As soon as practicable after making a vesting order, the Registrar must notify the Council of the municipal district where the land is located.”’.

Encumbrances

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5. (1) In section 1 (a) of the Principal Act, for “restrictions or encumbrances” substitute “or restrictions”.

(2) In section 3 of the Principal Act, the definition of “Encumbrance” is repealed.

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(3) After section 4 (4) of the Principal Act insert—

“(4A) This Act does not apply to an encumbrance unless the encumbrance constitutes an easement or a restriction.”.

(4) The Principal Act is amended as follows:

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(a) In section 3, in paragraph (c) of the definition of “Plan”, for “, restriction or encumbrance” substitute “or restriction”;

(b) In section 4 (1), for “, restriction or encumbrance” (where twice occurring) substitute “or restriction”;

- (c) In section 4 (4), for “, restriction or encumbrance” (where twice occurring) substitute “or restriction”;
- (d) In section 5 (1), for “, restriction or encumbrance” substitute “or restriction”;
- (e) In section 6 (1), paragraph (i) is repealed; 5
- (f) In section 8 (1) (b), for “, restriction or encumbrance” (where twice occurring) substitute “or restriction”;
- (g) In section 23 (1), for “, restrictions or encumbrances” substitute “or restrictions”;
- (h) In section 24 (2) (d), omit “, encumbrance”; 10
- (i) In section 25 (4), for “, restriction or encumbrance” substitute “or restriction”;
- (j) In section 32 (1) (e), omit “, encumbrance”.

Easements and restrictions

- 6. (1) The Principal Act is amended as follows: 15
 - (a) In section 4 (1) (c), after “scheme” insert “or permit”;
 - (b) In section 4 (4)—
 - (i) after “36” insert “or regulations made for the purposes of any of those sections”; and
 - (ii) for “relates to the subdivision or consolidation of land” substitute “is part of a plan of subdivision or consolidation”; 20
 - (c) In section 4, sub-section (5) is repealed;
 - (d) In sections 6 (1) (j) (i) and 6 (1) (k) (i), after “scheme” insert “or permit”; 25
 - (e) In section 6 (1) (j) (ii), for “or varied” substitute “modified or varied”.
 - (2) Section 12 of the Principal Act is amended as follows:
 - (a) In sub-section (1) (a), for “to which they are attached” substitute “benefited by the easements”; 30
 - (b) In sub-section (1) (b), for “to which they are to be attached” substitute “which they are to benefit”;
 - (c) For sub-section (2) substitute—
 - “(2) There are implied—
 - (a) over all the land on a plan of subdivision of a building, and over any lot on a plan if the plan specifies a boundary of the lot by a building line; and 35
 - (b) for the benefit of each lot and the common property— 40
- all easements and rights necessary to provide—
- (c) support, shelter or protection; or
 - (d) passage or provision of water, sewerage, drainage, gas, electricity, garbage, air or any other service of

whatever nature (including telephone, radio, television and data transmission); or

(e) rights of way enjoyed at the time the plan is registered; or

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

(g) maintenance of overhanging eaves existing when the plan is registered—

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

(d) Sub-section (3) is repealed;

15 (e) In sub-section (5)—

(i) after “If” insert “a plan of”; and

(ii) for “contrary to the easement” substitute “so as to interfere with the exercise of rights conferred by the easement”;

20 (f) After sub-section (5) insert—

“(6) If an easement in favour of a public authority is specified on a plan, sub-section (2) does not operate to imply an easement or right for that authority for the same purpose.

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

(a) an easement created in favour of a public authority otherwise than under this Act; or

(b) an agreement to create an easement in favour of a public authority made under an Act other than this Act.

30 (8) The easements specified on a plan or implied by sub-section (2) are in addition to easements under section 98 (a) of the *Transfer of Land Act* 1958.

35 (9) Section 98 (b) of the *Transfer of Land Act* 1958 does not apply to a plan registered under this Act.”.

(3) The Principal Act is amended as follows:

(a) In section 23 (1), after “scheme” (where first occurring) insert “or permit”;

(b) In section 23 (1), omit “if the planning scheme so requires”;

40 (c) After section 23 (2) insert—

“(3) If the direction in the planning scheme or permit relates to the subdivision or consolidation of land, the

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- certified plan required by sub-section (1) may be a plan of subdivision or consolidation.”;
- (d) In section 24 (2) (e), omit “or (3)”;
- (e) In section 25 (4) —
- (i) after “registration” (where first occurring) insert “under the *Transfer of Land Act 1958*”; and 5
 - (ii) for “does not relate to the subdivision or consolidation of land” substitute “is not part of a plan of subdivision or consolidation”;
- (f) In item 33 of Schedule 2 to the Principal Act, after proposed paragraph (k) insert— 10
- “; and
- (l) a condition requiring the creation, variation or removal of an easement or restriction.” •
- (4) In Schedule 2 to the Principal Act, for items 84 to 88 substitute— 15
- ‘84 After section 72 (2) insert—
- “(2A) Sub-section (2) does not apply to the creation of an easement—
 - (a) which is part of a plan of subdivision or consolidation; or 20
 - (b) if the creation of the easement is directed by a planning scheme or permit under the *Planning and Environment Act 1987*; or 25
 - (c) to which section 36 of the *Subdivision Act 1988* applies.”.’ 30
- 85 After section 73 (1) insert—
- “(1A) Sub-section (1) does not apply to the removal of an easement in whole or in part if— 35
 - (a) the removal is part of a plan of subdivision or consolidation; or
 - (b) the removal is directed by a planning scheme or permit under the *Planning and Environment Act 1987*; or 40

(c) section 36 of the
Subdivision Act 1988
applies to the removal.

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(1B) A registered proprietor
may make application in the
appropriate approved form to the
Registrar for a declaration that
the whole or a part of an
easement has been abandoned or
extinguished if the removal of the
easement is mentioned in
sub-section (1A) (a).

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(1C) The Registrar must give
to each person who appears by
the Register to have an estate or
interest in the land benefited by
the easement notice of the
application and, if the Registrar
is of the opinion that the
easement has been abandoned or
extinguished in whole or in part,
must issue a written declaration
to that effect to the applicant.”

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In section 73 (4) after “easement”
(where first occurring)
insert “to which sub-section (1)
applies”.

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After section 88 (1) insert—
“(1A) Sub-section (1) does
not apply to the creation,
variation or removal of a
restrictive covenant if the
creation, variation or removal—

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(a) is part of a plan
of subdivision or
consolidation; or

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(b) is directed by a planning
scheme or permit under
the *Planning and
Environment Act 1987*.

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(1B) If sub-section (1A) (a)
applies to the variation or
removal of a restrictive covenant
and the restrictive covenant is
released, varied or modified by
agreement of all interested

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parties or by order of a competent court, on an application in an appropriate approved form the Registrar may issue a written declaration to that effect to the applicant.”’ 5

Consideration of plans submitted for certification

7. (1) The Principal Act is amended as follows:

(a) In section 8 (1) (a), for “unless the applicant gives the Council satisfactory evidence of the authority’s consent dated within the previous 3 months” substitute— 10

“unless—

(i) the plan is of a class exempted from the referral requirement by the planning scheme or the regulations; or 15

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

(b) After section 8 (2) insert— 20

“(3) If a referral authority has required specified alterations to be made to a plan and a plan containing those alterations is submitted to the Council, the Council does not have to refer the altered plan to that referral authority.”; 25

(c) In section 9 (4)—

(i) after “consideration of the plan” insert “by the authority and the Council”; and

(ii) after “submitted” insert “to the Council”;

(d) In section 10 (3), after “re-submitted” insert “to the Council”; 30

(e) In section 22 for sub-section (2) substitute—

“(3) If the Registrar is satisfied that a certified plan requires corrections before it can be registered, the Registrar may— 35

(a) if satisfied that the corrections are minor in nature, make them, or require the applicant to make them on the certified plan, without returning the plan to the applicant for it to be amended under section 11; or

(b) in any other case, return the plan to the applicant to be amended under section 11.”. 40

(2) After section 11 of the Principal Act insert—

Council and referral authority may ask for information

5 “11A. (1) When considering a plan or an amendment to a plan under section 9, 10 or 11, the Council or a referral authority may require the applicant to give more information about the plan within a time specified by the Council or the authority.

