

COVID-19 Planning Law Adaptation Update

The Victorian planning system remains slow to respond to COVID-19. This NewsFlash updates on three key changes – VCAT process, Liquor control and certain hours of operation permit conditions (Amendment VC181).

Changes to VCAT during COVID-19

Anyone experiencing financial hardship (whether COVID-19 related, or otherwise) can apply for fee relief (being to waive, reduce or postpone any applicable fee). The link to VCAT's information page is [HERE](#).

VCAT issued a 'COVID-19 response' stating that Directions hearings and critical matters will proceed by telephone or video where suitable, and otherwise all cases listed for hearing until 15 May 2020 have been put on hold, however it remains silent as to extending fee relief for those experiencing financial hardship as a result of COVID-19.

Victorian Commission for Gambling and Liquor Regulation

Victorian Commission for Gambling and Liquor Regulation (VCGLR) has taken immediate and clear steps to help liquor licensees adapt to COVID-19 restrictions, including: waiving licencing fees, streamlining applications to 3 business days, providing temporary off-premises licences and refunding major event licences. VCGLR provides a clear example of some of the immediate steps required by the Victorian government to support the planning system.

Hours of Operation: Planning Permits (Amendment VC181)

Since our 7 April 2020 Newsflash, ([link HERE](#)) the Victorian Planning Minister has still not addressed planning permit delays facing business seeking to respond urgently to COVID needs.

It gazetted a minor planning scheme amendment, Amendment VC181, *State of Emergency Exemption*, on 6 April 2020, exempting permit conditions that restrict the hours of operation for dispatch, delivery, loading and unloading for "*delivery of food and other essential goods ... to enable supermarkets, hospitals, pharmacies and other essential businesses to meet the significant community demand*".

The Amendment's Clause 52.18 exempts any permit condition or planning scheme provision which "*limits, or has the effect of limiting, the hours or days during which goods may be dispatched, delivered, loaded or unloaded... to and from any type of premises including warehouses, factories and farms.*"

This exemption applies specifically to delivery of:

- food, drink, groceries, medicine, or cleaning, health, hygiene, medical or personal protection equipment, supplies, or products, or the like; and
- goods to a supermarket, market, hospital, medical centre, pharmacy, residential aged care facility or retirement village.



Conditions pertaining to hours of delivery typically exist to minimise the community amenity impacts (such as noise and emissions) that all-hour delivery and dispatch would otherwise have. Whilst obviously the COVID-19 emergency requires flexibility, the requirement to remain at home places extra emphasis on residential amenity. It is somewhat hard to see why, even with COVID-19, deliveries would be impossible during normal permitted hours.

Whilst VC181 purports to address 'essential services' management, it remains silent as to urgent COVID-19 planning system issues such as adapting requirements for notice, delays, streamlining for urgent COVID-19 responsive permits and some councils' continuing enforcement processes. COVID-19 is clearly unprecedented, and has created real uncertainty and confusion in the community. However, it also creates opportunity for innovation and new thinking.

In Queensland, over a month ago, the government was quick to introduce the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* on 18 March 2020 facilitating effective adaptation of existing legislation to the COVID19 public health emergency. Significantly, it amended the *Planning Act 2016* to temporarily allow:

- the approval of uses of premises or changes to conditions (by way of a **temporary use licence**);
- the relaxation of hours of operation or restrictions regarding the movement of goods; and
- the suspension or extension of relevant statutory periods.

It also introduced 'temporary use licences' that may:

- change a condition of a development approval;
- provide that a use of designated premises is not required to comply with a requirement about the use stated in the designation for the premises;
- change the existing lawful use of the premises (e.g. by adding a new use, increasing the intensity or scale of the existing lawful use or replacing the existing use with a new use).

Victorian businesses urgently need a localized version of this to support them adapt at this critical time. Whereas other states are evolving and responding nimbly to adapt to this crisis, the Victorian Government appears to be moving far slower.

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