

# **Yarra River Protection (Wilip-gin Birrarung murrong) Bill 2017**

## **Introduction Print**

### **EXPLANATORY MEMORANDUM**

#### **Overview**

The main purposes of this Bill, which will form a new principal Act, are to provide for the declaration of the Yarra River and certain public land in its vicinity for the purpose of protecting it as one living and integrated natural entity, provide for the development and implementation of a Yarra Strategic Plan as an overarching policy and planning framework for the Yarra River and certain land in its vicinity, to establish the Birrarung Council to report to the Minister on the development and implementation of the plan and generally act as the voice of the Yarra River and to provide for the declaration of the Greater Yarra Urban Parklands.

The Bill contains a preamble setting out why it is important to provide for the protection of the Yarra River. It highlights the connection of the traditional owners of the land through which the Yarra River flows to the river and their past and ongoing stewardship of it. Importantly, and as a first in Victorian legislation, the preamble is partly written in the language of the traditional owners, the Woi-wurrung language.

The Bill provides for an entity to be directed to be the lead agency responsible for—

- developing a long term community vision document for Yarra River land; and
- preparing a draft Yarra Strategic Plan for endorsement by the responsible public entities and their Ministers; and
- preparing a new Yarra Strategic Plan every 10 years; and
- preparing an annual report for the Birrarung Council on the implementation of the plan by responsible public entities.

The Birrarung Council will consist of up to 12 members comprising—

- at least 2 nominees of the Wurundjeri Tribe Land and Compensation Cultural Heritage Council; and
- at least one representative of an environment group and of an agriculture industry group; and
- at least 2 skill-based members; and
- at least one representative of a local community group; and
- an appropriately skilled chairperson.

The Birrarung Council has a role that will effectively make it the voice of the Yarra River. It will report to the Minister on the development, implementation, operation and effectiveness of a Yarra Strategic Plan and advise the Minister generally in relation to the protection and preservation of Yarra River land. Its role and operation will be reviewed within 5 years.

The declaration of the Greater Yarra Urban Parklands will enable parklands in the vicinity of the Yarra River to be given a common identity and treated as one integrated living whole urban natural asset of state significance. Land within the Greater Yarra Urban Parklands will be protected from planning scheme amendments that change the zoning of that land so that the land may be used in a way that is inconsistent with a Yarra Strategic Plan, by requiring such amendments to be ratified by Parliament.

The Bill gives an important role to the Commissioner for Environmental Sustainability to report on the environmental condition of Yarra River land and how that condition has changed since the last report.

The Bill sets out a range of Yarra protection principles to which responsible public entities must have regard when performing functions or duties or exercising powers in relation to land to which a Yarra Strategic Plan applies where the performance of those functions or duties or the exercise of those powers may affect Yarra River land. Such entities must also not act inconsistently with any part of a Yarra Strategic Plan that is binding on them when performing functions or duties or exercising powers in relation to Yarra River land and must have regard to the remainder of a Yarra Strategic Plan when performing functions or duties or exercising powers in relation to land to which a Yarra Strategic plan applies where the performance of those functions or duties or the exercise of those powers may affect Yarra River land. An exception applies to the performance of functions or the exercise of powers in relation to a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**. The Bill amends the legislation under which they operate for these purposes.

The Yarra Strategic Plan will apply to land that is required to be managed according to high degrees of legislative prescription and protection including land subject to a management plan under the **Heritage Rivers Act 1992**, land in a park under the **National Parks Act 1975**, land reserved under the **Crown Land (Reserves) Act 1978**, land to which a regional waterway strategy applies and land subject to a joint management plan under Part 8A of the **Conservation, Forests and Lands Act 1987**. A Yarra Strategic Plan must not be inconsistent with the existing protection over such land except with specific high-level endorsement.

## Clause Notes

### Part 1—Preliminary

Clause 1 sets out the main purposes of the Bill.

The Bill will—

- provide for the declaration of the Yarra River and certain public land in its vicinity for the purpose of protecting it as one living and integrated natural entity to be protected; and
- provide for the development and implementation of a Yarra Strategic Plan; and
- establish the Birrarung Council and give it the function of advising the Minister on matters relating to a Yarra Strategic Plan and generally in relation to the protection of Yarra River land; and
- to set out principles to which responsible public entities must have regard when performing functions or duties or exercising powers in relation to Yarra River land or other land the use or development of which may affect Yarra River land; and
- to provide for the declaration of the Greater Yarra Urban Parklands; and
- to amend the **Planning and Environment Act 1987** and the **Commissioner for Environmental Sustainability Act 2003** and make consequential amendments to other Acts.

Clause 2 deals with the commencement of the Bill. Except for section 63, it will come into operation on a day or days to be proclaimed. Any provisions (except section 63) that have not come into operation before 1 December 2017 will come into operation on that day. Section 63 comes into operation on the day on which the initial Yarra Strategic Plan comes into operation.

Clause 3 sets out definitions for the purposes of the Bill. Some of the more important definitions are explained below.

**Council** refers to the Birrarung Council established under clause 46 of the Bill.

**Greater Yarra Urban Parklands** refers to land covered by an order under clause 59(1) or (3) of the Bill and not removed from the Greater Yarra Urban Parklands by an order under clause 59(4).

**lead agency** refers to the relevant plan entity that, as a result of a direction under clause 4 of the Bill, has the functions of the lead agency under the Bill.

**long term community vision document** refers to the document developed by the lead agency under clause 17 that sets a vision for Yarra River land.

**relevant plan entity** is any of the following—

- the Department Head of the Department of Environment, Land, Water and Planning;
- Melbourne Water Corporation;
- Parks Victoria;
- the Victorian Planning Authority;
- the Port Phillip and Westernport Catchment Management Authority.

**responsible public entity** is a public entity that has functions or duties, or exercises powers, in relation to Yarra River land or other land within the Yarra catchment and is listed in the Bill as a responsible public entity. The following entities are listed—

- the Secretary to the Department of Environment, Land, Water and Planning;
- Melbourne Water Corporation;

- Parks Victoria;
- the Victorian Planning Authority;
- the Port Phillip and Westernport Catchment Management Authority;
- the Roads Corporation;
- Victorian Rail Track;
- Committees of management or trustees under the **Crown Land (Reserves) Act 1978** in relation to Yarra River land;
- Banyule City Council, Boroondara City Council, Manningham City Council, Melbourne City Council, Nillumbik Shire Council, Stonnington City Council, Yarra City Council and Yarra Ranges Shire Council;
- Traditional Owner Land Management Boards;
- any other public entity that is prescribed to be a responsible public entity.

