

# Planning Legislation Amendment Act 2009

No. 66 of 2009

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Victoria

# **Planning Legislation Amendment Act 2009<sup>†</sup>**

**No. 66 of 2009**

[Assented to 17 November 2009]

**The Parliament of Victoria enacts:**

## **PART 1—PRELIMINARY**

### **1 Purposes**

The purposes of this Act are—

- (a) to amend the **Planning and Environment Act 1987**—
  - (i) to enable certain applications for planning permits and amendments to planning permits to be decided on by

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development assessment committees;  
and

- (ii) to enable growth areas to be declared anywhere in Victoria; and
- (b) to amend the **Docklands Act 1991** to amend the objective of the Victorian Urban Development Authority; and
- (c) to amend the **Heritage Act 1995** to increase the maximum penalty that may be prescribed for an infringement offence; and
- (d) to amend the **Local Government Act 1989** to provide an exception from a conflict of interest provision for a member of a development assessment committee; and
- (e) to amend the **Melbourne Convention and Exhibition Trust Act 1996** to clarify and broaden the powers and functions of the Melbourne Convention and Exhibition Trust.

## 2 Commencement

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

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**PART 2—AMENDMENTS TO THE PLANNING AND  
ENVIRONMENT ACT 1987**

**3 Exemption from giving notice**

After section 20(5) of the **Planning and Environment Act 1987** insert—

- "(6) The Minister cannot, under this section, exempt a planning authority or himself or herself from any requirement if the amendment is to include an Activity Centre Zone for a Relevant Activity Area within the meaning of Part 4AA or to amend the boundaries of such a Zone."

See:  
Act No.  
45/1987.  
Reprint No. 8  
as at  
17 August  
2005  
and  
amending  
Act Nos  
18/2005,  
32/2006,  
33/2006,  
80/2006 and  
47/2007.  
LawToday:  
www.  
legislation.  
vic.gov.au

**4 Responsible authority to consider all applications**

- (1) In section 58 of the **Planning and Environment Act 1987**, for "The responsible authority" substitute "Subject to subsection (2), the responsible authority".
- (2) At the end of section 58 of the **Planning and Environment Act 1987** insert—
- "(2) A responsible authority must not consider or make a decision in respect of a DAC application within the meaning of Part 4AA."

**5 New Part 4AA inserted**

After Part 4 of the **Planning and Environment Act 1987** insert—

**"PART 4AA—DEVELOPMENT ASSESSMENT  
COMMITTEES**

**Division 1—General**

**97MA Definitions**

(1) In this Part—

*DAC* means a development assessment committee established under section 97MB;

*DAC application*, in relation to a DAC, means an application for a permit or an amendment to a permit that is within the operational area of that DAC;

*operational area*, in relation to a DAC, means—

- (a) the classes of applications for permits described in section 97MD(1)(a) that are to be decided on by that DAC; and
- (b) the types of amendments to permits described in section 97MD(1)(b) that are to be decided on by that DAC.

***Relevant Activity Area*** means any of the suburbs listed in Column 1 of the following Table—

<i>Column 1</i> <i>Suburb</i>	<i>Column 2</i> <i>Municipal District in which suburb is located:</i> <i>Municipal district of:</i>
Airport West	Moonee Valley City Council
Box Hill	Whitehorse City Council
Broadmeadows	Hume City Council
Camberwell	Boroondara City Council
Chadstone	Stonnington City Council
Cheltenham	Kingston City Council
Coburg	Moreland City Council
Cranbourne	Casey City Council
Dandenong	Greater Dandenong City Council
Doncaster	Manningham City Council
Epping	Whittlesea City Council
Footscray	Maribyrnong City Council
Frankston	Frankston City Council
Geelong	Greater Geelong City Council
Glen Waverley	Monash City Council
Greensborough	Banyule City Council
Hawthorn	Boroondara City Council
Maribyrnong	Maribyrnong City Council
Moonee Ponds	Moonee Valley City Council
Narre Warren	Casey City Council



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No. 66 of 2009

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Part 2—Amendments to the Planning and Environment Act 1987

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<i>Column 1</i>	<i>Column 2</i>
<i>Suburb</i>	<i>Municipal District in which suburb is located:</i> <i>Municipal district of:</i>
Prahran	Stonnington City Council
South Yarra	Stonnington City Council
Preston	Darebin City Council
Ringwood	Maroondah City Council
Sunshine	Brimbank City Council
Sydenham	Brimbank City Council
Wantirna South	Knox City Council
Werribee	Wyndham City Council

***Relevant Activity Centre Zone*** means a contiguous area designated in a planning scheme in respect of a Relevant Activity Area as an Activity Centre Zone.

