Authorised Version

Local Government Legislation Amendment (Environmental Upgrade Agreements) Act 2015

No. 39 of 2015

TABLE OF PROVISIONS

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Victoria

Local Government Legislation Amendment (Environmental Upgrade Agreements) Act 2015†

No. 39 of 2015

[Assented to 8 September 2015]

The Parliament of Victoria enacts:

1 Purposes

The purposes of this Act are—

(a) to amend the **Local Government Act 1989** to enable Councils, including the City of Melbourne, to enter into environmental upgrade agreements; and

(b) to amend the **City of Melbourne Act 2001** to remove provisions relating to environmental upgrade agreements as a consequence of the amendments being made to the **Local Government Act 1989** which will enable all Councils to enter into environmental upgrade agreements.

2 Commencement

(1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.

(2) If a provision of this Act does not come into operation before 1 June 2016, it comes into operation on that day.

3 Definitions

Insert the following definitions in section 3(1) of the **Local Government Act 1989**—

"***environmental upgrade agreement*** means an agreement entered into in accordance with section 181A;

environmental upgrade charge means a charge declared under section 181C;

lending body means the person who advances funds under the environmental upgrade agreement;

primary parties, in relation to an environmental upgrade agreement, means a Council, the lending body and the owner of the rateable land;".

4 New Division 2A inserted in Part 8

After Division 2 of Part 8 of the **Local Government Act 1989 insert**—

'Division 2A—Environmental upgrade agreements

181A Environmental upgrade agreement

(1) Subject to section 181B, the primary parties may enter into an environmental upgrade agreement in respect of rateable land, with an existing building on it, that is entirely or predominantly used for non-residential purposes, to fund works that improve the energy, water or environmental efficiency or sustainability of the building on that rateable land.

(2) By agreement of the primary parties to an environmental upgrade agreement, the environmental upgrade agreement may also be entered into by any other person that the primary parties consider should be a party to the environmental upgrade agreement.

(3) In addition to any provisions agreed to by the primary parties and any other parties to an environmental upgrade agreement, an environmental upgrade agreement must comply with, and provide for, the matters specified in section 181D(1) to (3).

181B Conditions to be met before Council may enter into environmental upgrade agreement

(1) A Council must not enter into an environmental upgrade agreement unless—

(a) the Council receives a statutory declaration from the owner of the rateable land, at least 28 days before the agreement is entered into, in accordance with subsection (4); and

(b) each occupier, that would be liable to pay for all or part of any environmental upgrade charge levied as a consequence of an environmental upgrade agreement being entered into, is provided with a statement specifying the following—

(i) the total amount of the payments that the occupier would be required to pay;

(ii) a repayment schedule that details when the occupier's liability would become payable and, if the occupier's liability can be paid by instalment, the amount of each instalment and the timing of each instalment;

(iii) that the occupier may consent or object, in writing, to the imposition of the environmental upgrade charge in the manner set out in the statement;

(iv) that only an occupier that consents to the imposition of the charge in the manner set out in the statement is liable to pay for all or part of the environmental upgrade charge as set out in the repayment schedule; and

(c) an occupier that consents to the imposition of the environmental upgrade charge gives that consent in the

manner set out in the statement the occupier received under paragraph (b); and

(d) the total amount of taxes, rates, charges and mortgages owing on the rateable land and specified in a notice from the owner under subsection (3) when added to the total value of the environmental upgrade charges as set out in the proposed agreement is an amount that does not exceed the capital improved value of the land prior to any works that would be undertaken as part of the agreement.

(2) The owner who intends to be a primary party to the environmental upgrade agreement must advise, in writing, any existing mortgagee in respect of the rateable land to which the agreement will apply—

(a) that the owner intends to enter into an environmental upgrade agreement; and

(b) of the details of all environmental upgrade charges that are expected to be declared by a Council in respect of the rateable land under the environmental upgrade agreement.

(3) The owner who intends to be a primary party to the environmental upgrade agreement is further required to give a Council notice of the following details (in writing) in respect of the rateable land to which the agreement will apply—

(a) details of all registered and unregistered mortgages over the rateable land including—

(i) the total amount owing in respect of each mortgage; or

(ii) if a relevant mortgage is held against 2 or more properties including the rateable land, the proportion of the debt secured by the mortgage that applies to the rateable land calculated in accordance with subsection (5);

(b) details of all taxes, rates and charges owing on the rateable land (including the total amount owing in respect of each tax, rate or charge) imposed by or under an Act.

(4) The details given by an owner to a Council under subsection (3) must be accompanied by a statutory declaration signed by, or on behalf of, the owner stating—

(a) that the owner has complied with subsection (2); and

(b) that the details given to the Council under subsection (3) are accurate and complete.

(5) For the purposes of subsection (3)(a)(ii), the proportion of the debt secured by the mortgage that applies to the rateable land must be calculated by distributing the debt between all the properties against which the mortgage is held in proportion to the relative capital improved values of the properties.

