

# Planning and Environment Amendment (Recognising Objectors) Bill 2015

## Introduction Print

### EXPLANATORY MEMORANDUM

#### Clause Notes

- Clause 1 sets out the purpose of the Bill which is to amend the **Planning and Environment Act 1987** to provide for the Victorian Civil and Administrative Tribunal (Tribunal) and responsible authorities to have regard to the number of objectors to permit applications in considering whether a proposed use or development may have a significant social effect.
- Clause 2 is the commencement provision, which provides for the Bill to come into operation **on a day to be proclaimed, or on 14 April 2016 if it is not proclaimed before that date.**
- Clause 3 amends section 6(2)(kcb) and (kda) of the **Planning and Environment Act 1987**. That section presently enables a planning scheme to set out—
- classes of applications for permits that are exempted wholly or in part from the requirements of section 60(1)(b) to (f) and (1A) of the **Planning and Environment Act 1987**; and
  - classes of applications for review that are exempted wholly or in part from the requirements of section 84B(2)(b) to (ja) of that Act.

The amendments to paragraphs (kcb) and (kda) are related to the amendments to sections 60 and 84B(2) of the **Planning and Environment Act 1987** in clauses 4 and 5 of the Bill.

Subclause (1) amends paragraph (kcb) to insert a reference to new section 60(1B) of the **Planning and Environment Act 1987**, which is being inserted by clause 4 of the Bill.

Subclause (2) amends paragraph (kda) to insert a reference to new section 84B(2)(jb) of the **Planning and Environment Act 1987**, which is being inserted by clause 5 of the Bill.

As explained in the notes to clauses 4 and 5, sections 60 and 84B(2) of the **Planning and Environment Act 1987** are being amended to insert an additional decision making consideration to which the responsible authority and the Tribunal must (where appropriate) have regard.

The amendments to paragraphs (kcb) and (kda) mean that a planning scheme may exempt classes of applications from the requirements of new sections 60(1B) and 84B(2)(jb), in the same way that a planning scheme may presently exempt classes of applications from certain other considerations in sections 60 and 84B(2).

Clause 4 inserts a new section 60(1B) into the **Planning and Environment Act 1987** to provide that, for the purposes of section 60(1)(f) of that Act, the responsible authority must (where appropriate) have regard to the number of objectors in considering whether the use or development may have a significant social effect.

Section 60(1) of the **Planning and Environment Act 1987** sets out matters that the responsible authority must consider before it decides on an application for a permit or an application to amend a permit. A separate list of matters that the responsible authority may consider is set out in section 60(1A) of that Act.

Section 60(1)(f) specifically requires the responsible authority to consider any significant social effects and economic effects which the responsible authority considers the use or development may have.

While the responsible authority must presently consider all objections to a permit application which have not been withdrawn, as required under section 60(1)(c) of the **Planning and Environment Act 1987**, there is no express requirement in that Act for the responsible authority to consider the number of objectors to the permit application.

Subclause (1) inserts new section 60(1B) to expressly require the responsible authority to have regard (where appropriate) to the number of objectors in considering whether a use or development may have a significant social effect.

Section 60(1B) is similar in terms to new section 84B(2)(jb) of the **Planning and Environment Act 1987**, which is being inserted by clause 5 of the Bill. As explained in the note to that clause, the Tribunal must also (where appropriate) have regard to the number of objectors in considering whether a use or development may have a significant social effect.

New sections 60(1B) and 84B(2)(jb) recognise, as was recognised in *Stonnington City Council v Lend Lease Apartments (Armada) Pty Ltd* [2013] VSC 505, that the number of objectors may be a relevant fact (together with other facts) that indicates that a proposed use or development may have a significant social effect.

For example, the number of objectors may be indicative of the significance of a social effect that a proposed use or development may have on the community or of the presence of a specific social need in the community that may be affected by a proposed use or development.

The Tribunal and responsible authority must have regard to the new consideration "where appropriate". It will be a matter for the decision maker to decide whether it is appropriate for the number of objectors to be considered in a particular case.

For example, if a proposal requires a permit for development for heritage reasons but the objectors to the proposal are concerned about the operation of the proposed use (which does not require a permit under the planning scheme), it may not be appropriate for the decision maker to consider the number of objectors in that case.

However, if a proposal requires a permit for use, the impact of that use on the safety or amenity of the community is a matter required to be considered under the planning scheme, and a large number of objectors raise issues that point to a detrimental effect on the safety of the community at large, it may be appropriate to consider the number of objectors in that case.

New section 60(1B) is one of several matters that the responsible authority must consider under section 60 of the **Planning and Environment Act 1987**. This means any significant social effects that the responsible authority considers that a use or development may have must be balanced with any other significant effects of the proposal and with the other matters set out in section 60 of that Act.

Subclause (2) amends section 60(3A) of the **Planning and Environment Act 1987** to include a reference to new section 60(1B). It is related to the amendment of section 6(2)(kcb) of that Act by clause 3 of the Bill. The amendment to section 60(3A) confirms that if an application for a permit is of a class that is exempted by a planning scheme wholly or in part from the requirements of new section 60(1B), the responsible authority is not required to consider the exempted matter before deciding the application.

Clause 5 inserts a new section 84B(2)(jb) into the **Planning and Environment Act 1987** to provide that the Tribunal must (where appropriate) have regard to the number of objectors in considering whether the use or development may have a significant social effect.

Section 84B(1) of the **Planning and Environment Act 1987** sets out a range of matters that the Tribunal must take account of or have regard to in determining an application for review under that Act. Section 84B(2) sets out specific planning considerations that the Tribunal must consider.

Subclause (1) inserts new section 84B(2)(jb). It will be a matter for the Tribunal to decide when it is appropriate for the number of objectors to be considered in a particular case.

Subclause (2) amends section 84B(3) of the **Planning and Environment Act 1987** to include a reference to new section 84B(2)(jb). It is related to the amendment of section 6(2)(kda) of that Act by clause 3 of the Bill. The amendment to section 84B(3) confirms that if an application for review is of a class that is exempted by a planning scheme wholly or in part from the requirements of new section 84B(2)(jb), the Tribunal is not required to take into account or have regard to the exempted matter in determining the application.

Clause 6 provides for the automatic repeal of this amending Act on 14 April 2017. The repeal of this Act does not affect in any way the continuing operation of the amendments made by the Act (see section 15(1) of the **Interpretation of Legislation Act 1984**).