- (2) Despite anything to the contrary in this Act—
- (a) not more than one Activity Centre Zone may be designated in a planning scheme in respect of each Relevant Activity Area other than Preston; and
  - (b) not more than 2 Activity Centre Zones may be designated in a planning scheme in respect of the Preston Relevant Activity Area.

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**Division 2—Establishment and functions  
of DACs**

**97MB Governor in Council may establish  
development assessment committees**

- (1) The Governor in Council, on the recommendation of the Minister, may by order published in the Government Gazette, establish one or more development assessment committees.
  - (2) An order establishing a DAC must specify—
    - (a) the class or classes of applications for permits to be decided on by the DAC; and
    - (b) the area or areas in a Relevant Activity Centre Zone or Zones for which the DAC is established and to which any such class of application applies.
  - (3) An area or areas for which a DAC is established—
    - (a) may be specified in the order by reference to a map or plan including a planning scheme document; and
    - (b) may include land that covers one or more, or parts of one or more, municipal districts.
  - (4) An order under this section takes effect from the day that it is published in the Government Gazette or, if a later day is specified in the order, on that later day.
  - (5) The Minister must publish on the Department's Internet site—
    - (a) the name of each DAC established by an order under this section; and
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- (b) the class or classes of applications for permits to be decided on by that DAC; and
- (c) the area or areas for which the DAC is established to which any such class of application applies.

**97MC Variation or revocation of order establishing DAC**

- (1) The Governor in Council, on the recommendation of the Minister, may by order published in the Government Gazette—
    - (a) revoke an order under section 97MB; or
    - (b) vary an order under section 97MB to change—
      - (i) the class or classes of applications for permits to be decided on by a DAC; and
      - (ii) the area or areas of Victoria to which any such class of application applies.
  - (2) An order under this section takes effect from the day that it is published in the Government Gazette or, if a later day is specified in the order, on that later day.
  - (3) A reference in this Part to an order under section 97MB includes the order as varied from to time under this section.
  - (4) The Minister must publish on the Department's Internet site the details of any variations to an order made under subsection (1)(b).
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**97MCA Referral to Advisory Committee**

- (1) Before making a recommendation to the Governor in Council under section 97MB or 97MC, the Minister must refer the matter to an Advisory Committee under section 151 for advice as to the classes of applications for permits that are to be decided on by the DAC.
- (2) The Advisory Committee must consult with the following before giving advice to the Minister under this section—
  - (a) any municipal council for the area or areas for which the DAC is to be established;
  - (b) the owners and occupiers of land that it believes may be materially affected by the proposal;
  - (c) any public authority that it believes may be materially affected by the proposal.

**97MD Functions of a DAC**

- (1) The functions of a DAC are to consider and decide under Part 4—
  - (a) any application for a permit—
    - (i) that is within the class or classes of applications for permits specified in the order under section 97MB establishing that DAC; and
    - (ii) that is within the area or areas specified in that order for which the DAC is established and to which the application applies; and

- (b) any application for an amendment to a permit where—
  - (i) the decision to grant the permit was made by the DAC and the permit, when amended, will be within a class of permits referred to in paragraph (a); or
  - (ii) the decision to grant the permit was made by the responsible authority and the permit, once amended, will be within a class of permits referred to in paragraph (a).
- (2) Despite subsection (1), a DAC must not decide or continue to decide an application for a permit—
  - (a) that is required or directed to be referred to the Minister under Division 4 of Part 4; or
  - (b) to which Division 5 of Part 4 applies; or
  - (c) that is directed to be referred to the Minister under Division 6 of Part 4.
- (3) Sections 59, 60, 61, 62, 73(2), 84(1), 97B and 197 apply in respect of an application for a permit or an amendment to a permit within the operational area of a DAC as if a reference to the responsible authority were a reference to that DAC.