10 (2) If the Council or a referral authority requires more information, the time permitted for the Council and the referral authority to consider the plan is suspended until the information is received or the specified time ends, whichever is the sooner.

(3) If a Council or a referral authority has required more information and the information is received within the specified time, the Council or the authority cannot require more information to be given.”.

Staged subdivision

15 8. (1) The Principal Act is amended as follows:

(a) In section 18, for sub-section (2) substitute—

“ (2) In the case of a staged subdivision—

20 (a) if an open space requirement is to be made, it must be made for the plan of all the land in the subdivision, but may be expressed to apply to any particular stage or stages; and

25 (b) if the requirement applies to the second or a subsequent stage, the location of the open space need not be defined except on the plan for that stage; and

30 (c) if the requirement applies to the second or a subsequent stage and is a requirement to pay money, the total amount to be paid may be apportioned between particular stages, and the proportion need not be specified except for the plans of the appropriate stages.”;

(b) In section 21, after “21.” insert “(1)”;

(c) At the end of section 21 insert—

“ (2) In the case of a staged subdivision—

35 (a) a statement of compliance for the plan of all the land in the subdivision must contain the prescribed information; and

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

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- (c) a part of a statement of compliance for the plan of all the land in the subdivision may be expressed to apply to the lots in the first stage, and any part of that statement that is expressed to apply to the lots in the first stage is a sufficient statement of compliance for the lots in the first stage for the purposes of this Act.”; 5
- (d) In section 22 (1), for paragraph (c) substitute—
 “(c) in the case of—
- (i) a plan for a stage in a staged subdivision, each person who lodged a mortgage or charge over the land in that stage before the lodging of the plan consents in writing to the registration of the plan; or 10
- (ii) any other plan, each person who lodged a mortgage or charge over the land in the plan before the lodging of the plan consents in writing to the registration of the plan; and”;
- (e) In item 69 of Schedule 2, after paragraph (c) insert— 20
- ‘; and
- (d) at the end of the paragraph insert—
- “and, in the case of a staged subdivision within the meaning of section 37 of the *Subdivision Act 1988*— 25
- (i) if the land is in the second or a subsequent stage, a copy of the plan for the first stage; and 30
- (ii) details of any requirements in a statement of compliance relating to the stage in which the land is included that have not been complied with; and 35
- (iii) details of any proposals relating to subsequent stages that are known to the vendor; and 40

(iv) a statement of the contents of any permit under the *Planning and Environment Act 1987* authorising the staged subdivision.”’

(2) For section 37 of the Principal Act substitute—

Staged subdivision

5 ‘37. (1) A staged subdivision is a scheme for the subdivision of land in stages.

(2) In this section “**master plan**” means a plan of all the land in a staged subdivision submitted for certification under sub-section (3) (a).

(3) If a planning scheme or permit authorises a staged subdivision—

10 (a) a master plan must be submitted for certification and lodged for registration and must specify the lots in the first stage and contain the prescribed information; and

(b) a plan for the second or a subsequent stage must contain the prescribed information; and

15 (c) a plan for the second or a subsequent stage may do any one or more of the following:

(i) Create additional lots on, or alter the lots on, the land in that stage;

20 (ii) In relation to the land in that stage, create a body corporate, common property, lot entitlement or lot liability;

(iii) Create, vary or remove an easement or restriction over land in that stage;

(iv) Amend the master plan or a plan for an earlier stage by—

25 (A) adding to the membership of an existing body corporate; or

(B) adding to existing common property; or

(C) changing lot entitlement or liability of existing lots.

30 (4) The amendment of a registered plan under this section does not affect the legal identity or continuity of operation of a body corporate created on the plan.

35 (5) A plan for a second or a subsequent stage may be submitted for certification and lodged for registration by the owner of all the land in that stage or the applicant for the certification and registration of the master plan, and, if a body corporate is created on the master plan or a plan for an earlier stage, the unanimous resolution of the body corporate is not required for any change made to that plan by a plan for a subsequent stage.

(6) When registering a master plan, the Registrar must record the prescribed information.

(7) When registering a plan for the second or a subsequent stage, the Registrar must—

- (a) record the prescribed information; and 5
- (b) make any necessary amendments to the information recorded for any earlier stage that are necessary because of the registration of the subsequent plan.’

Bodies corporate

9. The Principal Act is amended as follows: 10

(a) After section 27 (3) insert—

“(4) The prescribed information which a plan must contain under sub-section (3) is not limited to information about the body corporate or lot entitlement or liability.

(5) The Registrar must as prescribed record information and must amend that information in the prescribed circumstances.”; 15

(b) In section 28 (b), after “become” insert “the first members of”;

(c) In section 28 (c), after “body corporate” insert “while they are owners”; 20

(d) In section 29 (1), after “succession” insert “and a common seal”;

(e) After section 29 (5) insert—

“(6) The body corporate may in its own name and on behalf of its members execute any document or do anything necessary or convenient to enable it to carry out its duties, functions, powers, rights and liabilities, and the document or thing has effect as if executed or done by the members.”; 25

(f) In section 31 (7), after “entitlements” insert “and the Registrar must create a folio of the register accordingly”; 30

(g) After section 32 (1) (b) insert—

“(ba) add to, alter or reduce the common property; or

(bb) create new common property; or

(bc) create a new body corporate; or 35

(bd) alter the membership of an existing body corporate; or

(be) provide for the vesting of existing or newly created common property; or

(bf) create or alter lot entitlement or liability; or”; 40

(h) In section 32 (1) (d), omit “the common property or”;

(i) After section 32 (1) (g) insert—

“; or

(h) consolidate the lots and the common property into a single lot.”;

(j) After section 32 (1) insert—

“(1A) Sub-section (1) does not apply to a change in the ownership of the common property that occurs because of a change in the ownership of a lot.”;

(k) In section 32 (2)—

(i) omit “of subdivision”; and

(ii) for “part of the subdivision which is being changed” substitute “all the land on the registered plan”;

(l) In section 32, for sub-section (3) substitute—

“(3) A lot owner who is a member of a body corporate may submit a new plan for certification showing all the land in the registered plan if the changes to the registered plan affect only the lot or lots of which the lot owner is the owner, and do not affect common property except by the creation of additional lots.”;

(m) In section 32 (4), for “showing” substitute “for certification showing only”;

(n) In section 32, for sub-section (5) substitute—

“(5) The Registrar may, if he or she thinks it appropriate, refuse to register a plan under sub-section (4) and require a new plan to be submitted for certification and lodged for registration under sub-section (2) or (3).”;

(o) In section 32 (6), after “(6)” insert “Subject to sub-section (7).”;

(p) After section 32 (6) insert—

“(7) On the registration of a plan of consolidation of all the lots and the common property into a single lot—

(a) the body corporate is dissolved; and

(b) the lots and common property vest in the former lot owners as tenants in common in proportion to their lot entitlements and the Registrar must create a folio of the register accordingly.