***Yarra River land*** refers to the Yarra River itself and other land, owned by the Crown or by a responsible public entity other than a municipal council, that is adjacent to the Yarra River or within 500 metres of one of its banks and that is declared by the Governor in Council under clause 14(1) or (2) and not removed from Yarra River land by the Governor in Council under clause 14(4).

***Yarra protection principles*** refer to the principles set out in Part 2 of the Bill.

***Yarra Strategic Plan*** refers to the plan to be developed under Part 4 of the Bill.

Clause 4 sets out the mechanism for directing a relevant plan entity to be the lead agency. The direction will be given by the Minister administering this Act with the approval of whichever of the Planning Minister, the Environment Minister or the Water Minister is not the Minister administering this Act. Notice of a direction will be published in the Government Gazette.

Clause 5 specifies the objects of the Bill.

Under clause 5, the objects of the Bill are—

- to recognise the importance of the Yarra River and its parklands and associated public places to the economic prosperity, vitality and liveability of Melbourne and the Yarra Valley; and
- to recognise that Crown land and freehold land owned by the State adjacent to the River Yarra and which is used as public open space or as a park is part of the one living and integrated natural entity; and
- to establish an overarching policy and planning framework to coordinate and harmonise planning for the use, development and protection of the Yarra River, its parkland and other land in its vicinity; and
- to establish the Birrarung Council as an advocate for the protection and preservation of the Yarra River.

Clause 6 provides for the Bill to be binding on the Crown in all its capacities.

### **Part 2—Yarra protection principles**

Clause 7 provides that Part 2 of the Bill sets out the Yarra protection principles.

Clause 8 sets out general principles related to decision making that—

- require decisions to be based on the effective integration of environmental, social and cultural considerations; and
- require decision makers to take account of the potential impacts of climate change; and
- require decision makers to take into account the impact of individual actions or policies on public health and wellbeing; and
- mandate the maintenance and enhancement of environmental, social and cultural benefits for the benefit of future generations; and

- make the protection of the environment and delivery of sustainable development a shared responsibility of all levels of government, industry, business, communities and people.

Clause 9 sets out environment principles as follows—

- lack of full scientific certainty should not be used as a reason for postponing measures to respond to threats of serious or irreversible environmental damage; and
- environmental practices and procedures should maintain or enhance biodiversity and ecological integrity; and
- the best practicable environmental outcome should be sought if managing environment impacts on one segment of the environment impacts on another; and
- there should be a net gain for the environment in the area of Yarra River land from individual actions or policies.

Clause 10 sets out social principles as follows—

- the existing amenity of Yarra River land should be protected and enhanced for the benefit of the whole community; and
- community consultation and participation should play an essential and effective role in protecting, improving and promoting Yarra River land.

Clause 11 sets out recreational principles as follows—

- community access to, and use and enjoyment of, Yarra River land should be protected and enhanced in designing and managing public open space for compatible multiple uses that optimise community benefit; and
- public open space should be used for recreational and community purposes that are within the capacity of that space, so as to sustain natural processes and not diminish the potential of that space to meet long-term aspirations of the community.

Clause 12 sets out cultural principles as follows—

- Aboriginal cultural values, heritage and knowledge of Yarra River land should be acknowledged, reflected, protected and promoted; and
- the role of traditional owners as custodians of Yarra River land should be acknowledged through partnership, representation and involvement in policy planning and decision-making; and
- the cultural diversity and heritage of post-European settlement communities should be recognised and protected as a valued contribution to the identity, amenity and use of Yarra River land.

Clause 13 sets out management principles as follows—

- there should be coordination between all levels of government and government agencies in designing policies and programs and making decisions in relation to Yarra River land; and
- the best available practical measures should be used when designing policies and programs; and
- implementation of natural resource management should aim for continuous improvement and extend beyond compliance with relevant laws and requirements.

### **Part 3—Yarra River land and other land**

Clause 14 provides for land to be declared to be Yarra River land by the Governor in Council on the recommendation of the Minister administering this Act made with the approval of the Planning Minister (if the Planning Minister is not the Minister administering this Act). Land may be removed from Yarra River land by an Order in Council made on the recommendation of the Minister administering this Act with the approval of the Planning Minister (if the Planning Minister is not the Minister administering this Act) and after consultation with the Birrarung Council. A Yarra Strategic Plan will apply to Yarra River land.

The land that may be declared is land adjacent to the Yarra River or any part of which is within 500 metres of one of its banks that is Crown land or freehold land owned by a responsible public entity other than a municipal council.

Privately owned land, land that is owned by a municipal council, land within the port of Melbourne and land within a special water supply catchment area listed in Schedule 5 to the **Catchment and Land Protection Act 1994** are excluded.

*Yarra River land* is also defined in clause 3(1) to include the Yarra River, including its bed, soil and banks.

Clause 15 enables other land to be declared as land to which a Yarra Strategic Plan may apply. This is in addition to Yarra River land and land of any kind within one kilometre of a bank of the Yarra River.

Other declared land must be within the municipal district of a municipal council that is a responsible public entity.

Land within the port of Melbourne and land within a special water supply catchment area listed in Schedule 5 to the **Catchment and Land Protection Act 1994** are excluded.

## **Part 4—Yarra Strategic Plan**

### **Division 1—Purpose of Yarra Strategic Plan**

Clause 16 provides that the purpose of a Yarra Strategic Plan is to guide the future use and development of the land to which it applies and identify areas for protection.

### **Division 2—Long term community vision**

Clause 17 requires the lead agency to develop a long term (50 year at a minimum) community vision document for Yarra River land through a process of active community participation and co-design. Through this process the unique characteristics of Yarra River land and community values, priorities and preferences in relation to it (including preferences for future land uses and protection and development) will be identified.