**97ME DAC must consider all applications within its operational area**

A DAC must consider every application for a permit or an amendment to a permit within its operational area.

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**97MF Powers of a DAC**

In deciding a DAC application, the DAC has all the powers that the responsible authority would have had to decide on the application if it were not a DAC application.

**97MG Responsible authority to provide documents and information to DAC**

To enable a DAC to decide on a DAC application, the responsible authority must provide the following to each member of the DAC constituted to decide that application—

- (a) a copy of the application;
- (b) a copy of any comments from a referral authority relating to the application;
- (c) a copy of any report of a member of staff of the responsible authority in respect of the application;
- (d) any other document or information relating to the application that is relevant to deciding the application;
- (e) any other document or information that has been reasonably requested by the DAC to assist it in deciding on the application.

**97MH Responsible authority to provide assistance to DAC**

To enable a DAC to decide on a DAC application, the responsible authority must provide the DAC with any technical advice, administrative support and any other support reasonably required by the DAC.

**97MJ Decision of DAC taken to be decision of responsible authority**

- (1) A decision or failure to make a decision by a DAC on a DAC application is taken to be a decision or failure to make a decision on that application by the responsible authority.
- (2) The responsible authority must ensure that the register of applications kept under section 49 specifies whether a decision on an application for a permit or an amendment to a permit relating to its municipal district has been made by a DAC.
- (3) Any reference in Division 1, 1A, 2 or 3 of Part 4 or in sections 98(2), 99(a)(i) or 99(a)(iii) to an application for a permit or an amendment to a permit or a permit or amendment to a permit having been decided in favour of by a responsible authority or having been granted, issued, refused or failed to be granted within the prescribed time by a responsible authority, is taken to include an application for a permit or an amendment to a permit that has been decided on by a DAC or a permit or amendment to a permit that a DAC has decided to grant or refused to grant or has failed to grant within the prescribed time.

**Division 3—Membership of DAC**

**97MK Members**

- (1) A DAC is to consist of the following members in relation to DAC applications applying to land in a particular municipal district—

- 
- (a) a Chairperson nominated by the Minister from the list of persons prepared under subsection (3);
  - (b) 2 other members nominated by the Minister;
  - (c) 2 other members, nominated by the municipal council for the municipal district, who must be drawn from a group of 5 persons who are councillors or members of staff of that council and who have been nominated by that council.
- (2) The members of the DAC are to be appointed by the Governor in Council.
  - (3) The Minister must prepare a list of names of persons available for appointment as Chairperson or Alternate Chairperson of a DAC and must consult with the following bodies in respect of that list before making any nomination from that list—
    - (a) the Municipal Association of Victoria;
    - (b) the Victorian Local Government Association.

**97ML Alternate members**

- (1) There are to be the following alternate members of a DAC in relation to a DAC application applying to land in a particular municipal district—
    - (a) an alternate Chairperson nominated by the Minister from the list of persons prepared by the Minister under section 97MK(3);
    - (b) an alternate member nominated by the Minister for each member of the DAC nominated by the Minister;
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- (c) 3 other alternate members who are to be the persons forming part of the group of persons referred to in section 97MK(1)(c) who were not appointed as members of the DAC under section 97MK.
- (2) Alternate members of a DAC are to be appointed by the Governor in Council.
- (3) Subject to section 97MS(d)(ii), a person appointed as an alternate member for a member of a DAC is to act for that member if the member is incapable of performing his or her duties of office or is to be absent for any other reason.
- (4) Subject to section 97MS(d)(ii), a municipal council may nominate one of the 3 alternate members of a DAC referred to in subsection (1)(c) to act for a member of that DAC nominated by that council if he or she is incapable of performing his or her duties of office or is to be absent for any other reason.
- (5) An alternate member who is nominated to act for a member under subsection (4) is to act for that member.
- (6) An alternate member of a DAC while acting for a member has the powers, authority and duties of that member.