(8) Despite section 24, on the registration of a plan under sub-section (2), (3) or (4) of this section, the Register may if appropriate—

(a) create a folio of the register for the existing common property and a folio of the register for newly created common property in the name of a relevant body corporate; or

(b) create in the name of the relevant body corporate a single folio of the register for existing and newly created common property.”;

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- (g) In section 38 (3)—
- (i) after “body corporate” (where secondly occurring) insert “or an insurer under a policy taken out by a body corporate”; and
 - (ii) after paragraph (c) insert— 5
“; or
 - (d) an order as to the payment of insurance money under any policy taken out by a body corporate.”.

Insurance

10. In section 30 of the Principal Act— 10
- (a) after “30.” insert “(1)”; and
 - (b) at the end of the section insert—
 - (2) A body corporate must be taken to have an insurable interest in the land affected by the body corporate.
 - (3) In calculating any amount payable under an insurance policy taken out by the body corporate, any amount payable under an insurance policy taken out by a lot owner over that lot or the owner’s share in the common property must be disregarded. 15
 - (4) In calculating any amount payable under an insurance policy taken out by a lot owner over that lot or the owner’s share in the common property, any amount payable under an insurance policy taken out by the body corporate over the land affected by the body corporate must be disregarded. 20
 - (5) If a body corporate has taken out an insurance policy over the land affected by the body corporate, a mortgagee of a lot affected by the body corporate must not require the lot owner to take out an insurance policy over the lot and the owner’s share in the common property unless— 25
 - (a) the mortgagee’s interest is noted on the body corporate’s policy; and 30
 - (b) the sum insured in respect of the lot and share in the common property under the body corporate’s policy is less than the sum owing under the mortgage and the extra insurance is for the amount of the difference. 35
 - (6) A requirement that contravenes sub-section (5) is void.
 - (7) The following provisions apply where a body corporate has taken out an insurance policy and the owner of a lot affected by the body corporate has mortgaged the lot and share in the common property and the mortgagee’s interest is noted on the policy: 40
 - (a) If the lot owner’s property is damaged or destroyed and is not to be reinstated, the insurer must pay to 45

the mortgagee the amount owing under the mortgage (up to the sum insured in respect of the lot and share in the common property) and, if there is a surplus, pay the balance to the lot owner;

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(b) If the owner’s property is damaged or destroyed and is to be reinstated, the insurer must pay for the reinstatement up to the sum insured in respect of the lot and share in the common property;

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(c) Until the insurer reinstates or decides not to reinstate, the insurer must pay to the mortgagee any instalments that become due under the mortgage (up to the sum insured in respect of the lot and share in the common property), and must reduce any final payment made under the policy accordingly.”.

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Plans to be referred to Country Fire Authority

11. In Schedule 2 to the Principal Act, for item 5 substitute—

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‘5 6228 *Country Fire Authority Act* 1958

In section 110 (1), for paragraph (za) substitute—

“(za) Authorising and regulating the declaration by the Authority of special fire risk areas;”.

Marking out of lots

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12. (1) In section 6 (1) of the Principal Act, paragraphs (e) and (g) are repealed.

(2) In Schedule 2 to the Principal Act, after item 77 insert—

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‘77A

After section 18 (1) (i) insert—

“(ia) has failed to comply with section 31A;”

77B

After section 31 insert—

Marking out of lots

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‘31A. (1) The owners of the lots on a plan of subdivision must ensure that the licensed surveyor who prepared the plan complies with sub-section (2) or, if that surveyor is unavailable, must nominate a licensed surveyor who must comply with that sub-section.

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Subdivision (Amendment)

(2) Subject to sub-section (1), if works are required in connection with a plan of subdivision under the *Subdivision Act* 1988, the licensed surveyor who prepared the plan must, after the date on which the works are completed and before the end of one month after that date— 5
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(a) mark out the boundaries of the land in the plan and the roads and reserves and, where appropriate, the lots and common property; and 15

(b) check the numbers of the lots on the land or building to find out whether they accord with the numbers of the lots shown on the plan. 20

(3) A licensed surveyor who complies with sub-section (2) must, not later than one month after taking all the action required by that sub-section— 25

(a) If the Council has not given a statement of compliance for the plan, give to the Council; or 30

(b) if the Council has given a statement of compliance for the plan, give to the owner of each lot on the plan— 35

advice in writing in the prescribed form of the action taken.

(4) In this section “works” means all of the following: 40

(a) Building work;

- 5 (b) Changes to the natural or existing condition or topography of the land, including the removal, destruction or lopping of trees and the removal of vegetation or top soil;
- 10 (c) Works required by a planning scheme or permit under the *Planning and Environment Act* 1987, the plan of subdivision, the engineering plan or an agreement made under the *Subdivision Act* 1988;
- 15 (d) Works required by a Council, a nominated relevant authority or a referral authority to provide roads or public utility services to the land on the plan and which are to be the responsibility of the Council or the authority after the maintenance period.’

30 **Extension of power to enter into agreements**

13. (1) In section 17 (2) (c) of the Principal Act, after “owner” insert “or applicant in anticipation of the applicant becoming owner”.

(2) In Schedule 2 to the Principal Act, after item 32 insert—

- 35 ‘32A In section 62 (2) (f) after “owner of the land” insert “or applicant for the permit in anticipation of the applicant becoming owner of the land”.
- 40 32B In section 62 (2) (g) after “owner of the land” insert “or, if the applicant for the permit is not the owner of the land, the applicant on the applicant becoming the owner of the land”.
- 45 32C In section 62 (2) (h) (iii) after “owner of the land” insert “or applicant”.’

Public open space

- 14. (1) In section 18 (1) of the Principal Act—
 - (a) after “acting as” insert “a responsible authority or”; and
 - (b) for paragraph (c) substitute—
 - “(c) do a combination of (a) and (b) so that the total of the percentages required under (a) and (b) does not exceed 5 per cent.”. 5
- (2) Schedule 1 to the Principal Act is repealed.

Roads

- 15. After section 24 (2) of the Principal Act insert— 10
 - “(2A) When the land set aside as a road vests in a Council, person or body—
 - (a) the land continues under the operation of the *Transfer of Land Act 1958* and the Council, person or body is deemed to be its registered proprietor; and 15
 - (b) the Registrar need not create a folio of the register or produce a certificate of title for the land; and
 - (c) the Registrar may delete any folio of the register so far as it relates to that land.”.

Delegation by the Council 20

- 16. In section 41 (1) of the Principal Act, after “one or more” insert “Council committees or”.