### **Division 3—Preparation of Yarra Strategic Plan**

Clause 18 requires the lead agency to prepare a Yarra Strategic Plan in accordance with Part 4 of the Bill. The plan must be developed—

- through an open and collaborative process involving responsible public entities, local community reference forums and the Birrarung Council; and
- in accordance with guidelines for river corridor framework planning issued by the Planning Minister under clause 22; and
- having regard to the Yarra protection principles set out in Part 2 of the Bill; and
- in accordance with best practice regarding public participation. It is intended that there will be active public participation in the development of the plan so as to allow community concerns and aspirations to be understood and considered. The Public Participation Spectrum developed by the International Association for Public Participation (IAP2) demonstrates possible types of engagement with stakeholders and communities that might be used; and
- having regard to relevant legislation and current policies and plans of the Government and responsible public entities relating to relating to land use, waterway health, biodiversity, cultural heritage, transport or other social, economic or environmental policies or plans relevant to Yarra River land.

Clause 19 specifies the land to which a Yarra Strategic Plan applies.

A Yarra Strategic Plan applies to—

- Yarra River land; and
- land within one kilometre of a bank of the Yarra River other than land within the port of Melbourne and land within a special water supply catchment area listed in Schedule 5 to the **Catchment and Land Protection Act 1994**; and

- land further than one kilometre from a bank of the Yarra River that is specified under clause 15(3) and that the lead agency specifies as land to which the plan applies.

Clause 20 deals with the contents of a Yarra Strategic Plan.

Subclause (1) states that a Yarra Strategic Plan must—

- give effect to the vision expressed in the long term community vision document developed under clause 17; and
- include a land use framework plan (the contents of which are set out in clause 21).

Subclause (2) details particular requirements as to the contents of a Yarra Strategic Plan. It provides that it must—

- contain the long term community vision document; and
- set out the broad objectives of the plan and the values that it seeks to recognise, protect and promote; and
- contain performance objectives for waterway health, river parklands amenity, landscape amenity and environmental, cultural and heritage values; and
- identify regional infrastructure networks; and
- identify projects that should be carried out at the earliest opportunity; and
- set out a narrative description of the river corridor and a decision-making framework against which individual projects and proposals may be assessed or evaluated; and
- state which parts of the plan are binding on responsible public entities and which are only in the nature of recommendations to them; and
- deal with anything else that the Minister directs in relation to waterway health, river parklands amenity, landscape amenity or environmental, cultural or heritage values.

Clause 21 sets out detailed requirements for the land use framework plan component of a Yarra Strategic Plan.

A land use framework plan must—

- include spatial plans for the area to which the Yarra Strategic Plan applies, giving broad direction as to its future use, development and protection; and
- recognise and protect Aboriginal cultural values and other cultural and heritage values; and
- identify riparian zones and areas of high environmental or landscape value to be protected from development; and
- identify areas for urban revitalisation or renewal; and
- identify important views and viewsheds; and
- identify areas for the attraction of commercial activities and services; and
- identify locations suitable for community activities and events; and
- nominate habitat corridors and ecological values for improvement and the achievement of more resilient biodiversity outcomes; and
- define open space and urban forest networks to provide for the amenity and recreation needs of local communities; and
- identify movement and access networks that link people to the landscape and its parklands; and
- incorporate any agreed strategic transport infrastructure including river crossings and bicycle networks; and
- identify public authority infrastructure and land management proposals that may affect Yarra River land; and
- recognise projected climate change impacts and flood and bushfire risks.

Clause 22 empowers the Planning Minister to issue guidelines on river corridor framework planning. Clause 18(2)(b) requires the lead agency to prepare a Yarra Strategic Plan in accordance with them.

#### **Division 4—Consultation for draft Yarra Strategic Plan**

##### **Subdivision 1—Public sector entity and Ministerial consultation**

Clause 23 sets out the process for arriving at a draft of a Yarra Strategic Plan that may be released for public consultation. It involves endorsement of the draft by all the responsible public entities and the Ministers responsible for them. Such Ministers are empowered to give a written direction to an entity for which they are responsible in relation to the endorsement of the draft. After endorsement the lead agency must give a copy of the draft to the Minister for review and approval for public release. Following that approval, the lead agency must make a copy of the draft available for public inspection.

##### **Subdivision 2—Public consultation**

Clause 24 requires the lead agency to seek public submissions on a draft Yarra Strategic Plan over a period of at least 2 months. All submissions are to be available for public inspection at the office of the lead agency. At the end of the public consultation phase the lead agency must consider the submissions made and refer any relating to the land use framework plan component that the lead agency does not fully adopt to a panel.

##### **Subdivision 3—Panels and public hearing**

Clause 25 provides for the appointment by the Minister of a panel to consider submissions referred to it under clause 24.

Clause 26 provides that a panel may consist of one or more persons.

Clause 27 deals with the costs and expenses of a panel. Members are entitled to fees and allowances as fixed by the Minister which must be paid by the lead agency unless the Minister otherwise directs. The lead agency must pay to the Crown any amounts to which a Crown employee is entitled to receive as a member by way of remuneration or expenses. Unless the Minister otherwise

directs the lead agency must cover any reasonable costs and expenses incurred by the panel.

Clause 28 requires the Minister to appoint a chairperson of a multi-member panel.

Clause 29 applies to multi-member panels. It provides that—

- in a panel of 2 members, the chairperson constitutes a quorum; and
- in a panel of more than 2 members, half the number of members (rounded up, if necessary, to the next highest whole number) constitutes a quorum; and
- in a panel of more than 2 members, the members may appoint one of their number to act as chairperson if the chairperson is unable to attend; and
- the chairperson has an additional or casting vote in the event of an equality of votes; and
- subject to a quorum, a panel may act despite a vacancy; and
- the Minister may appoint a member to fill a vacancy.

Clause 30 allows a panel to regulate its own proceedings subject to anything provided in Part 4.

Clause 31 puts an obligation on the lead agency to support a panel by providing secretarial or other assistance.