(6) In this section—

existing mortgagee, in respect of rateable land to which an environmental upgrade agreement will apply, means any holder of a mortgage for that land, whether registered or unregistered.

181C Environmental upgrade charge

(1) After entering into an environmental upgrade agreement a Council must, in accordance with the conditions of that agreement, declare an environmental upgrade charge or 2 or more environmental upgrade charges (as the case requires) in respect of the rateable land that is the subject of the agreement.

(2) A Council must levy an environmental upgrade charge by sending a notice to the person liable to pay it.

(3) A notice under subsection (2) must specify—

(a) the name and address of the person liable to pay the charge; and

(b) a description of the rateable land in respect of which the charge is being levied; and

(c) the environmental upgrade agreement under which the charge is levied; and

(d) the amount for which the person specified in the notice is liable; and

(e) the manner of payment; and

(f) the penalties that may apply if the person fails to pay the charge.

(4) An environmental upgrade charge is due and must be paid by the date specified in the notice requiring payment, which is a date not less than 28 days after the date of issue of a notice.

(5) An environmental upgrade charge must be the agreed amount specified in the relevant environmental upgrade agreement.

(6) Divisions 1, 2 and 3, other than sections 154, 156, 172, 175, 177, 178, 180 and 181, do not apply to an environmental upgrade charge.

(7) For the purposes of this Division, section 172(1) applies as if for paragraph (b) there were substituted—

"(b) which have not been paid by the date specified in the repayment schedule to the environmental upgrade agreement.".

(8) Despite anything to the contrary in this Act, the total amount of an environmental upgrade charge received by a Council from an owner or any occupier or both (as the case requires) must be used by the Council to make repayments to the lending body in accordance with the environmental upgrade agreement.

(9) For the purposes of subsection (8), the total amount of an environmental upgrade charge received by a Council and to be paid to the lending body does not include—

(a) the proportion of the charge that accounts for the administrative costs of the Council as specified in the environmental upgrade agreement; and

(b) any penalty interest imposed by the Council on an owner or any occupier or both (as the case requires) as a consequence of nonpayment of the environmental upgrade charge.

Note

However, see section 181D(4)(b) which allows an environmental upgrade agreement to make provision for a Council to provide a proportion of any penalty interest received by the Council to the lending body.

(10) If land for which an environmental upgrade charge has been levied ceases to be rateable land, the owner or any occupier or both (as the case requires) must, despite the land no longer being rateable, continue to pay the charge in accordance with the schedule of repayments specified in the environmental upgrade agreement.

181D Environmental upgrade agreement provisions

(1) An environmental upgrade agreement must—

(a) be in writing; and

(b) outline the works to be undertaken on the rateable land of the owner.

(2) An environmental upgrade agreement must contain provisions that provide for the lending body advancing funds to an owner on the following conditions—

(a) that the owner use the funds advanced to conduct works on the rateable land for the purposes of the environmental upgrade agreement;

(b) that the owner or any occupier or both the owner and any occupiers (as the case requires) pay the environmental upgrade charge or charges levied by a Council in respect of the rateable land to which the agreement applies;

(c) that a Council uses the funds received under the environmental upgrade charge or charges to repay the lending body the principal amount initially advanced to the owner plus any agreed interest accrued since that advance.

(3) An environmental upgrade agreement must specify the following—

(a) the total amount being advanced by the lending body under the agreement;

(b) the total amount of each environmental upgrade charge to be levied under the agreement;

(c) the repayment schedule in respect of each environmental upgrade charge to be levied by a Council in accordance with the agreement;

(d) the total amount of the environmental upgrade charges to be declared by a Council under section 181C in accordance with the agreement;

(e) the total amount of any Council administration costs to be included as part of the environmental upgrade charge or charges;

(f) that if a Council adjusts an environmental upgrade agreement in accordance with section 181F(1), and as a consequence of that adjustment, refunds an amount to an owner or any occupier or an owner and any occupier (as the case requires) in accordance with section 181F(2), the lending body must reimburse the Council for all or part of the amount refunded if the Council passed all or part of that amount on to the lending body before the Council made the adjustment.

(4) An environmental upgrade agreement may provide the following—

(a) that an amount, in addition to any other liabilities a party may have under the agreement, may be payable by a party if a party to the agreement fails to comply with the agreement;

(b) that, in the event of nonpayment of an environmental upgrade charge by the owner or any occupiers, if a Council imposes penalty interest rates on the owner or any occupiers as a consequence of that nonpayment, the Council may provide a proportion of that penalty interest to the lending body.

(5) A provision of an environmental upgrade agreement must not be contrary to this Division.

181E Liability of Council to recover environmental upgrade charge

(1) Subject to subsections (2) and (3), a Council must use its best endeavours to recover an environmental upgrade charge in accordance with any requirements imposed on it by this Act and an environmental upgrade agreement.

(2) A Council is not liable for any failure by an owner or any occupier or an owner and any occupier (as the case requires) to pay an environmental upgrade charge or charges.