**97MM Removal, suspension or resignation of members**

- (1) The Minister may suspend a member or an alternate member of a DAC for up to 3 months if the Minister believes on reasonable grounds that the member has—
- (a) breached any requirement in Division 5; or
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- (b) acted corruptly in performing his or her duties as a member of the DAC.
- (2) The Governor in Council may at any time remove a member or an alternate member of a DAC from office.
- (3) A member or an alternate member of a DAC may resign by giving a written resignation to the Minister.

**97MN Vacancies**

- (1) The office of a member or an alternate member of a DAC becomes vacant if the member—
  - (a) becomes insolvent under administration; or
  - (b) is convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence;
  - (c) retires, resigns or is removed from office; or
  - (d) dies or becomes permanently incapable of performing the duties of office.
- (2) If there is a vacancy in the office of a member or an alternate member of a DAC, the Governor in Council may appoint a member or an alternate member to fill the vacancy in accordance with section 97MK or 97ML (as the case requires).

**97MO Minister to publish details of members**

The Minister must publish on the Department's Internet site the following details relating to the members and alternate members of a DAC—

- (a) the names of the members and alternate members of the DAC from time to time; and
- (b) if the DAC is established in respect of more than one municipal district, the members and alternate members who constitute the DAC in respect of each municipal district.

**97MP Conditions of membership**

A member or an alternate member of a DAC—

- (a) holds office for the period specified in the instrument of appointment, which must be a period of not more than 3 years; and
- (b) holds office on the terms and conditions determined by the Minister; and
- (c) may be reappointed.

**97MQ Payment of members**

Each member or alternate member of a DAC is entitled to receive any fees and allowances fixed by the Minister in respect of that member, unless the person is employed by or on behalf of the Crown or a municipal council or is a member of a municipal council.

**Division 4—Procedure of DAC**

**97MR General procedures**

In deciding on a DAC application, the DAC—

- (a) must act according to equity and good conscience without regard to technicalities or legal forms; and
  - (b) is bound by the rules of natural justice.
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**97MS Procedures at meetings of a DAC**

The following provisions apply to a DAC in deciding on a DAC application—

- (a) if either the Chairperson or the alternate Chairperson is for any reason unable to attend a meeting of the DAC, the members present must elect an acting Chairperson for that meeting;
- (b) the quorum for a meeting of the DAC is 3 members (including any alternate member acting for a member) of the DAC;
- (c) the DAC may act despite a vacancy in its membership as long as there is a quorum;
- (d) if a member of the DAC absents himself or herself from the DAC after it has commenced to consider an application—
  - (i) the DAC may continue to consider that application; and
  - (ii) despite section 97ML, the absent member is not to be replaced by an alternate member during the consideration of that application.

**97MT Validity of decisions**

An act or decision of a DAC is not invalid by reason only of—

- (a) a vacancy in the office of a member or an alternate member of the DAC; or
- (b) a defect or irregularity in or in connection with the appointment of a member or an alternate member of the DAC; or

- (c) in the case of a person purporting to act as a member or an alternate member of the DAC—
  - (i) the occasion for the appointment of the person to act had not arisen; or
  - (ii) there was a defect or irregularity in or in connection with the appointment of the member; or
  - (iii) the appointment or the occasion for the person to act had ceased.

**97MTA Meetings to be open to the public**

- (1) Unless subsection (2) applies, any meeting of a DAC must be open to members of the public.
- (2) A DAC may close a meeting to the public if the meeting is discussing confidential information or legal advice or any other matter that the DAC considers would prejudice the DAC or another person.
- (3) If a DAC decides to close a meeting to members of the public, the reason must be recorded in the minutes of the meeting.
- (4) A DAC must give public notice of a meeting of the DAC if practicable.

**97MU Additional procedures**

- (1) In addition to the procedures set out in this Division, a DAC must act in accordance with any procedures determined by the Minister and published in the Government Gazette from time to time.
- (2) Subject to this Division, a DAC may regulate its own procedures.

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**97MV Application of section 144**

Section 144 applies in respect of a meeting to decide a DAC application as if a reference to the responsible authority were a reference to the DAC.

