Part 5 of the Planning and Environment Act 1987: Significant changes to the planning compensation regime

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Today's topics

- The existing regime (up to 2025), including recent changes already in operation
- A review of the amendments to be introduced through the *Planning Amendment (Better Decisions Made Faster) Act* 2026 that reflect existing practice
- An analysis of the most significant amendments to be introduced through the *Planning Amendment (Better Decisions Made Faster) Act* 2026
- Key takeaways

Introduction to Part 5

- Broadly, Part 5 provides a statutory entitlement to compensation for owners or occupiers who suffer financial loss as the natural, direct and reasonable consequence of their land being reserved, or proposed to be reserved, for a public purpose.
- In order to claim compensation following reservation or proposed reservation, the right to compensation must first arise. Generally, this right arises by:
  - Permit refusal: a responsible authority refusing to grant a permit for the use or development of land on the basis that it is or may be required for a public purpose; or
  - Loss on sale: the owner of the land selling the land at a lower price than the owner might reasonably have expected to get if the land or part of the land had not been reserved or proposed to be reserved.

Note: see *Capela v Minister for Energy, Environment and Climate Change* [2018] VSC 360 for a summary of the existing regime focussed on a prospective claim for compensation following loss on sale.

Consumer and Planning Legislation Amendment (Housing Statement Reform) Act 2025

- On 25 November 2025, the *Consumer and Planning Legislation Amendment (Housing Statement Reform) Act* 2025 made changes to Part 5, including:
  - Introduced new section 99A Requirements for claim for compensation
  - Introduced new section 104B Interest on compensation
  - Introduced new section 104C Determination of rate of interest
  - Amended section 105 Land Acquisition and Compensation Act to apply subject to s 99A.

Note: Further amendments to s 104B were made through the *Planning Amendment (Better Decisions Made Faster) Act* 2026 on 3 June 2026

Planning Amendment (Better Decisions Made Faster) Act 2026

Timing of changes

- Royal Assent on 17 February 2026
- Default commencement date of 29 October 2027
- Changes came into effect from 3 June 2026, including:
  - Sections 104B(3) and 104B(4) were introduced
  - Updates to Distinctive Areas and Landscapes (DALs) provisions
  - New requirements to give notice of VC amendments
  - Changes to how Infrastructure Contributions Plans (ICPs) can be administered
  - Changes to how Growth Area Infrastructure Contributions (GAIC) can be administered.
- New civil compliance and enforcement provisions commenced on 3 August 2026

Reasoning behind the changes

- Statement of Compatibility provides insight into the Government's reasoning for the changes:
  - Government says it is seeking to reduce ambiguity about what a person might be entitled to claim against the State
  - Recognition from the State that this may be perceived as limitation on property rights by reducing the amount of monetary compensation that they may have otherwise been able to obtain against the State
  - That limitation is considered *"reasonable and justified"*
  - Government considers that the changes ultimately seek to reduce the State's liability in connection with planning compensation claims

Changes to the objectives of the Act

Existing section 4 Objectives:

4 Objectives

(1) The objectives of planning in Victoria are—

(a) to provide for the **fair,** orderly, economic and sustainable use, and development of land;

...

Amended section 4 Objects:

"(1) The objectives of planning in Victoria are—

(a) to enhance the State's liveability and prosperity by facilitating the orderly and economically, socially and environmentally sustainable use and development of land; and

....

Note: s4(2)(l) has not been amended:

4(2) the objectives of the planning framework established by this Act are:

..

(l) to provide for compensation when land is set aside for public purposes and in other circumstances.