Amendment of regulation-making powers

- 17. (1) Section 43 (1) of the Principal Act is amended as follows:
 - (a) After paragraph (b) insert— 25
 - “(ba) regulating the making of applications; and
 - (bb) prescribing the form and content of plans; and
 - (bc) prescribing matters in relation to the interpretation of plans of strata or cluster subdivision or strata or cluster redevelopment; and 30
 - (bd) prescribing classes of plans to be exempted from the referral requirements in section 8; and”;
 - (b) In paragraph (d), after “limits” insert “including different time limits for different classes of cases”;
 - (c) For paragraph (g) substitute— 35
 - “(g) requiring records or registers to be kept and prescribing the content and manner of keeping records or registers under this Act or the regulations; and”;

(d) In paragraph (h), after “members” insert—
“including but not limited to—

- (i) rules to apply to bodies corporate; and
- (ii) the powers of a body corporate to amend or revoke the prescribed rules or to make, amend or revoke additional rules; and
- (iii) the circumstances in which a member of a body corporate is disentitled from voting; and
- (iv) the circumstances in which a person can exercise a member’s right to vote at a meeting of a body corporate; and
- (v) the powers of a body corporate to enter land affected by the body corporate; and
- (vi) the powers of a body corporate to pay remuneration; and
- (vii) the powers of a body corporate to delegate any of its powers, including the power of delegation; and
- (viii) the fees and contributions payable to a body corporate”;

(e) In paragraph (i), after “for” insert “bodies corporate and”;

(f) After paragraph (i) insert—

“(ia) regulating the taking out of insurance by a body corporate and members of a body corporate including but not limited to—

- (i) prescribing terms to be contained in insurance policies in relation to lots or common property; and
- (ii) requiring the noting of mortgagees’ interests on insurance policies taken out by bodies corporate; and
- (iii) prescribing the manner of indexing the sum insured for any particular class of insurance; and
- (iv) prescribing the powers and duties of the Registrar in connection with plans and other matters arising under this Act or the regulations including authorising the Registrar—
 - (i) to allocate plan numbers; and
 - (ii) to publish acceptable abbreviations to be used on plans; and
 - (iii) to charge fees for supplying a copy of any document; and
 - (iv) to charge fees for lodging or sending any document by post; and”.

- (2) Section 43 (2) of the Principal Act is amended as follows:
- (a) In paragraph (a), for sub-paragraph (iii) substitute—
- “(iii) maximum and minimum fees related to the costs and value of services or works; and
- (iv) the fixing by Councils of fees to be charged for checking engineering plans; and 5
- (v) fees to be substituted for the fees fixed by a provision applied by section 44 (3B); and”;
- (b) After paragraph (e) insert—
- “; and 10
- (f) require a Council to give information about a plan in specified circumstances; and
- (g) be of general or limited application and may differ according to differences in time, place or circumstance”. 15

Transitional arrangements

18. (1) The Principal Act is amended as follows:
- (a) In section 3, in the definition of “Lot”, after “separately” insert “and includes a unit or accessory unit on a registered plan of strata subdivision and a lot or accessory lot on a registered cluster plan”; 20
- (b) In section 3, in the definition of “Registered plan”, after “any Act” insert “whether before or after the commencement of section 44”;
- (c) In section 5 (1), for “section 4” substitute “sections 4 and 44”; 25
- (d) In section 22 (1) (a)—
- (i) omit “or sealed”; and
- (ii) omit “or sealing”;
- (e) In section 44, for sub-sections (2) and (3) substitute— 30
- “(2) Subject to this section, if before the commencement of this section or not later than 6 months after its commencement—
- (a) a person—
- (i) gives notice under section 569 of the *Local Government Act 1958*, section 4 of the *Strata Titles Act 1967* or section 4 of the *Cluster Titles Act 1974*; or 35
- (ii) submits a plan of subdivision or consolidation for sealing by a Council; or 40
- (iii) has a plan of subdivision or consolidation sealed; or

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

the person or acquiring authority may choose—

- (c) to prepare a plan and have it certified, lodged and registered under this Act and not to proceed with action referred to in paragraph (a) or (b); or
- (d) to—
 - (i) have the plan sealed, lodged and approved or registered; or
 - (ii) proceed with the acquisition—
as if this Act (except sub-sections (2) to (11) of this section) had not commenced.

(3) Subject to this section, if before the commencement of this section a person or acquiring authority has lodged a plan of subdivision or consolidation for registration or approval by the Registrar, the plan must be dealt with as if this Act (except for sub-sections (2) to (11) of this section) had not commenced.

(3A) Subject to this section, if a person or acquiring authority makes a choice under sub-section (2) (d)—

- (a) a plan must be prepared, submitted for sealing, sealed, lodged with the Registrar, registered or approved and otherwise dealt with; and

(b) the acquisition must proceed—

as if this Act (except for sub-sections (2) to (11) of this section) had not commenced.

(3B) Subject to this section, if a person or an acquiring authority proceeds under sub-section (3) or (3A), any provision relating to—

- (a) the plan and its sealing, lodgment, approval or registration or any appeal or proceedings in relation to those matters; or

(b) land acquisition—
 and any regulations made for the purposes of such a provision continue to apply as if this Act (except for sub-sections (2) to (11) of this section) had not commenced.

(3C) A plan (including a plan of strata subdivision or cluster subdivision or strata redevelopment or cluster development) sealed by a Council—

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

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

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

(3E) If—

- (a) before the commencement of this section—
 - (i) a permit for the subdivision or consolidation of land is in force under the *Planning and Environment Act 1987*; and
 - (ii) at the time the permit was granted the planning scheme did not require the proposal to be referred to referral authorities; and

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

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

(f) In section 44, for sub-section (4) substitute—

“(4) A notice of restriction on a plan of strata subdivision or accompanying a plan of cluster subdivision registered—

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

continues to operate as if this Act (except for sub-sections (2) to (11) of this section) had not commenced.”;

(g) In section 44 (5), after “application” insert “and on the amendment of the plan the notice ceases to apply to that unit or lot”;

(h) After section 44 (5) insert—

5 “(5A) With the written consent of the Council, a body corporate may apply in the prescribed form to the Registrar to cancel or alter a scheme of development accompanying a plan of cluster subdivision.

10 (5B) With the written consent of the Council, the owner of a lot on a plan of cluster subdivision may apply in the prescribed form to the Registrar to cancel or alter the scheme of development accompanying the plan so far as it affects that lot.

(5C) The Registrar may cancel or alter the scheme of development in accordance with the application of a body corporate or the owner of a lot and—

- 15 (i) if cancelled, the scheme ceases to have effect; or
(ii) if altered, has effect as altered by the Registrar.

(5D) A plan registered or approved by the Registrar—

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

continues to have the same status and operation as if this Act (except sub-sections (2) to (11) of this section) had not commenced, but may be replaced or modified by the registration of a plan under this Act or amended in accordance with sub-section (5E).

25 (5E) If a plan of cluster subdivision for the development of land in stages has been registered—

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

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

35 (5F) If before the commencement of this section an application has been made under section 35 of the *Strata Titles Act* 1967 and any regulations under that Act but at the commencement of this section a plan has not been registered in accordance with the application, the application may be dealt with as if this Act (except for sub-sections (2) to (11) of this section) had not commenced and Part IV of the *Strata Titles Act* 1967 any regulations made under that Act for the purposes of that Part continue to apply to it.”;