Clause 32 deals with the conduct of hearings by a panel. A panel is required to consider the submissions and give a reasonable opportunity to be heard to those who make submissions, responsible public entities and anyone that the lead agency or the Minister directs the panel to hear. Division 2 of Part 8 of the **Planning and Environment Act 1987** (except sections 169 and 170) is applied to the conduct of a hearing. A panel must report its findings and recommendations to the Minister. A copy of its report must be made publicly available by the lead agency at its office.

Clause 33 provides for various offences in relation to panel members and panel hearings.

Clause 34 protects panel members from personal liability for certain acts or omissions as panel members.

#### **Division 5—Revision and approval of Yarra Strategic Plan**

Clause 35 deals with the stage after the public submission process is completed and any panel appointed has reported. It requires the lead agency to consider any panel report and revise the draft plan to take account of any amendments arising out of the public submission process and of any panel recommendations with which the responsible public entities agree.

Clause 36 requires the lead agency to give a copy of a revised draft Yarra Strategic Plan for endorsement to the responsible public entities and the Ministers responsible for them. A Minister responsible for a responsible public entity may give the entity a written direction in relation to endorsement. After a revised draft plan has been endorsed by the responsible public entities and their Ministers, the lead agency must give a copy to the Minister for approval.

#### **Division 6—Approval of Yarra Strategic Plan**

Clause 37 provides that the Minister may approve a draft Yarra Strategic Plan submitted under clause 36 and publish notice of the approval in the Government Gazette.

Clause 38 provides that an approved Yarra Strategic Plan comes into operation on notice of the approval being published in the Government Gazette or on a later commencement date specified in that notice.

Clause 39 requires that a copy of an approved Yarra Strategic Plan and the notice of its approval must be laid before each House of the Parliament within 7 sitting days after the publication of the notice in the Government Gazette.

Clause 40 ensures that an approved Yarra Strategic Plan is publicly available at the principal offices of the lead agency, the responsible public entities and the Department and on their Internet sites.

### **Division 7—Amendment of current and preparation of new Yarra Strategic Plan**

- Clause 41 provides a mechanism for minor amendments to be made to a Yarra Strategic Plan by the lead agency without having to comply with the full process. The lead agency must have the approval of the Minister to the amendment and the Minister must consult with the Planning Minister and any other Minister responsible for a responsible public entity affected by the proposed amendment before giving approval.
- Clause 42 requires that the long term community vision is reviewed, and a new Yarra Strategic Plan made, within 10 years after the commencement of a Yarra Strategic Plan, adopting the same procedures as adopted on the making of the initial Yarra Strategic Plan.

### **Division 8—Reporting**

- Clause 43 requires responsible public entities to report on their implementation of a Yarra Strategic Plan at 6 month intervals or at such other intervals as the Minister specifies. The reports are provided to the lead agency.
- Clause 44 requires the lead agency to prepare an annual implementation report for the Birrarung Council based on the information provided by the responsible public entities under clause 43.

### **Division 9—Other**

- Clause 45 deals with the relationship between a Yarra Strategic Plan and legislation relating to land that is required to be managed according to high degrees of legislative prescription and protection.
- Subclause (1) provides that a Yarra Strategic Plan, to the extent that it applies to land to which a management plan under the **Heritage Rivers Act 1992** applies, must not be inconsistent with that Act or, unless the Minister otherwise specifically endorses in writing, any management plan under that Act.
- Subclause (2) provides that a Yarra Strategic Plan, to the extent that it applies to land in a park under the **National Parks Act 1975**, must not be inconsistent with that Act or, unless the

Secretary otherwise specifically endorses in writing, any management plan under that Act.

Subclause (3) provides that a Yarra Strategic Plan, to the extent that it applies to land that is reserved under the **Crown Land (Reserves) Act 1978**, must not be inconsistent with the **Crown Land (Reserves) Act 1978**, the purpose for which that land is reserved, any relevant recommendation for that land by the Land Conservation Council, or any Government response or amended Government response under section 25 or 26G of the **Victorian Environmental Assessment Council Act 2001** to any report under section 23 or 26E of that Act applying to the land.

Subclause (4) provides that a Yarra Strategic Plan, to the extent that it applies to land that is reserved under the **Crown Land (Reserves) Act 1978** and subject to additional management requirements under the **Wildlife Act 1975**, must not be inconsistent with that Act or, unless the Secretary otherwise specifically endorses in writing, any plan of management under the **Wildlife Act 1975**.

Subclause (5) provides that a Yarra Strategic Plan, to the extent that it applies to land to which a regional waterway strategy prepared by Melbourne Water Corporation under the **Water Act 1989** applies, must not be inconsistent with that Act or, unless the Water Minister and the Environment Minister otherwise specifically jointly endorse in writing, that regional waterway strategy.

Subclause (6) provides that a Yarra Strategic Plan, to the extent that it applies to land that is the subject of a joint management plan under Part 8A of the **Conservation, Forests and Lands Act 1987** between the Secretary and a Traditional Owner Land Management Board, must not be inconsistent with that Act or, unless the Secretary and that Board otherwise specifically jointly endorse in writing, that joint management plan.

Subclause (7) requires notice of an endorsement to be published in the Government Gazette.

Subclause (8) defines various terms used in the clause.

## **Part 5—The Birrarung Council**

- Clause 46 establishes the Birrarung Council.
- Clause 47 provides that the Birrarung Council is to act independently of responsible public entities.
- Clause 48 lists the various matters on which the Birrarung Council is to provide advice to the Minister. They include, apart from a general advisory role, the development, implementation, operation and effectiveness of a Yarra Strategic Plan including the scope and adequacy of public participation processes. The Council is to look at the contribution of the plan to the protection and improvement of the Yarra River land and its environmental, cultural and heritage values including waterway health. The Council also has the function of advocating for the protection and preservation of the Yarra River. Relying on this function it is intended that the Council will act as a voice for the Yarra River. The Council may be given other functions and has all necessary powers to carry out its functions.
- Clause 49 deals with the constitution and membership of the Birrarung Council.

Subclause (1) states that the Birrarung Council consists of not more than 12 members appointed by the Minister of whom—

- at least 2 are nominees of the Wurundjeri Tribe Land and Compensation Cultural Heritage Council; and
- at least one is a representative of an environment group and at least one a representative of an agriculture industry group; and
- at least 2 are skill-based members with skills specified in subclause (2); and
- at least one is a representative of a Yarra River land local community group; and
- one is the chairperson.