Amendments covered in this presentation

- Changes already in operation requiring supporting evidence to accompany claim (s 99A(1) and (2))
- Changes already in operation regarding interest on compensation (ss 104B, 104C)
- Changes that reflect current practice
  - Remove deferral LAC Act for claims process, now more a 'one stop shop' (for example, changes to s 105 and 99A(3)-(8), 101(2))
  - Confirming Court decisions in relation to Part 5 of the Court (for example, inclusion of "actual" financial loss (*Mason*), "settlement" in s 106(1), 106(2A) (*Plunkett*))
  - "Market" value
- Ability for the Authority to request further information (s 99C)

Amendments covered in this presentation

- Increased compensation for effect on residence now limited to "principal place of residence" (s 100)
- Changes to claims for expenses (s 101)
- Direction as to how market value is to be assessed (s 104AA)
- New provisions regarding determination of claim for compensation for loss on permit refusal, including that compensation must be assessed by reference to the use or development for which the permit was sought (s 106A)
- New provisions limiting claims:
  - to one claim only, only by the owner/occupier at the time of reservation or proposed reservation (s 108(2))
  - in respect of the events in s 98(1)(a), (b) or (c), to the earliest of the events specified
  - Some exemptions are contemplated.

Changes already in operation

Section 99A - Requirements for claim for compensation

- s 99A(1) requirement for claim to be made in the prescribed form and that the claim be accompanied by supporting evidence
- s 99A(2) Minister may specify by order in the Government Gazette the supporting evidence required
- Prescribed form – see the draft Form 15A in the discussion paper:
  - Proposed amendments to the Planning and Environment Interim Regulations 2026
- Government Gazette that specifies supporting evidence required not yet published

Section 104B Interest on compensation

- Interest on compensation is now specifically dealt with in Part 5 – s 104B and 104C through amendments made in November 2025
- Subject to subsection 104B(5), interest is payable under this section at the rate for the time being fixed under section 104C.
- Includes a new s104B(5) which provides that if good cause is shown, including any delay that a claimant causes or contributes to, the Tribunal or the Supreme Court may:
  a) reduce the rate of interest payable under this section; or
  b) pause the accrual of interest for a specified period.

Section 104C Determination of rate of interest

- A potential change from the existing scheme of awarding penalty interest in accordance with the *Supreme Court Act 1986*
- No interest rate currently set
- For discussion on interest prior to the recent amendments see *Minister for Energy, Environment and Climate Change v Morton* [2017] VSC 774 at [58]

Section 104C Determination of rate of interest

(1) The Governor in Council may from time to time, by order published in theGovernment Gazette, determine the rate of interest to be paid in respect of unpaidcompensation under this Part.

...

3) The Minister may only recommend a rate that the Minister considers—

(a) is compensatory in nature; and

(b) is commensurate with a fair market rate that reflects the opportunity cost of money.

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Changes that reflect current practice

Sections 99A and 105 Claim process a “one stop shop"

- Procedural steps for the claim process to be included in s 99A, no longer necessary to look to s 37 of the LAC Act.
- Consider operation of section 107 of the LAC Act.
- Incoming amendment:

105 Land Acquisition and Compensation Act 1986 to apply

Subject to section 99A, Parts 10 and 11 **(except for section 106)** ~~and section 37~~ of the *Land Acquisition and Compensation Act 1986,* with any necessary changes, apply tothe determination of compensation under this Part as if the claim were a claim under~~section 37 of~~ that Act.

(2) In any proceeding in the Tribunal or the Supreme Court under Part 10 of the LandAcquisition and Compensation Act 1986 in respect of compensation under this Part,the claimant bears the burden of establishing—

(a) that the claimant has suffered actual financial loss; and

(b) that the loss was the natural, direct and reasonable consequence of the action givingrise to the right to compensation.

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Section 98 - Actual Financial Loss

Section 98 Right to compensation

(1) The owner or occupier of any land may claim compensation from the planning authority for **actual** financial loss suffered as the natural, direct and reasonable consequence of—

a) subject to subsection (1A), the land being reserved for a public purpose under a planning scheme; or

b) subject to subsection (1B), the land being shown as reserved for a public purpose in a proposed amendment to a planning scheme of which notice has been published in the Government Gazette under section 19; or

c) (c) a declaration of the Minister under section 113 that the land is proposed to be reserved for a public purpose; or

d) (d) access to the land being restricted by the closure of a road by a planning scheme.

