

# Planning Appeals Board Bill

## EXPLANATORY MEMORANDUM

### PART I.—INTRODUCTION

*Clause 1* provides for the title, the coming into operation of the Act and for it to be divided into Parts.

*Clause 2* contains transitional provisions with respect to the *Town and Country Planning Act 1961*, the *Environment Protection Act 1970*, Divisions 9 and 10 of the *Local Government Act 1958* and the *Port Phillip Authority Act 1966*. It also provides for the continuation and determination of appeals not finally determined before the commencement of this Act.

*Clause 3* provides for members of the Town Planning Appeals Tribunal, Environment Protection Appeals Board and Arbitrators under the Local Government Act to continue to hold office for such period as is necessary.

*Clause 4* sets down the interpretation of certain terms used in the Bill.

### PART II.—PLANNING APPEALS BOARD

*Clause 5* constitutes a Planning Appeals Board consisting of full-time and part-time members appointed by the Governor in Council. One of the full-time members is to be appointed as chief chairman by the Governor in Council. He is to be qualified for appointment as a County Court Judge and he may be appointed or reappointed for any period but he will cease to hold office at age seventy-two.

Full-time and part-time members may be appointed or reappointed for periods up to seven years but shall cease to hold office at age seventy-two. The Governor in Council shall appoint as many full-time members as he thinks fit as senior members of the Board. A full-time member shall not engage in other paid employment without the consent of the Governor in Council.

The clause also makes provision for resignation, removal and suspension from office of a member, payment of salary and allowances and travelling allowances, appointment of an acting chief chairman, acting members and the filling of extraordinary vacancies.

*Clause 6* provides that members of the Board shall not in respect of their office as members be subject to the Public Service Act. Also provides for saving of superannuation rights and rights of officers of the public service appointed members of the Board.

*Clause 7* provides for the appointment of a registrar and other officers and employes subject to the Public Service Act. The registrar is to keep a register in the prescribed form of all appeals and determinations of the Board thereon.

*Clause 8* requires the Board to perform the duties and determines any matter which it is required by the provisions of this or any other Act to perform or determine.

*Clause 9* requires the chief chairman to advise the Minister on action he considers would lead more convenient, economic and efficient disposal of Board business and the avoidance of delay in hearing appeals.

*Clause 10* requires the Board to submit an annual report to the Minister by 30 September to be laid before both Houses of Parliament. The Board may also issue reports or bulletins for the assistance of the public.

*Clause 11* requires the Board to sit in divisions consisting of members assigned by the chief chairman. The number of members on a division shall not exceed five; a division may consist of a single member. The chief chairman may sit alone as a single member division or as one of the members of a division.

Where an appeal relating to use and development has been determined and a further appeal is lodged relating to that use or development, the chief chairman is to assign to the division at least one member of the division which made the earlier determination unless he considers the circumstances do not make this appropriate. The member who conducted a compulsory conference is not to sit on the division which subsequently hears that appeal.

The clause also provides for the appointment of the chief chairman or a senior member to be chairman of a division, determination of hearings where a member of a division ceases to be available, determination of questions of law and other procedural matters in relation to the functioning of divisions.

### PART III.—COMPULSORY CONFERENCE

*Clause 12* provides for compulsory conferences. The chief chairman may order the parties to an appeal to attend a compulsory conference, which is to be held as soon as practicable within 28 days or such longer period as the chief chairman may determine. The registrar is to notify the parties in the prescribed manner.

The compulsory conference is to be conducted before a single member. The Minister on the recommendation of the chief chairman is to appoint members who may conduct compulsory conferences.

*Clause 13* sets down aims of the compulsory conference.

*Clause 14* enables the member conducting the compulsory conference to determine or strike out the appeal if the parties attending the conference are agreeable to him disposing of the matter. Also provides for authorization of municipal representatives, representatives of bodies corporate and unincorporate.

*Clause 15* requires the member conducting a compulsory conference to make a written report to the chief chairman where the appeal is wholly or partly unresolved at the completion of the compulsory conference.

### PART IV.—PROCEDURE

*Clause 16* provides for appeals to be in writing, and other procedural matters including service of notices, withdrawal of appeals, and for lodgment and delivery of statements of grounds relied on. Provision is also made for certain appeals to be dealt with together.

Where a copy of an appeal is served on a regional planning authority such regional authority may lodge notice of intention to contest the appeal and thereupon become a party thereto.

The clause also makes provision in relation to appeals relating to permits to use land for extractive industry.

*Clause 17* enables the Minister to extend the time of lodging of appeals beyond that prescribed provided the appeal has not been set down for hearing.

*Clause 18* requires the Board to act according to the substantial merits of the case and without regard to legal forms and technicalities. It is not to be bound by the rules of evidence but subject to the requirements of justice it may inform itself in any manner it thinks fit.

The Board is to take account of and give effect to statements of planning policy and environment protection policies.

*Clause 19* enables the chief chairman to determine an appeal where all parties to an appeal inform the registrar they do not desire to be heard or to make written submissions.

*Clause 20* gives the members of the Board entry and inspection rights. A penalty for obstruction is prescribed.

*Clause 21* provides for the appearance of parties at hearings and for representation of bodies corporate and unincorporate. Submissions may be made orally or in writing or both orally and in writing.

Also makes provision with regard to new and amended grounds including adjournment of a hearing and costs.

Where a party does not appear at the hearing and has not indicated at the compulsory conference intention not to pursue the appeal or has not notified the registrar in writing not less than seven days before the hearing, the Board, on application, may order that party to pay reasonable costs incurred by another party.

*Clause 22* makes provision in relation to Ministerial submissions to the Board. Also provides that where it appears that any appeal raises a major issue of policy and the determination of the appeal may have a substantial effect on planning within the region or in other parts of Victoria, the Board is to hear the appeal but not make a determination. After completion of the hearing of the appeal the Board is to advise the Minister of its opinion and the Minister is within 30 days to refer the appeal to the Governor in Council for determination.

In this clause Minister means the Minister administering the Act under which the appeal is made.

*Clause 23* makes costs awarded to a party in respect of an appeal a debt due to that party and recoverable through a court.

*Clause 24* requires the Board to furnish a statement of reasons for its determination.

*Clause 25* states that the determination of any appeal by the Board shall be final except where there is a reference to the Supreme Court.

*Clause 26* provides for the Board on its own notice or on the application of any party to refer any question of law to the Supreme Court. Any party may appeal to the Supreme Court against the determination on a question of law. There shall be no other appeal against a determination of the Board.

## **PART V.—REGULATIONS**

*Clause 27* gives power to make Regulations.

## **PART VI.—AMENDMENTS TO CERTAIN ACTS**

*Clause 28* amends section 9 of the *Port Phillip Authority Act 1966*.

*Clause 29* substitutes a new section 22E in the *Town and Country Planning Act 1961*.

*Clause 30* consequentially amends the *Town and Country Planning Act 1961*. Also amends section 20 (4D) of that Act to require the responsible authority to issue a permit in accordance with the determination of the Planning Appeals Board within three working days.

*Clause 31* consequentially amends the *Environment Protection Act 1970*.

*Clause 32* consequentially amends the *Local Government Act 1958*.

*Clause 33* amends the *Strata Titles Act 1967* consequential to amendment of section 570 of the *Local Government Act* so that the provision of that section insofar as they affect the *Strata Titles Act* will continue to operate, notwithstanding amendment of that section by this Act.