Subclause (2) lists the areas in which skills or expertise are necessary for the skill-based members. The Minister must be satisfied that a skill-based member is skilled or has expertise in one of the following areas—

- waterway health;
- aquatic ecology;
- urban design;
- landscape architecture;
- urban parks and recreation;
- statutory planning;
- environmental planning;
- public participation processes;
- community health.

Subclause (3) provides that a member or employee of a responsible public entity is not eligible for appointment as a member.

- Clause 50 requires that the person appointed as chairperson must be a person whom the Minister is satisfied has suitable skills for that role.
- Clause 51 deals with the terms and conditions of appointment of members of the Birrarung Council. Members are appointed by the Minister for terms of up to 4 years on terms and conditions (including as to remuneration and allowances) determined by the Minister. The **Public Administration Act 2004** (other than Part 3) applies to a member.
- Clause 52 allows members of the Birrarung Council to resign by writing to the Minister. Members may be removed by the Minister at any time on grounds specified in the clause relating to their fitness to hold office.
- Clause 53 empowers the Minister to fill any vacancy arising when a member resigns or is removed from office under clause 52.
- Clause 54 states that the chairperson presides at meetings. If the chairperson is absent, another member elected by the members present at the meeting presides. Whoever presides has a deliberative vote and, if votes are equal, a casting vote.

- Clause 55 makes a majority of the members in office a quorum for a meeting of the Birrarung Council. The Council may regulate its own proceedings subject to any written direction given by the Minister.
- Clause 56 preserves the validity of acts or decisions of the Birrarung Council despite any defect or irregularity connected with an appointment and despite any vacancy in membership. Anything done by an acting chairperson is not invalid merely because the occasion for an acting appointment had not arisen, or there was a defect or irregularity connected with the appointment or the appointment had ceased to have effect.
- Clause 57 requires the Birrarung Council to report annually (on or before 31 October) to the Minister on the implementation of the Yarra Strategic Plan by responsible public entities. The Minister must cause the report to be laid before both Houses of Parliament within 7 sitting days together with a copy of the report given to the Council under clause 44.
- Clause 58 imposes an obligation on the Minister to have the role and operation of the Council reviewed within 5 years of its operation by a person nominated by the Minister. The Minister must cause a report of the review to be laid before both Houses of Parliament within 10 sitting days after its completion.

### **Part 6—Greater Yarra Urban Parklands**

- Clause 59 enables the Governor in Council, on the recommendation of the Minister, to make an Order, to be published in the Government Gazette, declaring land as forming part of the Greater Yarra Urban Parklands.

The land that may be included in the Greater Yarra Urban Parklands is Yarra River land that is used as public open space or a park and which is within a specified metropolitan Melbourne urban growth boundary. Any other land within such a boundary may be included with the agreement of the land owner.

Parklands included in the Greater Yarra Urban Parklands will have a common identity and be treated as part of one integrated urban natural entity of state significance.

The Governor in Council, on the recommendation of the Minister made after consulting the Birrarung Council, may remove land from the Greater Yarra Urban Parklands.

### **Part 7—General**

Clause 60 enables the Governor in Council to make regulations as necessary or required to give effect to the Act.

### **Part 8—Amendment of the Planning and Environment Act 1987**

Clause 61 will insert in section 3(1) of the **Planning and Environment Act 1987** definitions of terms used in this Bill that are referenced in provisions being inserted in the **Planning and Environment Act 1987**. Those terms are *Department Head*, *Greater Yarra Urban Parklands*, *responsible public entity*, *Yarra protection principles*, *Yarra River land*, *Yarra Strategic Plan* and *Yarra Strategic Plan area*.

Clause 62 will insert a new section 4AA into the **Planning and Environment Act 1987**.

Section 4AA will impose an obligation on the Department Head to not act inconsistently with any part of a Yarra Strategic Plan that is binding on the Department Head when performing functions or duties or exercising powers in relation to Yarra River land, other than in relation to a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**.

The new section will also require the Department Head to have regard to the Yarra protection principles, and those parts of a Yarra Strategic Plan that are not expressed to be binding on the Department Head, when performing functions or duties or exercising powers in relation to land within the Yarra Strategic Plan area where the performance of those functions or duties or exercise of those powers may affect Yarra River land.

Section 4AA(2) makes it clear that new section 4AA is not intended to affect the operation of the **Major Transport Projects Facilitation Act 2009**.

Clause 63 will insert a new Part 3AAA in the **Planning and Environment Act 1987** to deal with planning scheme amendments and their consistency with a Yarra Strategic Plan.

Division 1 of the new Part contains new section 46AAA which requires responsible public entities that are planning authorities not to prepare an amendment to a planning scheme that relates to Yarra River land that is inconsistent with anything in a Yarra Strategic Plan that is binding on the responsible public entity.

Division 2 of the new Part contains new sections 46AAB to 46AAI.

New section 46AAB specifies the amendments to which Division 2 applies. These are amendments approved by the Minister after the commencement of the section that remove, change or replace a zoning of land so that the land may be used in a way that is inconsistent with a Yarra Strategic Plan.

New section 46AAC provides that an amendment to which Division 2 applies does not take effect until ratified by each House of the Parliament. It also disapplies sections 36, 37 and 38 of the **Planning and Environment Act 1987** from the amendment.

New section 46AAD sets out the procedure for Parliament to ratify an amendment. The amendment must be laid before each House within 7 sitting days after it is approved by the Minister and must be ratified by that House within 10 sitting days after it is laid.

New section 46AAE requires the Minister to publish a notice of ratification in the Government Gazette specifying where the amendment may be inspected.

New section 46AAF provides that a ratified amendment commences on publication of the notice of ratification or on any later day or days specified in that notice.

New section 46AAG provides that an amendment to which Division 2 applies lapses, if it is not ratified within the timeframe set out in section 46AAD, on the day immediately after the last day on which it could have been ratified. The Minister must publish a notice in the Government Gazette setting out the date on which the amendment lapsed. The notice is conclusive proof that the amendment has lapsed.