Note: see decisions in *Brompton Lodge Pty Ltd v Head, Transport For Victoria* [2021] VSCA 302 and *Mason v Head, Transport for Victoria* [2021] VSCA 19

Section 106 Loss on sale

- Changes made to s 106(1) to enable a loss on sale claim by the owner of land to claim compensation under s98 after settlement of the sale of the land.
- Claimant should be aware of this change, as may impact timing of claim where there is a long settlement
- Consider *Plunkett v Roads Corporation* [2019] VSC 39

Market Value

- The amendments seek to clarify that references to “value” in Part 5 are references to “Market Value”.
- Market Value has the meaning given by section 40 of the Land Acquisition and Compensation Act 1986:

  > *market value, in relation to any interest in land on a particular date, means the amount of money that would have been paid for that interest if it had been sold on that date by a willing but not anxious seller to a willing but not anxious purchaser*

- Market Value will be expressly referred to in relation to small claims (s 103) and the maximum amount of compensation payable (s 104).
- New rules to assist with determining market value are introduced at s 104AA .

Section 104AA Determining market value

104AA Determining market value

(1) Subject to section 108(5), in determining, for the purposes of assessing compensation under this Part, the market value the land would have had if the land had not been affected by any circumstance set out in section 98(1) or (2) or 107, regard may be had only to the provisions under the relevant planning scheme that applied to the land or would have applied to the land if not for the reservation of the land for a public purpose.

(2) In determining whether provisions under the relevant planning scheme would have applied to the land, regard must be had to the actual zoning of the adjoining land.

Significant incoming changes

Section 99C - Compensating authority may require information

New section 99C provides:

99C Compensating authority may require information

(1) A compensating authority may require a claimant to provide the compensating authority with information before responding to the claim under section 99A(4).

(2) If a compensating authority requires a claimant to provide information under subsection (1), the period for the compensating authority to respond to the claim under section 99A(4) is suspended until that information is provided.".

Section 100 – Increased compensation for effect on principal place of residence

- Compensation for the intangible and non-financial disadvantages arising from the reservation on a residence is now limited to land used as the claimant's principal place of residence.
- New s 100(3) requires the assessment of compensation to be made against the existing residential land use.

Section 100 Increased compensation for effect on principal place of residence

(1) The amount of compensation payable under section 98 in respect of **land that a claimant uses as the claimant's principal place of residence** ~~a residence~~ may be increased by an amount which is reasonable to compensate the claimant for any intangible and non-financial disadvantages arising from the circumstances which gave rise to the claim under section 98.

New limitations on section 101 claim for expenses

- New section 101(1) provides that, if compensation is payable under section 98, the owner or occupier of any land may also claim from the planning authority or responsible authority any legal, valuation or other professional expenses that are naturally, directly and reasonably incurred in preparing and submitting the claim and in responding to any alternative offer of compensation.
- New section 101(2) provides that despite section 101(1), a claim under s 101(1) cannot be made in relation to any expenses incurred:
  - before the right to compensation arises under section 99 of that Act; or
  - after an application to the Tribunal or referral to the Supreme Court is made in relation to the claim.
- Note: see *Barilla v Roads Corporation* [2017] VSC 349 for consideration of the terms “natural”, “direct” and “reasonable” .

Section 106A Loss on permit refusal

106A Loss on permit refusal

In determining a claim for compensation under this Part in relation to the refusal by a responsible authority to grant a permit to use or develop land—

a) any grounds on which the responsible authority refused or could have refused to grant the permit to use or develop land if the land had not been reserved or proposed to be reserved, or was not or would not be needed, for a public purpose must be taken into account; and

b) the compensation must be assessed by reference to the use or development for which the permit was sought.