(3) A failure by an owner or any occupier or an owner and any occupier (as the case requires) under subsection (2) does not make the Council liable to pay the outstanding amount under the environmental upgrade charge or charges to the lending body.

181F Other responsibilities of Council

(1) If an environmental upgrade agreement is terminated before all the funds that the lending body agreed to advance to the owner are advanced, a Council must—

(a) adjust the environmental upgrade charge or charges to reflect the lower amount advanced to the owner; and

(b) by written notice, advise any person liable to pay the environmental upgrade charge of the adjustment.

(2) If, as a consequence of an adjustment being made to an environmental upgrade charge under subsection (1), an owner or any occupier has made payments under the environmental upgrade charge in excess of the adjusted amount, a Council must refund the excess amount paid to the owner or occupier or the owner and the occupier (as the case requires).

181G Quarterly statement

The Chief Executive Officer must ensure that a statement prepared under section 138 includes a record of the following—

(a) each environmental upgrade agreement entered into in the last quarter, and the rateable land to which the agreement relates;

(b) each environmental upgrade charge approved in respect of the agreements referred to in paragraph (a), and the value of the charges;

(c) the total number of environmental upgrade charges in operation in the last quarter;

(d) the total value of all environmental upgrade charge payments that have fallen due and have not been paid;

(e) the total value of all environmental upgrade charge payments that are yet to fall due.

181H Delegation to Chief Executive Officer

(1) A Council may, by instrument of delegation, delegate to the Chief Executive Officer the following powers—

(a) the power to enter into an environmental upgrade agreement on behalf of the Council;

(b) the power to declare and levy an environmental upgrade charge.

(2) The Chief Executive Officer must not delegate the power delegated to the Chief Executive Officer under subsection (1) to any other person.

181I Guidelines

(1) The Minister administering the **Victorian Energy Efficiency Target Act 2007** may make guidelines for the purposes of this Division including in relation to the following matters—

(a) the specification of works that are likely to be considered as improving the energy, water or environmental efficiency or sustainability of a building for the purposes of entering into an environmental upgrade agreement;

(b) the specification of matters that should be considered by a Council before deciding to offer environmental upgrade agreements;

(c) environmental upgrade agreement provisions that may be incorporated into any environmental upgrade agreement;

(d) the provision of reports by a Council to the public in relation to the commencement, progress or completion of any works funded by an environmental upgrade agreement.

(2) Before making guidelines under this section, the Minister administering the **Victorian Energy Efficiency Target Act 2007** must consult with the Minister administering this Act.

(3) Guidelines made under this section—

(a) must be published in the Government Gazette; and

(b) may be published on the Internet.

181J Environmental upgrade agreements and charges under City of Melbourne Act 2001

(1) Any environmental upgrade agreement that was entered into under Part 4B of the **City of Melbourne Act 2001** and that was in force immediately before the repeal of that Part—

(a) continues in force as if it had been entered into under this Division; and

(b) is taken to be an environmental upgrade agreement under this Division.

(2) For the avoidance of doubt, the repeal of Part 4B of the **City of Melbourne Act 2001** and the re-enactment of that Part in this Division, is not to be considered as a change of law for the purposes of any environmental upgrade agreement entered into under that Part before its repeal.

(3) Any environmental upgrade charge that was declared and levied by the City of Melbourne under Part 4B of the **City of Melbourne Act 2001** and that was due and payable immediately before the repeal of that Part—

(a) continues to be due and payable as if it had been declared and levied under this Division; and

(b) is taken to be an environmental upgrade charge under this Division.

(4) Without limiting the operation of any provisions of the **Interpretation of Legislation Act 1984** relating to repeal and re-enactment, a provision of Part 4B of the **City of Melbourne Act 2001** specified in Column 1 of the Table is taken to be re-enacted (with or without modifications) by the provision of this Act appearing opposite in Column 2 of the Table.

Column 1 *Provision of Part 4B of the **City of Melbourne Act 2001***	*Column 2* *Provision of this Act*
Section 27L	Definitions of ***environmental upgrade agreement***, ***environmental upgrade charge***, ***lending body*** and ***primary parties*** in section 3(1)
Section 27M	Section 181A
Section 27N	Section 181B
Section 27O	Section 181C
Section 27P	Section 181D
Section 27Q(1)	Section 181E(2) and (3)
Section 27Q(2) and (3)	Section 181F
Section 27R	Section 181G
Section 27S	Section 181H

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5 Repeal of Part 4B of the City of Melbourne Act 2001

Part 4B of the **City of Melbourne Act 2001** is **repealed**.

6 Repeal of amending Act

This Act is **repealed** on 1 June 2017.

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**).

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

† *Minister's second reading speech—*

Legislative Assembly: 24 June 2015

Legislative Council: 6 August 2015

The long title for the Bill for this Act was "A Bill for an Act to amend the **Local Government Act 1989** to enable Councils, including the City of Melbourne, to enter into environmental upgrade agreements and to consequentially amend the **City of Melbourne Act 2001** and for other purposes."