New section 46AAH disapplies sections 40, 41 and 42 of the **Planning and Environment Act 1987** from an amendment unless and until it is ratified.

New section 46AAI deals with the situation where an amendment to which Division 2 applies is also an amendment to which a permit granted under Division 5 of Part 4 applies. The permit is cancelled if the amendment lapses. If the amendment is ratified, the notice of ratification must also specify where the permit may be inspected.

### **Part 9—Amendment of Commissioner for Environmental Sustainability Act 2003**

- Clause 64 will amend section 1(2) of the **Commissioner for Environmental Sustainability Act 2003** to include a reference to the preparation of a periodical report on the environmental condition of Yarra River land in the purpose section of the Act.
- Clause 65 will insert in section 3 of the **Commissioner for Environmental Sustainability Act 2003** definitions of terms used in this Bill that are referenced in provisions being inserted in the **Commissioner for Environmental Sustainability Act 2003**. Those terms are *lead agency* and *Yarra River land*.
- Clause 66 will insert a new paragraph (ab) into section 8 of the **Commissioner for Environmental Sustainability Act 2003**. The effect of the amendment is to make it a function of the Commissioner for Environmental Sustainability to prepare a report on the environmental condition of Yarra River land and on how the environmental condition of that land has changed since the Commissioner's last report.
- Clause 67 will insert new sections 17A and 17B into the **Commissioner for Environmental Sustainability Act 2003**. New section 17A requires the Commissioner for Environmental Sustainability to prepare and submit to the Minister a periodical report on the environmental condition of Yarra River land. The report may be a separate report or part of a Report on the State of the Environment of Victoria. New section 17B requires the lead agency to give the Commissioner whatever assistance the Commissioner reasonably requires in preparing a report under new section 17A.

Clause 68 will insert a new subparagraph (iva) into section 21(1)(a) of the **Commissioner for Environmental Sustainability Act 2003**. The effect of the amendment is to provide for the public availability of a report prepared as a separate report under new section 17A.

## **Part 10—Amendment of other Acts**

### **Division 1—Amendment of Catchment and Land Protection Act 1994**

Clause 69 will insert in section 3(1) of the **Catchment and Land Protection Act 1994** definitions of terms used in this Bill that are referenced in provisions being inserted in the **Catchment and Land Protection Act 1994**. Those terms are *Yarra protection principles*, *Yarra River land*, *Yarra Strategic Plan* and *Yarra Strategic Plan area*.

Clause 70 will insert a new section 12A into the **Catchment and Land Protection Act 1994**.

Section 12A will impose an obligation on the Port Phillip and Westernport Catchment Management Authority to not act inconsistently with any part of a Yarra Strategic Plan that is binding on the Authority when performing functions or duties or exercising powers in relation to Yarra River land, other than in relation to a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**.

The new section will also require the Port Phillip and Westernport Catchment Management Authority to have regard to the Yarra protection principles, and those parts of a Yarra Strategic Plan that are not expressed to be binding on the Authority, when performing functions or duties or exercising powers in relation to land within the Yarra Strategic Plan area where the performance of those functions or duties or exercise of those powers may affect Yarra River land.

Section 12A(2) makes it clear that new section 12A is not intended to affect the operation of the **Major Transport Projects Facilitation Act 2009**.

## **Division 2—Amendment of Conservation, Forests and Lands Act 1987**

Clause 71 will insert a definition of *Yarra Strategic Plan* in section 82A of the **Conservation, Forests and Lands Act 1987**.

Clause 72 will insert a new subsection (3) in section 82PA of the **Conservation, Forests and Lands Act 1975**.

The new section 82PA(3) will require the Traditional Owner Land Management Board and the Secretary to have regard to a Yarra Strategic Plan when preparing a management plan in relation to any appointed land to which a Yarra Strategic Plan applies.

## **Division 3—Amendment of Crown Land (Reserves) Act 1978**

Clause 73 will insert in section 3 of the **Crown Land (Reserves) Act 1978** definitions of terms used in this Bill that are referenced in provisions being inserted in the **Crown Land (Reserves) Act 1978**. Those terms are *Yarra protection principles*, *Yarra River land*, *Yarra Strategic Plan* and *Yarra Strategic Plan area*.

Clause 74 will insert a new section 18C into the **Crown Land (Reserves) Act 1978**.

Section 18C will impose an obligation on the Secretary to not act inconsistently with any part of a Yarra Strategic Plan that is binding on the Secretary when performing functions or exercising powers in relation to Yarra River land, other than in relation to a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**.

The new section will also require the Secretary to have regard to the Yarra protection principles, and those parts of a Yarra Strategic Plan that are not expressed to be binding on the Secretary, when performing functions or exercising powers in relation to land within the Yarra Strategic Plan area where the performance of those functions or exercise of those powers may affect Yarra River land.

Section 18C(2) makes it clear that new section 18C is not intended to affect the operation of the **Major Transport Projects Facilitation Act 2009**.

Clause 75 will insert a new section 21AB into the **Crown Land (Reserves) Act 1978**.

Section 21AB will impose an obligation on a committee of management trustees under the **Crown Land (Reserves) Act 1978** to not act inconsistently with any part of a Yarra Strategic Plan that is binding on the committee or trustees when performing functions or duties or exercising powers in relation to Yarra River land, other than in relation to a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**.

The new section will also require a committee of management or trustees to have regard to the Yarra protection principles, and those parts of a Yarra Strategic Plan that are not expressed to be binding on the committee of management or trustees, when performing functions or duties or exercising powers in relation to land within the Yarra Strategic Plan area where the performance of those functions or duties or exercise of those powers may affect Yarra River land.

Section 15A(2) makes it clear that new section 15A is not intended to affect the operation of the **Major Transport Projects Facilitation Act 2009**.

#### **Division 4—Amendment of Forests Act 1958**

Clause 76 will insert in section 3(1) of the **Forests Act 1958** definitions of terms used in this Bill that are referenced in provisions being inserted in the **Forests Act 1958**. Those terms are *Yarra protection principles*, *Yarra River land*, *Yarra Strategic Plan* and *Yarra Strategic Plan area*.

Clause 77 will insert a new section 18B into the **Forests Act 1958**.