40

- (i) In section 44, for sub-section (6) substitute—
- “(6) Despite section 9AA of the *Sale of Land Act 1962*, the *Strata Titles Act 1967* and any regulations made under that Act and the *Cluster Titles Act 1974* and any regulations made under that Act continue to apply to dealings with common property, units, accessory units, lots and accessory lots on any plan of strata subdivision or strata redevelopment, cluster subdivision or cluster redevelopment.”;
- (j) In section 44 (9), for “before the commencement of this section” substitute “—
- (a) before the commencement of this section; or
- (b) on or after the commencement of this section, under the provisions applied by sub-section (3B)—
- as if this Act (except for sub-sections (2) and (11) of this section) had not commenced.”;
- (k) In section 44 (10)—
- (i) for “prior to the commencement of this Act must” substitute “—
- (a) before the commencement of this section; or
- (b) on or after the commencement of this section, under the provisions applied by sub-section 3B—
- must”; and
- (ii) after “this Act” (where secondly occurring) insert “(except sub-sections (2) to (11) of this section)”;
- (l) After section 44 (10) insert—
- “(11) This section is in addition to and does not limit the operation of the *Interpretation of Legislation Act 1984*.”;
- (m) In item 42 of Schedule 2 (proposed section 8A)—
- (i) for “8A (1)” substitute “8A”; and
- (ii) in paragraph (a) (v) for “registered plan” substitute “registered cluster plan”; and
- (iii) in paragraphs (a) (viii) and (ix) and (b) (iv) for “46” substitute “44”; and
- (iv) in paragraph (b) (iii) after “1958” insert “before 1 March 1963”; and
- (v) after paragraph (b) (iii) insert—
- “(iia) a parcel of land on a plan of subdivision containing not more than 2 allotments sealed under section 569B of the *Local Government Act 1958* on or after 1 March 1963; or”;

(n) After item 79 of Schedule 2 insert—

79A In section 4 (1), after the definition of “Approved form” insert—

‘ “Approved or registered” in relation to a plan, means approved or registered by the Registrar under any Act.’

79B In section 27 (8), for “section 24 (4)” substitute “sections 24, 32, 35 and 37”.

(2) After section 44 of the Principal Act insert—

References

“44A. In—

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

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

- (d) to a plan of subdivision must be taken to include a reference to a plan of strata subdivision, a plan of strata redevelopment, a plan of cluster subdivision and a plan of cluster redevelopment; and
- (e) to a lot on a plan of subdivision must be taken to include a reference to a unit on a plan of strata subdivision, a plan of strata redevelopment and a lot on a plan of cluster subdivision or cluster redevelopment and an allotment on a plan of subdivision; and
- (f) to the registration of a plan of subdivision must be taken to include a reference to the registration of a plan of strata subdivision, the approval of a plan of strata redevelopment, the registration of a plan of cluster subdivision, the approval of a plan of cluster redevelopment and the approval of a plan of subdivision; and
- (g) to a registered plan (if the reference relates to the *Subdivision Act 1988*) must be taken to include a reference to a registered plan within the meaning of the *Strata Titles Act 1967*, a registered cluster plan within the meaning of the *Cluster Titles Act 1974* and an approved plan under section 97 of the *Transfer of Land Act 1958* or a corresponding previous enactment; and

- (h) to—
- (i) a plan of consolidation; or
 - (ii) a registered plan (if the reference relates to a registered plan of consolidation under the *Subdivision Act 1988*)—
must be taken to include a reference to a plan of consolidation or an approved plan of consolidation, as the case requires; and 5
- (i) to the certification of a plan of subdivision or consolidation or to a certified plan must be taken to include a reference to the sealing of a plan of strata subdivision, plan of strata redevelopment, plan of cluster subdivision, plan of cluster redevelopment or plan of consolidation; and 10
- (j) to the *Strata Titles Act 1967* or the *Cluster Titles Act 1974* must be taken to be a reference to the *Subdivision Act 1988*; and 15
- (k) to—
- (i) an approved plan of subdivision; or
 - (ii) a registered plan of strata subdivision; or
 - (iii) a registered cluster plan; or
 - (iv) an approved plan of consolidation—
must be taken to include a reference to a registered plan under the *Subdivision Act 1988*; and 20
- (l) to the sealing of a plan of subdivision or consolidation must be taken to include a reference to the certification of a plan under the *Subdivision Act 1988*; and 25
- (m) to—
- (i) a plan of redevelopment under the *Strata Titles Act 1967*; or
 - (ii) a plan of cluster redevelopment—
must be taken to include a reference to a plan of subdivision under the *Subdivision Act 1988*; and 30
- (n) to a clearing statement in relation to a plan of cluster subdivision must be taken to include a reference to a statement of compliance under section 21 (2) of the *Subdivision Act 1988*; and 35
- (o) to—
- (i) a plan of strata subdivision; or
 - (ii) a plan of cluster subdivision—
must be taken to include a reference to a plan of subdivision under the *Subdivision Act 1988* having one or more bodies corporate.”. 40

Miscellaneous amendments

19. The Principal Act is amended as follows:

(a) In section 3 after “3.” insert “(1)”;

(b) In section 3, for the definition of “Applicant” substitute—

‘ “Applicant” means—

(a) a person who applies to the Council for certification of a plan; or

(b) a person who applies to the Registrar to have a certified plan registered.’;

(c) In section 3, in the definition of “Restriction”, after “registered” insert “, or recorded in the Register”;

(d) At the end of section 3 insert—

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

(e) In section 4, for sub-section (2) substitute—

“(2) This Act does not apply to the disposition or acquisition of any land—

(a) which can be lawfully dealt with under section 8A of the *Sale of Land Act* 1962 without being subdivided; or

(b) if the land is disposed of or acquired by the Crown and, if it were disposed of or acquired by a private citizen, the land could lawfully be dealt with under section 8A of the *Sale of Land Act* 1962 without being subdivided.”;

(f) In section 5 (3) (c) after “certification” insert “together with an application in the prescribed form”;

(g) In section 5 (3) (e) after “registration” insert “together with an application in the prescribed form”;

(h) In section 5 (7) for “subdivision” substitute “plan”;

(i) After section 17 (2) insert—

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

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

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

- (a) the payment by the owner or applicant of—
 - (i) any reasonable part of the cost of constructing works; or 5
 - (ii) any reasonable part of the cost of maintaining works for a period of not more than 5 years; and
- (b) the payment by the owner or applicant of any reasonable part of the cost of the authority's general system of public utility services, based on the area or use of the land; and 10
- (c) the payment by the owner or applicant of any reasonable part of the cost of constructing or maintaining works on other land that are capable of benefiting the owner's or applicant's land; and 15
- (d) advances to be made by the owner or applicant to the authority for constructing or maintaining works; and 20
- (e) exempting the works from any provision of this section; and
- (f) the person or body in which works are to vest or who is to be responsible for works after they are completed; and 25
- (g) the referral of any proposal for works to any person or body.

(2D) At any time after works are completed under an agreement to which sub-section (2C) applies, the Council and a relevant authority may by agreement or the Governor in Council may by Order published in the *Government Gazette*, transfer the works and any land or interest in land relating to the works and rights, powers, obligations and liabilities under the agreement from the Council to a relevant authority. 30 35

(2E) Subject to any agreement, sub-sections (1), (3), (4), (5) and (6) apply as if they referred to a nominated relevant authority as well as to a referral authority.”;

- (j) In section 17 (6) after “In this section,” insert— 40
 - “relevant authority” means—
 - (a) a relevant authority within the meaning of the *Water and Sewerage Authorities (Restructuring) Act* 1983; or
 - (b) the Melbourne and Metropolitan Board of Works; and 45

(k) In section 21 (b) (i), for “Act” substitute “Part”;

(l) After section 21 insert—

Enforcement of agreements

5 “21A. Division 2 of Part 9 of the *Planning and Environment Act* 1987 applies to an agreement under section 21 (1) (b) (ii) as if a relevant authority within the meaning of section 17 (6), a referral authority or the Council (as the case requires) were the responsible authority.”;

10 (m) In section 22 (1) (e), omit “ in the case of a plan of subdivision or consolidation.”;

(n) After section 22 (1) (e) insert—

“; and

15 (f) in the case of a plan of consolidation, the applicant is registered as the sole proprietor of an estate in fee simple in the land on the plan or, if there is more than one applicant, the applicants are registered as proprietors of an estate in fee simple in the land on the plan as joint proprietors or tenants in common.”;

20 (o) In section 24 (1) for “notes on the plan that it” substitute “records that the plan”;

(p) After section 24 (4) insert—

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

(q) After section 28 insert—

Dealings with common property

30 “28A. (1) The share in the common property of a member of a body corporate cannot be dealt with except as part of a dealing with the member’s lot or under section 32.

