

# Subdivision (Amendment) Bill

## EXPLANATORY MEMORANDUM

*Clause 1* states the purpose of the Bill.

*Clause 2* provides for the Act to come into operation on Royal Assent.

*Clause 3* nominates the *Subdivision Act 1988* as the Principal Act.

*Clause 4* makes provisions and amendments in relation to land acquisition. Definitions of “Acquire” and “Vesting date” are inserted. Section 5 (2) of the Principal Act is substituted to ensure consistency with the *Land Acquisition and Compensation Act 1986* in relation to when an acquisition is complete.

Section 35 of the Principal Act is substituted and now applies when the land is acquired in whole or part, and clarifies whether and when affected land should be brought under the *Transfer of Land Act 1958*. It also clarifies the obligations of an acquiring authority where a plan submitted for certification relates to land which is affected by a body corporate.

Items 82 and 83 of Schedule 2 of the Principal Act are substituted to amend sections 54 and 62 (3) of the *Transfer of Land Act 1958* as a consequence of the substitution of section 35 of the Principal Act.

*Clause 5* repeals the definition of “Encumbrance” in section 3 of the Principal Act and provides that the Act should not apply to an encumbrance unless it constitutes an easement or a restriction. Consequential amendments are made to other sections of the Principal Act.

*Clause 6* amends the Principal Act to clarify the extent to which the Act applies to easements and restrictions and clarifies the rights attached to implied easements for services and access within buildings that are to be subdivided. It further provides that permits issued under a planning scheme may remove or vary easements or restrictions in the same manner as the provisions of a planning scheme.

Items 84 to 88 of Schedule 2 of the Principal Act are substituted to amend sections 72, 73 and 88 of the *Transfer of Land Act 1958* to overcome inconsistencies with the provisions of section 4 (4) of the Principal Act. Section 4 (4) confines the Act’s operation in respect of easements and restrictions, to plans involving the consolidation or subdivision of land.

*Clause 7* amends the Principal Act to clarify the types of plans that require referral pursuant to section 8 of the Principal Act as well as the obligations of councils and referral authorities in respect of time allowed for the consideration of plans. It also enables councils and referral authorities to request further information from an applicant in respect of a plan or an amending plan.

*Clause 8* amends the Principal Act to provide procedures to be followed in respect of applications for staged subdivisions. Section 37 of the Principal Act is substituted, and amendments are made to sections 18 and 21 in respect of open space requirements and statements of compliance for staged subdivisions.

*Clause 9* provides for a body corporate to act on behalf of its members. It also makes a number of other amendments to clarify the membership and powers of bodies corporate.

*Clause 10* clarifies the relationship between an insurance policy taken out by a body corporate and policies taken out over individual lots by owners. In particular, it sets out the procedures to be followed where a body corporate has taken out insurance and an owner has mortgaged the lot.

*Clause 11* provides for the Country Fire Authority to retain its present role as a referral authority where subdivisions are proposed in Special Fire Risk Areas.

*Clause 12* provides for easier pre-selling of lots from plans of subdivision by repealing sections 6 (1) (e) and 6 (1) (g) of the Principal Act and making consequential changes to the *Surveyors Act 1978* to clarify the requirements and timing for marking out of lots in subdivisions.

*Clause 13* extends the power in section 17 of the Principal Act to enter into agreements to applicants who anticipate becoming the owners of land. Similar amendments are also made to section 62 of the *Planning and Environment Act 1987*.

*Clause 14* deletes Schedule 1 and amends section 18 (1) (c) of the Principal Act to overcome inconsistencies within the Act in relation to the calculation of open space requirements.

*Clause 15* inserts a new sub-section 24 (2) of the Principal Act to clarify the status of land that is set aside as a road or otherwise vested in a council, person or body.

*Clause 16* provides for a council to delegate its powers and duties under the Principal Act to council committees as well as council officers.

*Clause 17* amends section 43 of the Principal Act to provide for a range of regulation making powers including the power to prescribe the content and interpretation of certain types of plans and agreements. Power is provided to make regulations for bodies corporate in relation to both their powers and the taking out of insurance.

This clause also provides powers for the Registrar of Titles to be able to allocate plan numbers, publish abbreviations to be used on plans, and to charge certain fees. It also enables councils to levy charges for services including the checking of engineering plans.

There are also provisions to clarify the scope of the regulations and to require a council to provide information about a plan in specified circumstances.

*Clause 18* substitutes sections 44 (2) and 44 (3) of the Principal Act to clarify transitional arrangements and allow subdivision proposals that are in process to be completed under existing legislative provisions. The clause also provides for applications to be made in the existing required form for up to 6 months after the Principal Act is proclaimed.

The clause also clarifies the steps that need to be taken to amend subdivisions, including staged, cluster and strata subdivisions approved under the existing legislation, and makes other minor amendments to ensure the continuity of existing registered plans and plans still in process.

The clause inserts a new section 44A which sets out references and interpretations particularly with regard to the *Cluster Titles Act 1974* and *Strata Titles Act 1967*.

*Clause 19* makes miscellaneous amendments to the Principal Act to make it consistent with other legislation and to facilitate its operation when it is proclaimed.

Amendments include—

- (a) new sub-sections 17 (2A)–(2D) which make provisions where land on a plan is located outside the area of jurisdiction of a relevant authority within the meaning of the *Water and Sewerage Authorities Reconstruction Act 1983* or the Melbourne and Metropolitan Board of Works.
- (b) changes to the *Sale of Land Act 1962* to allow for a sale to be avoided where a lot which is presold does not accord with the lot shown on the registered plan.

The clause also amends items in Schedule 2 relating to the *Planning and Environment Act 1987*, the *Sale of Land Act 1962* and the *Transfer of Land Act 1958* to ensure consistency with the Principal Act.

*Clause 20* provides for the repeal of sections of the *Local Government Act 1958* which are replaced by provisions in the Principal Act and the repeal of the *Transfer of Land (Amendment) Act 1984* and the *Sale of Land (Allotments) Act 1985*.

*Clause 21* inserts a new section 49 into the Principal Act to amend section 66 of the *Administrative Appeals Tribunal Act 1984* to enable regulations to be made under that Act relating to the *Subdivision Act 1988*. It also inserts a new section 50 into the Principal Act to amend the *Companies (Application of Laws) Act 1981* in relation to units and lots under the *Strata Titles Act 1967*, the *Cluster Titles Act 1974* and the *Subdivision Act 1988*.

*Clause 22* makes statute law revision amendments to items in Schedule 2 of the Principal Act.

*Clause 23* amends section 45 of the Principal Act to insert a new Schedule 3 which makes changes to other legislation arising from the provisions of the Principal Act.

*Clause 24* amends section 29 of the *Building Control Act 1981* to clarify the position with respect to siting and buildings where both regulations, by-laws and specific planning scheme provisions exist.

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