**Division 5—Probity requirements for DAC members**

**Subdivision 1—General**

**97MW Definition**

In this Division (except in Subdivisions 5 and 6), a *member of a DAC* includes an alternate member of that DAC when acting for a member of the DAC.

**Subdivision 2—Conduct principles**

**97MX Conduct principles for DAC members**

In performing the role of a member of a DAC, a member must—

- (a) act with integrity; and
- (b) impartially decide DAC applications in accordance with this Act and the relevant planning scheme; and
- (c) not improperly seek to confer an advantage or disadvantage on any person; and
- (d) avoid conflicts between his or her public duties as a member of the DAC and his or her personal interests and obligations; and

- (e) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person; and
- (f) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other members of the DAC, employees of a responsible authority providing services to the DAC and other persons; and
- (g) endeavour to ensure that public resources are used prudently and solely in the public interest; and
- (h) act lawfully; and
- (i) support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the DAC.

**Subdivision 3—Misuse of position**

**97MY Definition**

In this Subdivision, *confidential information* means information provided to a member of a DAC—

- (a) which was identified as being provided in confidence by the responsible authority or person who provided the information; or
- (b) which the DAC has identified as being confidential.

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**97MZ Misuse of position**

- (1) A person who is, or has been, a member of a DAC must not misuse his or her position or former position—
- (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
  - (b) to cause, or attempt to cause, detriment to the DAC or to a responsible authority.

Penalty: 100 penalty units.

- (2) For the purposes of this section, circumstances involving the misuse of a position or former position by a person who is, or has been, a member of a DAC include—
- (a) making improper use of information acquired as a result of being a member of the DAC; or
  - (b) disclosing information that is confidential information; or
  - (c) seeking to improperly influence a person who has a duty or is engaged to provide advice, a report or other services, including administrative services, to the DAC; or
  - (d) attempting to exercise a power or function that he or she is not authorised to exercise; or
  - (e) using public funds improperly or in an unauthorised manner.



- (3) This section—
- (a) has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of a member of a DAC; and
  - (b) does not prevent the institution of any criminal or civil proceedings in respect of that liability.

**Subdivision 4—Conflict of interests**

**97MZA Disclosure of conflicts of interest by DAC members**

- (1) If a member of a DAC has a conflict of interest within the meaning of section 97MZC relating to DAC application, the member must without delay advise the Secretary of that conflict and take no part in deciding on the application.
- (2) A member of a DAC who, without reasonable excuse, fails to comply with this section is guilty of an offence and liable to a penalty of not more than 100 penalty units.

**97MZB Persons to disclose interests when providing advice or report**

- (1) This section applies to members of staff of a responsible authority and other persons who have a duty or are engaged to provide advice or a report to a DAC.
  - (2) A person, who is providing advice or a report to a meeting of a DAC or otherwise to a DAC and who has a direct interest or an indirect interest (within the meaning of this Subdivision) in a matter to which the advice or report relates, must not, without reasonable excuse, fail to disclose the type of
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interest when providing the advice or report to the DAC.

Penalty: 50 penalty units.

- (3) A disclosure made by a person under subsection (2) must be recorded in the minutes of any relevant meeting of the DAC.
- (4) A person who has made a disclosure under subsection (2) must disclose the nature of the interest if required to make that disclosure by the DAC.

**97MZC Conflict of interest**

- (1) In this Subdivision, a person has a conflict of interest in respect of a matter if the person has a direct interest or indirect interest in the matter.
- (2) A person has a direct interest in a matter if the person has an interest of a kind described in section 97MZD.
- (3) A person has an indirect interest in a matter if the person has—
  - (a) a close association as specified in section 97MZE; or
  - (b) an indirect financial interest as specified in section 97MZF; or
  - (c) a conflicting duty as specified in section 97MZG; or
  - (d) received an applicable gift as specified in section 97MZH; or
  - (e) become an interested party as specified in section 97MZI.
- (4) A person does not have a conflict of interest in a matter if the direct interest or indirect interest of the person is so remote or

insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the person in relation to the matter.

**97MZD Direct interest**

- (1) A person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way.
- (2) Without limiting subsection (1), a person has a direct interest in a matter if—
  - (a) there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way; or
  - (b) there is a reasonable likelihood that the residential amenity of the person will be directly affected if the matter is decided in a particular way.