35 (2) A dealing with a lot operates as a dealing with the lot owner’s share in the common property, even though that share is not mentioned in any document giving effect to the dealing with the lot.”;

(r) In section 40, sub-section (6) is repealed;

(s) In section 46 (proposed section 9AG), for sub-section (1) substitute—

40 (1) In this section, “declared special land” means land which—

(a) is to be subdivided into not more than 2 lots; or

- (b) the Governor in Council declares is special land for the purposes of this section.’;
- (t) In section 46 (proposed section 9AG (4)), for “project” substitute “special”;
- (u) In section 46, after proposed section 9AG insert— 5

Where land sold does not accord with land in plan

“9AH. (1) This section applies to the sale of land if, at the date the contract is entered into, section 31A of the *Surveyors Act 1978* applies to the land and has not been complied with. 10

(2) The registered proprietor of land to which this section applies may sell it although section 31A of the *Surveyors Act 1978* has not been complied with in relation to the land.

(3) A contract for the sale of land to which this section applies 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. 15

(4) The deposit and other money paid by a purchaser under a contract— 20

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

(b) must be held on trust for the purchaser until section 31A (3) of the *Surveyors Act 1978* is complied with in relation to the land. 25

(5) If—

(a) this section is not complied with; or

(b) under section 31A of the *Surveyors Act 1978* a licensed surveyor advises that—

(i) actual boundaries of the land sold do not accord with the boundaries of the land shown on the plan; or 30

(ii) the lot number of the lot sold does not accord with the lot number shown on the plan—

the purchaser may, before completion of the contract and not later than 18 months after the contract is entered into or the plan registered (whichever later happens), avoid the sale only if the purchaser has not disposed of the lot. 35

(6) If the purchaser avoids the sale, 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 fee for any time during which the purchaser was in actual occupation of the land the subject of the sale.”; 40

- (v) In item 29 of Schedule 2—

- (i) in proposed paragraph (d), after “subdivision” insert “or consolidation”; and
- (ii) in proposed paragraph (da), for “restriction or encumbrance” substitute “or restriction”;
- 5 (w) In item 39 of Schedule 2, after “authority” insert “(whether or not it represents the Crown)”;
- (x) After item 48 of Schedule 2 insert—
- ‘48A In section 9AA (6), for “In this section and in section 9AF” substitute “In this section (except sub-section (1) (b)) and sections 9AF, 9AG and 9AH”.’;
- 10 (y) After item 50 of Schedule 2 insert—
- ‘50A In section 9AA (7) after “9AF” insert “and 10”’;
- (z) In item 51 of Schedule 2 (proposed section 9AAA)—
- 15 (i) for “on registration of the plan” substitute “after the plan is registered”; and
- (ii) for “the plan is registered” substitute—
- (a) if at the end of 6 months after the plan is registered the body corporate has not met, at the end of 6 months; or
- 20 (b) if the body corporate meets within 6 months after the plan is registered, the end of one month after its first meeting.”;
- (za) After item 59 of Schedule 2 insert—
- 25 ‘59A After section 9AD (3) insert—
- “(4) This section does not apply to possession of a lot by a purchaser in consideration of a payment of an occupation fee.”’;
- (zb) After item 62 in Schedule 2 insert—
- ‘62A In section 9AE (2) for “12” (where twice occurring) substitute “18”.’;
- 30 (zc) In item 64 of Schedule 2—
- (i) (proposed section 10 (1)), before “contract of sale” insert “prescribed”; and
- 35 (ii) (proposed section 11 (1)), after “unless” insert “the vendor or”;
- (zd) In item 66 of Schedule 2 omit “8A or”;

(ze) After item 81 of Schedule 2 insert—

'81A

After section 45 (2) insert—

“(3) The Registrar must not register an instrument that creates a right of way unless satisfied that the Council of the municipal district in which the land is located has consented to the creation of the right of way.”;

5
10

(zf) After item 104 of Schedule 2 insert—

“104A

In section 97A, sub-section (4) is repealed.”;

(zg) In item 111 of Schedule 2, after “plan” (where first occurring) insert “lodged with the Registrar under any Act”;

15

(zh) In items 6, 11, 19, 20, 25, 26, 28, 34, 36, 71, 76, 120 and 122 of Schedule 2, after “subdivision” (wherever occurring) insert “or consolidation”.

Repeals

20. (1) In section 44 (1) (c) of the Principal Act omit “509 (1B)”. 20

(2) After section 44 (1) (c) of the Principal Act insert—

“(d) *The Transfer of Land (Amendment) Act 1984*;

(e) *The Sale of Land (Allotments) Act 1985*.”.

New sections 49 and 50 inserted

21. (1) After section 48 of the Principal Act insert— 25

Amendment of *Administrative Appeals Tribunal Act 1984*

‘49. (1) After section 66 (2A) of the *Administrative Appeals Tribunal Act 1984* insert—

“(2B) The Governor in Council may, on the recommendation of the Minister administering the *Subdivision Act 1988*, make regulations prescribing matters which by this Act are authorised or required to be prescribed for the purposes of this Act in relation to applications made under sections 36 and 39 of the *Subdivision Act 1988*.”

30

(2) In section 66 (3) of the *Administrative Appeals Tribunal Act 1984*, for “and (2A)” substitute “, (2A) and (2B)”.

35

No. 10155.
Amended by
Nos. 10191,
18/86, 9/87,
85/87 and 50/88.

Amendment of *Companies (Application of Laws) Act 1981*

‘50. For clause 26 of Schedule 1 to the *Companies (Application of Laws) Act 1981* substitute—

No.9712.
Amended by SR
197/82, 198/82,
199/82, 200/82,
435/82, 422/83,
129/84, 73/86,
156/86, 157/86,
158/86, 251/87,
272/87, Act
No.107/86.

5 “26. After section 123 (15) of the Commonwealth Act there were inserted the following sub-section:

10 ‘(16) Where land under the operation of the *Transfer of Land Act 1958* is comprised in a plan of strata subdivision registered under the *Strata Titles Act 1967*, a plan of cluster subdivision registered under the *Cluster Titles Act 1974* or a plan of subdivision registered under the *Subdivision Act 1988* and at the time of registration of the plan the proprietor of that land was a company, the transfer by the company of any unit on the plan of strata subdivision or lot on the plan of cluster subdivision or the plan of subdivision in exchange for or in satisfaction of a right of a kind referred to in sub-section (13) shall not of itself constitute, and shall be deemed never to have constituted, a reduction of the share capital of the company.’.’.’