Section 18B will impose an obligation on the Secretary to not act inconsistently with any part of a Yarra Strategic Plan that is binding on the Secretary when performing functions or duties or exercising powers in relation to Yarra River land, other than in relation to a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**.

The new section will also require the Secretary to have regard to the Yarra protection principles, and those parts of a Yarra Strategic Plan that are not expressed to be binding on the Secretary, when performing functions or duties or exercising

powers in relation to land within the Yarra Strategic Plan area where the performance of those functions or duties or exercise of those powers may affect Yarra River land.

Section 18B(2) makes it clear that new section 18B is not intended to affect the operation of the **Major Transport Projects Facilitation Act 2009**.

#### **Division 5—Amendment of Heritage Rivers Act 1992**

Clause 78 will insert a new section 9(2) into the **Heritage Rivers Act 1992**.

New section 9(2) requires a management authority or a Catchment Management Authority that is requested by the Minister to prepare a management plan in relation to land that forms part of the Yarra River Heritage Area to have regard to a Yarra Strategic Plan as it applies to that land.

#### **Division 6—Amendment of Local Government Act 1989**

Clause 79 will insert in section 3(1) of the **Local Government Act 1989** definitions of terms used in this Bill that are referenced in provisions being inserted in the **Local Government Act 1958**. Those terms are *Yarra protection principles*, *Yarra River land*, *Yarra Strategic Plan* and *Yarra Strategic Plan area*.

Clause 80 will insert a new section 3G into the **Local Government Act 1989**.

Section 3G will impose an obligation on a Council that is a responsible public entity to not act inconsistently with any part of a Yarra Strategic Plan that is binding on the Council when performing functions or duties or exercising powers in relation to Yarra River land, other than in relation to a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**.

The new section will also require the Council to have regard to the Yarra protection principles, and those parts of a Yarra Strategic Plan that are not expressed to be binding on the Council, when performing functions or duties or exercising powers in relation to land within the Yarra Strategic Plan area where the performance of those functions or duties or exercise of those powers may affect Yarra River land.

Section 3G(2) makes it clear that new section 3G is not intended to affect the operation of the **Major Transport Projects Facilitation Act 2009**.

#### **Division 7—Amendment of National Parks Act 1975**

- Clause 81 will insert in section 3(1) of the **National Parks Act 1975** definitions of terms used in this Bill that are referenced in provisions being inserted in the **National Parks Act 1975**. Those terms are *Yarra protection principles*, *Yarra River land*, *Yarra Strategic Plan* and *Yarra Strategic Plan area*.
- Clause 82 will insert a new section 20A into the **National Parks Act 1975**.  
Section 20A will impose an obligation on the Secretary to not act inconsistently with any part of a Yarra Strategic Plan that is binding on the Secretary when performing functions or duties or exercising powers in relation to Yarra River land, other than in relation to a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**.  
The new section will also require the Secretary to have regard to the Yarra protection principles, and those parts of a Yarra Strategic Plan that are not expressed to be binding on the Secretary, when performing functions or duties or exercising powers in relation to land within the Yarra Strategic Plan area where the performance of those functions or duties or exercise of those powers may affect Yarra River land.  
Section 20A(2) makes it clear that new section 20A is not intended to affect the operation of the **Major Transport Projects Facilitation Act 2009**.
- Clause 83 will insert a new section 27BA in the **National Parks Act 1975**. It requires the Secretary to have regard to a Yarra Strategic Plan if preparing a management plan in relation to a park that forms part of Yarra River land.

#### **Division 8—Amendment of Parks Victoria Act 1998**

- Clause 84 will insert in section 3 of the **Parks Victoria Act 1998** definitions of terms used in this Bill that are referenced in provisions being inserted in the **Parks Victoria Act 1998**. Those terms are *Yarra protection principles*, *Yarra River land*, *Yarra Strategic Plan* and *Yarra Strategic Plan area*.

Clause 85 will insert a new section 8A into the **Parks Victoria Act 1998**.

Section 8A will impose an obligation on Parks Victoria, to the extent that it provides services under any agreement in relation to Yarra River land, to not act inconsistently with any part of a Yarra Strategic Plan that is binding on Parks Victoria when performing functions or duties or exercising powers in relation to Yarra River land under the **Parks Victoria Act 1998**, the relevant Act or the agreement, other than in relation to a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**.

The new section will also require Parks Victoria to have regard to the Yarra protection principles, and those parts of a Yarra Strategic Plan that are not expressed to be binding on Parks Victoria, when performing functions or duties or exercising powers under the **Parks Victoria Act 1998** or any other Act or the agreement in relation to land within the Yarra Strategic Plan area where the performance of those functions or duties or exercise of those powers may affect Yarra River land.

Section 8A(2) makes it clear that new section 8A is not intended to affect the operation of the **Major Transport Projects Facilitation Act 2009**.

#### **Division 9—Amendment of Traditional Owner Settlement Act 2010**

Clause 86 will insert a new section 28(v) into the **Traditional Owner Settlement Act 2010** to include the preparation of a Yarra Strategic Plan as a land use activity.

Clause 87 will insert a new section 29(r) into the **Traditional Owner Settlement Act 2010** to define the decision maker in relation to the preparation of a Yarra Strategic Plan as the lead agency responsible for the preparation of the plan.

#### **Division 10—Amendment of Transport Integration Act 2010**

Clause 88 will insert in section 3 of the **Transport Integration Act 2010** definitions of terms used in this Bill that are referenced in provisions being inserted in the **Transport Integration Act 2010**. Those terms are *Yarra protection principles*, *Yarra River land*, *Yarra Strategic Plan* and *Yarra Strategic Plan area*.

Clause 89 will insert a new section 89A into the **Transport Integration Act 2010**.

Section 89A will impose an obligation on the Roads Corporation to not act inconsistently with any part of a Yarra Strategic Plan that is binding on the Roads Corporation when performing functions or duties or exercising powers in relation to Yarra River land under the **Transport Integration Act 2010** or any other Act, other than in relation to a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**.