**97MZE Indirect interest by close association**

- (1) In this section—

*daughter of a person* means a biological daughter, stepdaughter, adopted daughter, or female child for whom the person has custodial responsibilities;

*direct relative of a person* means the spouse, domestic partner, son, daughter, mother, father, brother or sister of the person;

***domestic partner of a person*** means—

- (a) a person who is in a registered relationship with the person; or
- (b) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—
  - (i) for fee or reward; or
  - (ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

***family member of a person*** means—

- (a) a spouse or domestic partner of the person; or
- (b) a son, daughter, mother, father, brother or sister that regularly resides with the person;

***relative of a person*** means—

- (a) a direct relative of the person;
- (b) a direct relative of a person who is the direct relative of the person;

*son of a person* means a biological son, stepson, adopted son or male child for whom the person has custodial responsibilities.

- (2) A person has an indirect interest by close association in a matter if—
- (a) a family member of the person has a direct interest or an indirect interest in a matter; or
  - (b) a relative of the person has a direct interest in a matter; or
  - (c) a member of the person's household has a direct interest in a matter.
- (3) For the purposes of the definition of *domestic partner* in subsection (1)—
- (a) *registered relationship* has the same meaning as in the **Relationships Act 2008**; and
  - (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and
  - (c) a person is not a domestic partner of another person only because they are co-tenants.

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**97MZF Indirect interest that is an indirect financial interest**

- (1) A person has an indirect financial interest in a matter if the person is likely to receive a benefit or incur a loss, measurable in monetary terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.
  - (2) Without limiting subsection (1), a person has an indirect financial interest that is a conflict of interest if—
    - (a) the person has a beneficial interest in shares of a company or other body that has a direct interest in the matter, except in the circumstances specified in subsection (3);
    - (b) the person is owed money from another person and that other person has a direct interest in the matter.
  - (3) If a person, and family members of the person, hold shares in a company or body that has a direct or indirect interest in a matter with a combined total value that does not exceed \$10 000 and the total value of issued shares of the company or body exceeds \$10 million, the person's indirect financial interest is not a conflict of interest.
  - (4) Subsection (2)(b) does not apply if the other person is an authorised deposit-taking institution.
  - (5) For the purposes of determining the value of shares under this section, the share value is to be taken from—
    - (a) the close of business on the most recent of 30 June or 31 December; or
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- (b) if the person has submitted an ordinary return to the Secretary (within the meaning of Subdivision 5) since the most recent of 30 June or 31 December, the close of business on the date the return was submitted.

**97MZG Indirect interest because of conflicting duties**

- (1) A person has an indirect interest in a matter because of a conflicting duty if the person—
    - (a) is a manager or a member of a governing body of a company or body that has a direct interest in a matter;
    - (b) is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter;
    - (c) is a trustee for a person who has a direct interest in a matter.
  - (2) A person has an indirect interest in a matter because of a conflicting duty if the person held a position or role specified in subsection (1) and, in that position or role, dealt with the matter.
  - (3) A person does not have an indirect interest because of a conflicting duty—
    - (a) by virtue of the fact that the person is an employee in the service of the Crown or of a body established by or under any Act for a public purpose, if the person has no current or expected responsibilities as that employee in relation to a matter; or
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- (b) by virtue of the fact that the person holds a position in a not-for-profit organisation for which the person receives no remuneration and the person was appointed or nominated to that position by a municipal council; or
- (c) by virtue of the fact that the person is the Mayor or Chief Executive Officer of a municipal council or a councillor or member of staff of that council;
- (d) if the person holds a position that has been declared for the purposes of this section by the Minister in an order published in the Government Gazette.

**97MZH Indirect interest because of receipt of an applicable gift**

- (1) In this section, *applicable gift* means one or more gifts with a total value of \$200 or more, received from a person or persons specified in subsection (2), in the 5 years preceding the decision or the exercise of the power, duty or function relating to the matter.
- (2) A person has an indirect interest in a matter if the person has received an applicable gift, directly or indirectly, from—
  - (a) a person who has a direct interest in the matter; or
  - (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
  - (c) a person who gives the applicable gift to the person on behalf of a person, company or body that has a direct interest in the matter.