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Statute law revision

22. Schedule 2 to the Principal Act is amended as follows:

- (a) Item 3 is repealed;
- 20 (b) In item 24, for “269A(d)” substitute “269A (2) (d)”;
- (c) In item 58, after “allotment” insert “(wherever occurring)”;
- (d) In item 69, after “approved” insert “(where secondly occurring)”;
- 25 (e) In item 70, for “(Subdivision)” substitute “(Subdivision of Land)”;
- (f) In item 78, after ““surveying”” insert “(where first occurring)”;
- (g) In item 108, for “for” substitute “after”;
- (h) In item 109, (proposed section 98CA (2))—
- 30 (i) for “must be— (a)” substitute “must — (a) be”; and
- (ii) in proposed paragraph (c) after “(c)” insert “be”; and
- (iii) in proposed paragraph (d), after “applicant,” insert “be accompanied by”.

Consequential amendments

35 23. (1) For section 45 of the Principal Act, substitute—

“45. The Acts specified in Schedules 2 and 3 are amended as specified in those Schedules”.

Subdivision (Amendment)

(2) After Schedule 2 to the Principal Act insert—

‘SCHEDULE 3**FURTHER AMENDMENT OF OTHER ACTS Section 45**

<i>Item</i>	<i>Act No.</i>	<i>Short Title</i>	<i>Amendment</i>
1	9720	<i>Building Control Act 1981</i>	In section 20 (2A), for “an allotment” substitute “a lot”.
2			In section 20, sub-section (15A) is repealed.
3			In section 55 (7), for “an allotment” substitute “a lot”.
4	12 of 1988	<i>Building Control (General Amendment) Act 1988</i>	In the Schedule, the items relating to the <i>Cluster Titles Act 1974</i> are repealed.
5	9699	<i>Companies (Consequential Amendment) Act 1981</i>	In Schedule 2, the items relating to the <i>Strata Titles Act 1967</i> are repealed.
6	6226	<i>Co-operative Housing Societies Act 1958</i>	In section 3 (5) (a), for “unit on a registered plan within the meaning of the <i>Strata Titles Act 1967</i> ” substitute “lot on a registered plan of subdivision within the meaning of the <i>Subdivision Act 1988</i> ”.
7	10097	<i>Credit Act 1984</i>	In section 5 (1), in the definition of “Body corporate”, in paragraph (a) for “ <i>Strata Titles Act 1967</i> ” substitute “ <i>Subdivision Act 1988</i> ”.
8			In section 5 (1), in the definition of “Body corporate”, in paragraph (a) for “units” substitute “lots”.
9	16 of 1986	<i>Courts Amendment Act 1986</i>	Sections 21 and 23 are repealed.
10	107 of 1986	<i>Courts (Further Amendment) Act 1986</i>	Parts 4 and 5 are repealed.
11	10095	<i>Equal Opportunity Act 1984</i>	In section 30 (9), for “or 97B of the <i>Transfer of Land Act 1958</i> or the <i>Strata Titles Act 1967</i> applies or the <i>Cluster Titles Act 1974</i> ” substitute “of the <i>Transfer of Land Act 1958</i> or the <i>Subdivision Act 1988</i> ”.
12	6241	<i>Electric Light and Power Act 1958</i>	In section 6 (2), for “units on a plan of strata subdivision under the <i>Strata Titles Act 1967</i> or lots on a plan of cluster subdivision under the <i>Cluster Titles Act 1974</i> ” substitute “lots on a plan of subdivision under the <i>Subdivision Act 1988</i> ”.
13	9428	<i>Estate Agents Act 1980</i>	In section 4 in the definition of “Residential property”, for “of land” substitute “or lot”.

SCHEDULE 3—continued

<i>Item</i>	<i>Act No.</i>	<i>Short Title</i>	<i>Amendment</i>
14	9428	<i>Estate Agents Act 1980</i> —continued	In section 54 (3), for “the allotments in a subdivision of land comprising not more than two allotments” substitute “the allotments or lots in a plan of subdivision comprising not more than two allotments or lots”.
15			After section 54 (4) (b) insert— “; or (c) a lot on a plan of subdivision containing common property”.
16			In section 54, sub-section (5) is repealed.
17			In section 57 (1) (c), for “allotments” (wherever occurring) substitute “allotments or lots”.
18	6263	<i>Geelong Waterworks and Sewerage Act 1958</i>	In section 59 (1), in the definition of “Sewer”, for “allotment” substitute “lot”. In section 104, for “or allotments” (where twice occurring) substitute “,allotments or lots”.
19	9667	<i>Historic Buildings Act 1981</i>	In section 3, in the definition of “Subdivide”— (a) omit “allotments or” (where twice occurring); and (b) omit the expression commencing “in fee simple” and ending at the end of the definition.
20	10020	<i>Housing Act 1983</i>	In section 16 (3), for “allotments” substitute “allotment or lot”.
21	121 of 1986	<i>Land Acquisition and Compensation Act 1986</i>	In section 38 (5), for “holdings or allotments” (where twice occurring) substitute “holdings, allotments or lots”.
22	6299	<i>Local Government Act 1958</i>	In section 254 (1), in the definition of “Unit”, for paragraph (a) substitute— “(a) a unit on a plan of strata subdivision that is a registered plan within the meaning of the <i>Subdivision Act 1988</i> ; and”.

Subdivision (Amendment)

SCHEDULE 3—continued

<i>Item</i>	<i>Act No.</i>	<i>Short Title</i>	<i>Amendment</i>
23		<i>Local Government Act 1958—continued</i>	In section 254 (1), in the definition of “Urban farm land”, for “allotments” substitute “allotments or lots”.
24			In section 254 (3B), for “subdivision under the <i>Cluster Titles Act 1974</i> ” substitute “plan of cluster subdivision that is a registered plan within the meaning of the <i>Subdivision Act 1988</i> ”.
25			In section 505A, for “established pursuant to the provisions of the <i>Strata Titles Act 1967</i> or the <i>Cluster Titles Act 1974</i> ” substitute “within the meaning of the <i>Subdivision Act 1988</i> ”.
26			In section 510 (1), for “any allotment” substitute “any allotment or lot”.
27			In section 510 (1), for “allotment or allotments” substitute “allotments or lots”.
28			In section 535 (6) (a), omit “strata”.
29			In section 575 (3B), for “registered plan within the meaning of the <i>Cluster Titles Act 1974</i> ” substitute “plan of cluster subdivision that is a registered plan within the meaning of the <i>Subdivision Act 1988</i> ”.
30			In section 584 (2), for “seal” substitute “certify”.
31			In section 584 (2), for “allotments” substitute “lots”.
32			In section 584 (2), for “sealing” substitute “certifying”.
33			In section 601 (8), for “registered cluster plan within the meaning of the <i>Cluster Titles Act 1974</i> ” substitute “plan of cluster subdivision that is a registered plan within the meaning of the <i>Subdivision Act 1988</i> ”.
34			In section 605A (3) (e), for “re-subdivide” substitute “subdivide”.
35			In section 605A (3) (e), for “seal” substitute “certify”.