- Consider the new s 106A to be one of the most significant changes

Section 98 – Changes to right to compensation

98 Right to Compensation

(3) A person cannot claim compensation under subsection (1) if—

a) ~~the planning authority has purchased or compulsorily acquired the land or part of the land; or~~ **the land or part of it has been transferred to or vested in the planning authority, whether by purchase, compulsory acquisition or otherwise; or**

b) a condition on **a permit granted in relation to the land or part of it** ~~the permit~~ provides that compensation is not payable.

- S98(3)(a) is expanded to now prevent compensation where land was transferred or vested in the planning authority.
- Be aware of the operation of the *Subdivision Act 1988* – particularly in relation to the registration of plans

Section 108 Persons who are not eligible to claim compensation

- **Substitution of new ss 108(2) – 108(5)**
  - Section 108(2) provides that only one claim for compensation may be made in relation to the same reservation of land for a public purpose by the owner or occupier who must have been the owner or occupier at the time the reservation was imposed.
    - Limitation for owners of multiple lots
    - Potential limitation to only owner or occupier
    - Consider question of timing
  - Section 108(3) provides an exemption for a person who became of the owner after the reservation was imposed, such as e.g. beneficiaries and super funds.
    - See the draft regulations for an example

Note: See *AG Dennis Pty Ltd & Ors v Minister for Environment* [2023] VSC 44; *Greenwells Wollert Pty Ltd v Head, Transport For Victoria* [2023] VSC 271; *Mason v Head, Transport for Victoria* [2021] VSCA 19

Section 109 When is compensation payable by other authorities?

- Entire existing provision is substituted.
- New provision seeks to make clear when the Minister, Public Authority or municipal council is liable to pay compensation

Amendments to the *Land Acquisition and Compensation Act 1986*

- New subsection 41(5A): The A and B components of planning compensation recorded on title are binding upon compensation for future compulsory acquisition.
- Amendments to the prescribed formula at s 41(7):

  B = the market value of the land in respect of which the compensation was paid, that value to be determined on the basis of the ***provisions of the planning scheme that applied to the land or would have applied to the land if not for the reservation of the land for a public purpose****.* ~~*actual zoning that applied to the land at the date which was the basis for the calculation of that compensation*~~*.*
- Amendments to 43(1)(d) reflects new matters to be disregarded in the valuation under the LAC Act.

What does it mean for you now?

Strategy, strategy, strategy!

What does it mean for you now?

- **Transitional provisions:** The changes to Part 5 will not apply to disputed claims if the application to the Tribunal or referral to the Supreme Court was made before the commencement of the changes
- **Interest:** changes are already in operation. What does this mean for disputed claims already before the Court or Tribunal?
- **Disputed claims:** may be prudent to refer the claim to the Court or Tribunal now, though need to consider the potential consequences regarding interest
- **Proposed claims:** finalise the claim material now; noting it will likely take some time to prepare the claim material
- **Loss on sale/permit refusal:** consider whether a loss on sale claim may be more appropriate
- **s 99C Provision of information to the Authority:** unclear how provision will be used by the Authority. May lead to delay.

Cases referred to

- *Capela v Minister for Energy, Environment and Climate Change* [2018] VSC 360 (***Capela***)
- *Minister for Energy, Environment and Climate Change v Morton* [2017] (***Morton***)
- *Mason v Head, Transport for Victoria* [2021] VSCA 19 (***Mason***)
- *Brompton Lodge Pty Ltd v Head, Transport For Victoria* [2021] VSCA 302 (***Brompton Lodge***)
- *Plunkett v Roads Corporation* [2019] VSC 39 (***Plunkett***)
- *Barilla v Roads Corporation* [2017] VSC 349 (***Barilla***)
- *AG Dennis Pty Ltd & Ors v Minister for Environment* [2023] VSC 44 (***Dennis Family***)
- *Greenwells Wollert Pty Ltd v Head, Transport For Victoria* [2023] VSC 271 (***Greenwells***)

Thank you