**97MZI Indirect interest as a consequence of becoming an interested party**

A person has an indirect interest in a matter if the person has become an interested party in the matter by initiating civil proceedings or a proceeding in the Tribunal in relation to the matter or becoming a party to civil proceedings or a proceeding in the Tribunal in relation to the matter.

**Subdivision 5—Returns of interests of DAC members**

**97MZJ Application of Subdivision**

This Subdivision does not apply to any member or alternate member of a DAC who is required to submit returns under section 81 of the **Local Government Act 1989**.

**97MZK Definition**

In this Subdivision *return period*, in relation to the ordinary return of a member or an alternate member of a DAC, means—

- (a) if the last return of the member was a primary return, the period between the date of the primary return and the date the ordinary return is submitted; or
- (b) if the last return of the member was an ordinary return, the period between the date of that return and the date the current ordinary return is submitted.

**97MZL DAC members to submit primary returns**

- (1) Each member and alternate member of a DAC must submit a primary return in accordance with subsection (2) to the Secretary within 30 days after his or her appointment, unless that member is
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reappointed after completion of his or her term of office.

- (2) A member or an alternate member of a DAC must disclose the following information in the primary return as at the date of the primary return—
- (a) the name of any company or other body in which he or she holds any office whether as a director or otherwise;
  - (b) the name or description of any company or body in which he or she holds a beneficial interest unless the total value of the interest does not exceed \$10 000 and the total value of issued shares of the company or body exceeds \$10 million;
  - (c) the address or description of any land in an area of Victoria for which the DAC is established, or of any adjoining land, in which he or she has any beneficial interest other than by way of security for any debt;
  - (d) a concise description of any trust in which he or she holds a beneficial interest or of which he or she is a trustee and a member of his or her family holds a beneficial interest;
  - (e) any other substantial interest whether of a pecuniary nature or not of him or her or of a member of his or her family of which he or she is aware and which he or she considers might appear to raise a material conflict between his or her private interest and his or her public duty as a member or alternate member of a DAC.

**97MZM DAC members to submit ordinary returns**

- (1) Each member and alternate member of a DAC must submit an ordinary return in accordance with subsection (2) to the Secretary within 30 days after the anniversary of his or her appointment each year.
- (2) A member or an alternate member of a DAC must disclose in an ordinary return the following information in relation to the return period—
  - (a) if he or she has held an office whether as director or otherwise in any company or body, corporate or unincorporate—the name of the company or body;
  - (b) the name or description of any company or body in which he or she holds or has held a beneficial interest unless the total value of the interest does or did not exceed \$10 000 and the total value of issued shares of the company or body exceeds \$10 million;
  - (c) the address or description of any land in any area of Victoria for which the DAC is established, or of any adjoining land, in which he or she has any beneficial interest other than by way of security for any debt;
  - (d) a concise description of any trust in which he or she held a beneficial interest or of which he or she is a trustee and a member of his or her family held a beneficial interest;

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- (e) particulars of any gift of or above the amount or value of \$200 received by him or her, either directly or indirectly, from a person other than a relative (within the meaning of section 97MZE) of him or her;
  - (f) any other substantial interest, whether of a pecuniary nature or not, of him or her or of a member of his or her family of which he or she is aware and which he or she considers might appear to raise a material conflict between his or her private interest and his or her public duty as a member or alternate member of a DAC.

**Subdivision 6—Register of interests of DAC members**

**97MZN Secretary to maintain register**

The Secretary must maintain a register of the interests of each member and alternate member of a DAC consisting of the last 3 returns that those members were required to submit under Subdivision 5.

**97MZO Inspection of register**

- (1) The Secretary must allow a person to inspect the register if that person has previously made written application to the Secretary to do so and the application meets the requirements of the regulations (if any).
- (2) The register may be inspected at the offices of the Department during normal office hours.

- (3) The Secretary must take all reasonable steps to ensure that no person, other than a person who has made an application in accordance with this section, has access to or is permitted to inspect the register or any return.
- (4) The Secretary must maintain a record of the names of persons who have inspected the register of interests under subsection (2).