SCHEDULE 3—continued

Item	Act No.	Short Title	Amendment
36		<i>Local Government Act 1958—continued</i>	In section 605A (3), for paragraph (f) substitute— “(f) Lodge the plan of subdivision with the Registrar of Titles for registration under the <i>Subdivision Act 1988</i> .”
37			In section 605A (3) (g), for “allotments” substitute “lots”.
38			In section 605A (4), for “purchase an allotment” substitute “purchase a lot”.
39			In section 605A (4), for “allotments” substitute “lots”.
40			In section 605A (6), for “extinguished” substitute “removed”.
41			In section 612 (1), for “allotments” substitute “allotments or lots”.
42			In section 615 (1) (d) for “allotments” substitute “allotments or lots”.
43			In section 629 (5) (b), for “allotments” substitute “allotments or lots”.
44			In section 629 (5) (b), for “shall be deemed an allotment” substitute “and the <i>Subdivision Act 1988</i> shall be deemed an allotment or lot”.
45			In section 699 (1) (c), for subparagraph (ii) substitute— “(ii) certify a plan of subdivision under the <i>Subdivision Act 1988</i> and lodge it for registration under that Act.”
46			The Thirtieth Schedule is repealed.
47		<i>Local Government (Consequential Provisions) Act 1989</i>	In item 114.1 of Schedule 2, for “s. 39” substitute “s. 41”.
48	6310	<i>Melbourne and Metropolitan Board of Works Act 1958</i>	In section 106A, for sub-section (1) substitute— “(1) Where water is supplied under this Part to a subdivision having one or more bodies corporate, each body corporate shall be liable to pay for the supply of water to the land affected by the body corporate.”
49			In section 106A (2), omit “unit or” (where twice occurring).

Subdivision (Amendment)

SCHEDULE 3—continued

Item	Act No.	Short Title	Amendment
50		<i>Melbourne and Metropolitan Board of Works Act 1958—</i>	In section 106A (2), for “body corporate” substitute “relevant body corporate”.
51		continued	In section 106A (3), for “a subdivision” substitute “land affected by a body corporate”.
52			In section 106A (4), for “ <i>Strata Titles Act 1967</i> and the <i>Cluster Titles Act 1974</i> ” substitute “ <i>Subdivision Act 1988</i> ”.
53			In section 106A (5), omit “unit or”.
54			In section 106A (6), omit “of a strata or cluster subdivision”.
55			In section 129, in the definition of “Sewer”, for “allotment” substitute “allotment or lot”.
56			In section 239EB, for “allotment” (wherever occurring) substitute “allotment or lot”.
57	45 of 1987	<i>Planning and Environment Act 1987</i>	In section 52 (1) (a), for “allotments” substitute “allotments or lots”.
58			In the Schedule, items 10 and 129 are repealed.
59	9512	<i>Planning Appeals Act 1980</i>	In section 52 (1) (b), for sub-paragraph (iii) substitute— “(iii) the failure or refusal to seal or certify a plan of subdivision; or (iv) any other refusal or failure to which section 40 (1) of the <i>Subdivision Act 1988</i> applies”.
60	9 of 1987	<i>Planning Appeals (Amendment) Act 1987</i>	In Schedule 3, items 2.1 to 2.9 (inclusive) and items 16.1 to 16.6 (inclusive) are repealed.
61	126/1986	<i>Retirement Villages Act 1986</i>	In section 3 (1), for the definition of “Body Corporate” substitute— “Body Corporate” has the same meaning as in the <i>Subdivision Act 1988</i> .”.
62			In section 12 (a), for sub-paragraphs (ii) and (iii) substitute— “(ii) shown on a plan of subdivision, that is a registered plan within the meaning of the <i>Subdivision Act 1988</i> —”

SCHEDULE 3—continued

<i>Item</i>	<i>Act No.</i>	<i>Short Title</i>	<i>Amendment</i>
63		<i>Retirement Villages Act 1986—continued</i>	In section 27 (a), for sub-paragraphs (ii) and (iii) substitute— “(ii) shown on a plan of subdivision, that is a registered plan within the meaning of the <i>Subdivision Act 1988</i> —”.
64			In section 34 (2) (a), for sub-paragraphs (ii) and (iii) substitute— “(ii) shown on a plan of subdivision, that is a registered plan within the meaning of the <i>Subdivision Act 1988</i> —”.
65			In section 34 (5), for “ <i>Strata Titles Act 1967</i> and the <i>Cluster Titles Act 1974</i> ” substitute “ <i>Subdivision Act 1988</i> ”.
66			In section 37, for sub-section (1) substitute— “(1) This section does not apply to rules to which the <i>Subdivision Act 1988</i> or the regulations made under that Act apply.”.
67	6975	<i>Sale of Land Act 1962</i>	In section 5 (5) (e), for “allotments” substitute “lots”.
68	6368	<i>Sewerage Districts Act 1958</i>	In section 3 (1), in the definition of “Sewer”, for “allotment” substitute “lot”.
69			In section 58 (3), for “allotment” substitute “lot”.
70			In section 139, for “or allotments” (where twice occurring) substitute “, allotments or lots”.
71	8486	<i>Small Claims Tribunals Act 1973</i>	In section 2 (1), in the definition of “Residential corporation”, for paragraphs (i) and (ii) substitute— “(i) which is a body corporate within the meaning of the <i>Subdivision Act 1988</i> ; or”.
72	6377	<i>State Electricity Commission Act 1958</i>	In section 58 (1), in the definition of “Urban area”, in sub-paragraph (a) (i), for “allotments” substitute “allotments or lots”.
73	9863	<i>Statute Law Revision (Repeals) Act 1982</i>	In the Schedule, the items relating to the <i>Strata Titles Act 1967</i> and the <i>Cluster Titles Act 1974</i> are repealed.

Subdivision (Amendment)

SCHEDULE 3—continued

<i>Item</i>	<i>Act No.</i>	<i>Short Title</i>	<i>Amendment</i>
74	10087	<i>Statute Law Revision Act 1984</i>	In Schedule 1, items 240 and 241 are repealed.
75	110 of 1986	<i>Supreme Court Act 1986</i>	In the Schedule, the items relating to the <i>Strata Titles Act 1967</i> are repealed.
76	9180	<i>Surveyors Act 1978</i>	In the Schedule, the items relating to the <i>Strata Titles Act 1967</i> and the <i>Cluster Titles Act 1974</i> are repealed.
77	6399	<i>Transfer of Land Act 1958</i>	In section 4 (1), in the definition of "Service company", for " <i>Strata Titles Act 1967</i> " substitute " <i>Subdivision Act 1988</i> ".
78			In section 102 (2) (a), for "allotments" substitute "allotments or lots".
79			In section 102 (2) (b), for "allotment" (where twice occurring) substitute "allotment or lot".
80	6401	<i>Trustee Act 1958</i>	In section 5A, for "unit on a registered plan within the meaning of the <i>Strata Titles Act 1967</i> " substitute "lot on a registered plan within the meaning of the <i>Subdivision Act 1988</i> ".
81			In section 5A, for "mortgage of shares" substitute "mortgage of the common property or of shares".
82	6413	<i>Water Act 1958</i>	In section 307AA (6) (b) (i), for "allotments" substitute "allotments or lots".

Amendment of *Building Control Act 1981*

24. Section 47 of the Principal Act is amended as follows:

- (a) For "47. After" substitute "47. (1) After";
 (b) At the end of the section insert—

'(2) Section 29 of the *Building Control Act 1981* is amended as follows:

(a) In sub-section (1), for the expression commencing "shall cease" and ending at the end of the sub-section insert "—

(a) if not inconsistent with that provision, shall be observed in addition to that provision; or

(b) if inconsistent with that provision—

(i) so far as practicable, shall be read so as to resolve the inconsistency; and

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(ii) subject to sub-paragraph (i), to the extent of the inconsistency, shall cease to have effect in that municipal district or that part of the municipal district (as the case may be).”;

(b) In sub-section (2), after “by-law” insert “or part thereof”;

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(c) Sub-section (3) is repealed.’.