Section 89A will also require the Roads Corporation to have regard to the Yarra protection principles, and those parts of a Yarra Strategic Plan that are not expressed to be binding on the Roads Corporation, when performing functions or duties or exercising powers under the **Transport Integration Act 2010** or any other Act in relation to land within the Yarra Strategic Plan area where the performance of those functions or duties or exercise of those powers may affect Yarra River land.

Section 89A(2) makes it clear that new section 89A is not intended to affect the operation of the **Major Transport Projects Facilitation Act 2009**.

Clause 90 will insert a new section 127 into the **Transport Integration Act 2010**.

Section 127 will impose an obligation on Victorian Rail Track to not act inconsistently with any part of a Yarra Strategic Plan that is binding on Victorian Rail Track when performing functions or duties or exercising powers in relation to Yarra River land under the **Transport Integration Act 2010** or any other Act, other than in relation to a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**.

Section 127 will also require Victorian Rail Track to have regard to the Yarra protection principles, and those parts of a Yarra Strategic Plan that are not expressed to be binding on Victorian Rail Track, when performing functions or duties or exercising powers under the **Transport Integration Act 2010** or any other Act in relation to land within the Yarra Strategic Plan area where the performance of those functions or duties or exercise of those powers may affect Yarra River land.

Section 127(2) makes it clear that new section 127 is not intended to affect the operation of the **Major Transport Projects Facilitation Act 2009**.

#### **Division 11—Amendment of Victorian Planning Authority Act 2017**

Clause 91 will insert in section 3(1) of the **Victorian Planning Authority Act 2017** definitions of terms used in this Bill that are referenced in provisions being inserted in the **Victorian Planning Authority Act 2017**. Those terms are *Yarra protection principles*, *Yarra River land*, *Yarra Strategic Plan* and *Yarra Strategic Plan area*.

Clause 92 will insert a new section 10A into the **Victorian Planning Authority Act 2017**.

Section 10A will impose an obligation on the Victorian Planning Authority to not act inconsistently with any part of a Yarra Strategic Plan that is binding on the Authority when performing functions or duties or exercising powers in relation to Yarra River land, other than in relation to a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**.

The new section will also require the Authority to have regard to the Yarra protection principles, and those parts of a Yarra Strategic Plan that are not expressed to be binding on the Authority, when performing functions or duties or exercising powers in relation to land within the Yarra Strategic Plan area where the performance of those functions or duties or exercise of those powers may affect Yarra River land.

Section 10A(2) makes it clear that new section 10A is not intended to affect the operation of the **Major Transport Projects Facilitation Act 2009**.

#### **Division 12—Amendment of Water Act 1989**

Clause 93 will insert in section 3(1) of the **Water Act 1989** definitions of terms used in this Bill that are referenced in provisions being inserted in the **Water Act 1989**. Those terms are *Yarra protection principles*, *Yarra River land*, *Yarra Strategic Plan* and *Yarra Strategic Plan area*.

Clause 94 will insert a new section 124A into the **Water Act 1989**.

Section 124A will impose an obligation on the Port Phillip and Westernport Catchment Management Authority to not act inconsistently with any part of a Yarra Strategic Plan that is binding on the Authority when performing functions or duties or exercising powers in relation to Yarra River land under the **Water Act 1989** or any other Act, other than in relation to a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**.

The new section will also require the Authority to have regard to the Yarra protection principles, and those parts of a Yarra Strategic Plan that are not expressed to be binding on the Authority, when performing functions or duties or exercising powers under the **Water Act 1989** or any other Act in relation to land within the Yarra Strategic Plan area where the performance of those functions or duties or exercise of those powers may affect Yarra River land.

Section 124A(2) makes it clear that new section 124A is not intended to affect the operation of the **Major Transport Projects Facilitation Act 2009**.

Clause 95 will insert a new section 171I into the **Water Act 1989**.

Section 171I will impose an obligation on the Melbourne Water Corporation to not act inconsistently with any part of a Yarra Strategic Plan that is binding on the Corporation when performing functions or duties or exercising powers in relation to Yarra River land under the **Water Act 1989** or any other Act, other than in relation to a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**.

The new section will also require the Corporation to have regard to the Yarra protection principles, and those parts of a Yarra Strategic Plan that are not expressed to be binding on the Corporation, when performing functions or duties or exercising powers under the **Water Act 1989** or any other Act in relation to land within the Yarra Strategic Plan area where the performance of those functions or duties or exercise of those powers may affect Yarra River land.

Section 171I(2) makes it clear that new section 171I is not intended to affect the operation of the **Major Transport Projects Facilitation Act 2009**.

- Clause 96 will insert a new section 190(3A) into the **Water Act 1989** to require the Melbourne Water Corporation to have regard to a Yarra Strategic Plan as it applies to the Yarra River in preparing a regional waterway strategy that relates to the Yarra River.

### **Division 13—Amendment of Wildlife Act 1975**

- Clause 97 will insert in section 3(1) of the **Wildlife Act 1975** definitions of terms used in this Bill that are referenced in provisions being inserted in the **Wildlife Act 1975**. Those terms are *Yarra protection principles*, *Yarra River land*, *Yarra Strategic Plan* and *Yarra Strategic Plan area*.

- Clause 98 will insert a new section 14A into the **Wildlife Act 1975**.

Section 14A will impose an obligation on the Secretary to not act inconsistently with any part of a Yarra Strategic Plan that is binding on the Authority when performing functions or duties or exercising powers in relation to Yarra River land, other than in relation to a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**.

The new section will also require the Secretary to have regard to the Yarra protection principles, and those parts of a Yarra Strategic Plan that are not expressed to be binding on the Secretary, when performing functions or duties or exercising powers in relation to land within the Yarra Strategic Plan area where the performance of those functions or duties or exercise of those powers may affect Yarra River land.

Section 14A(2) makes it clear that new section 14A is not intended to affect the operation of the **Major Transport Projects Facilitation Act 2009**.

### **Part 11—Repeal of amending Parts**

- Clause 99 provides for Part 8 (except section 63) and Parts 9, 10 and this Part of the Bill to be repealed on 1 December 2018. The clause also provides for section 63 to be repealed on the first anniversary of the day on which it comes into operation.

The repeals will not affect the continuing operations of amendments to be made by those Parts—see section 15(1) of the **Interpretation of Legislation Act 1984**.