**97MZP Member may inspect records**

A member or an alternate member of a DAC whose interests are recorded in the register may inspect the record kept under section 97MZO(4) of names of persons who have inspected his or her personal records.

**97MZQ Persons not to publish information from register**

A person must not publish any information derived from the register unless that information is a fair and accurate summary or copy of the information derived from the register.

Penalty: 20 penalty units.

**97MZR Department employees must not divulge or use information**

A person employed by the Department must not, whether before or after he or she ceases to be so employed—

- (a) make a record of, divulge or communicate to any person any information in relation to a matter dealt with under Subdivision 5 or this Subdivision that is gained by or conveyed to him or her during his or

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her employment with the Department;  
or

(b) make use of that information—

for any purpose other than the discharge of  
his or her official duties under Subdivision 5  
or this Subdivision.

Penalty: 50 penalty units.

**97MZS Removal of returns from register**

As soon as practicable after a person ceases  
to be a member or an alternate member of a  
DAC, the Secretary must remove all the  
returns submitted by that person from the  
register.

**97MZT Retention of returns of ceased members**

The Secretary must—

- (a) retain the returns of a member or an  
alternate member of a DAC for a period  
of 3 years after the person has ceased to  
be such a member; and
- (b) at the end of that period, cause the  
returns to be destroyed.

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**PART 3—AMENDMENTS TO OTHER ACTS**

**6 Amendment to Docklands Act 1991**

In section 9 of the **Docklands Act 1991** omit "and to complete its involvement in that development by 31 December 2005".

See:  
Act No.  
22/1991.  
Reprint No. 4  
as at  
1 March 2005  
and  
amending  
Act Nos  
108/2004,  
95/2005,  
69/2006,  
74/2006 and  
80/2006.  
LawToday:  
www.  
legislation.  
vic.gov.au

**7 Amendment to the Heritage Act 1995**

In section 185(k) of the **Heritage Act 1995**, for "4 penalty units" substitute "10 penalty units".

See:  
Act No.  
93/1995.  
Reprint No. 4  
as at  
1 January  
2006  
and  
amending  
Act Nos  
32/2006,  
80/2006 and  
48/2008.  
LawToday:  
www.  
legislation.  
vic.gov.au

## 8 Amendment to the Local Government Act 1989

After section 78B(3)(c) of the **Local Government Act 1989** insert—

- "(ca) the person is only a member of a development assessment committee established under Part 4AA of the **Planning and Environment Act 1987**";

See:  
Act No.  
11/1989.  
Reprint No. 9  
as at  
1 April 2007  
and  
amending  
Act Nos  
26/2007,  
2/2008,  
12/2008,  
35/2008 and  
67/2008.  
LawToday:  
www.  
legislation.  
vic.gov.au

## 9 Amendments to the Melbourne Convention and Exhibition Trust Act 1996

- (1) In sections 5(a) and 5(b) of the **Melbourne Convention and Exhibition Trust Act 1996**, for "the City of Melbourne and the City of Port Phillip" **substitute** "Victoria, including the use of those facilities and services for entertainment purposes".
- (2) In section 5(d) of the **Melbourne Convention and Exhibition Trust Act 1996**, for "Council of the Museum of Victoria" **substitute** "Museums Board of Victoria".

See:  
Act No.  
71/1996  
and  
amending  
Act Nos  
46/1998,  
108/2004 and  
80/2006.  
LawToday:  
www.  
legislation.  
vic.gov.au



**PART 4—REPEAL OF AMENDING ACT**

**10 Repeal of amending Act**

This Act is **repealed** on the first anniversary of its commencement.

**Note**

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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**ENDNOTES**

† *Minister's second reading speech—*

*Legislative Assembly: 15 September 2009*

*Legislative Council: 17 September 2009*

The long title for the Bill for this Act was "A Bill for an Act to amend the **Planning and Environment Act 1987**, the **Docklands Act 1991**, the **Heritage Act 1995**, the **Local Government Act 1989** and the **Melbourne Convention and Exhibition Trust Act 1996** and for other purposes."