



Western Australia

## **Metropolitan Region Town Planning Scheme Act 1959**

This Act was repealed by the *Planning and Development  
(Consequential and Transitional Provisions) Act 2005* s. 4 (No. 38 of  
2005) as at 9 Apr 2006 (see s. 2 and *Gazette* 21 Mar 2006 p. 1078).



# Metropolitan Region Town Planning Scheme Act 1959

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Western Australia

## **Metropolitan Region Town Planning Scheme Act 1959**

**An Act to provide for and relating to the planning and development of land within the metropolitan region, and to regulate the assessment of a Metropolitan Improvement Tax and for incidental and other purposes.**

*[Long title amended by No. 92 of 1985 s. 12.]*

## **Part I — Preliminary**

### **1. Short title**

This Act may be cited as the *Metropolitan Region Town Planning Scheme Act 1959*<sup>1</sup>.

### **2. Commencement**

- (1) This Act shall come into operation on a day to be fixed by proclamation<sup>1</sup>.
- (2) It shall not be necessary to proclaim that the whole Act shall commence on one day, but the several Parts and sections may be proclaimed to commence on such days as are respectively fixed by proclamation.

### **3. Construction**

This Act shall be construed in conjunction with the Town Planning Act, as if the provisions of this Act were incorporated with and formed part of that Act, but where the provisions of this Act are in conflict or are inconsistent with the provisions of that Act, the provisions of this Act prevail to the extent to which they are so in conflict or inconsistent.

[4. *Repealed by No. 73 of 1982 s. 3.*]

### **5. Application**

- (1) The provisions of this Act apply only to the metropolitan region.
- (2) The provisions of the Town Planning Act, except as modified by this Act, apply to the metropolitan region.

### **6. Interpretation**

In this Act, unless the context requires otherwise —

“**Authority**” in sections 30, 31, 32, 33B, 33C and 37A(4a) means the Metropolitan Region Planning Authority in existence

under section 7 before the commencement of Part III of the *Acts Amendment (State Planning Commission) Act 1985*<sup>1</sup>;

“**Commission**” means the Western Australian Planning Commission established by section 4 of the *Western Australian Planning Commission Act 1985*;

“**District Planning Committee**” means District Planning Committee constituted by or under section 23;

“**EPA**” means the Environmental Protection Authority continued in existence under the EP Act;

“**EP Act**” means the *Environmental Protection Act 1986*;

“**Fund**” means The Metropolitan Region Improvement Fund established under this Act;

“**Heritage Council**” means the Heritage Council of Western Australia established pursuant to the *Heritage of Western Australia Act 1990*;

“**metropolitan region**” means the region described in the Third Schedule;

“**Metropolitan Region Scheme**” or “**Scheme**” means a town planning scheme for the metropolitan region or any part thereof, including the provisions therein for regulating and controlling the use of the land the subject of the Scheme and the purposes for which the land may be used and includes —

- (a) the provisions of the Scheme;
- (b) all maps, plans, specifications and other particulars contained in the Scheme and colourings, markings or legend thereon;
- (c) the Scheme as varied or amplified by any amendment that has the force of law; and
- (d) a subsequent scheme that has the force of law and any such subsequent scheme as varied or amplified by any amendment that has the force of law;

**“Minister for the Environment”** means the Minister to whom the Governor has for the time being committed the administration of the EP Act;

**“order”** means an interim development order made under section 7A of the Town Planning Act;

**“planning control area”** means a planning control area declared and in force under section 35C;

**“Swan Valley”** has the same meaning it has in the *Swan Valley Planning Act 1995*;

**“Swan Valley Planning Committee”** has the same meaning as it has in the *Swan Valley Planning Act 1995*;

**“Town Planning Act”** means the *Town Planning and Development Act 1928*.

*[Section 6 amended by No. 115 of 1979 s. 3; No. 79 of 1981 s. 5; No. 73 of 1982 s. 4; No. 92 of 1985 s. 13; No. 6 of 1986 s. 4; No. 97 of 1990 s. 24; No. 84 of 1994 s. 43 and 46; No. 31 of 1995 s. 27; No. 23 of 1996 s. 28.]*

## Part II — Miscellaneous

*[Heading inserted by No. 92 of 1985 s. 14.]*

*[7-22. Repealed by No. 92 of 1985 s. 15.]*

### **23. Constitution of District Planning Committees**

- (1) For the purposes of assisting and advising the Commission, the City of Perth and the groups of local governments referred to in the First Schedule, shall each appoint from among their mayors, councillors or members, as the case may be, a District Planning Committee as provided in this section.
- (2) In the case of the City of Perth, the City of Perth Town Planning Committee for the time being is the District Planning Committee.
- (3)
  - (a) In the case of the groups of local governments referred to in subsection (1) each local government in each group shall from time to time as occasion requires appoint one person as a member of the District Planning Committee to represent that local government on the District Planning Committee.
  - (b) Where a local government fails to make an appointment, the Governor may appoint a person having the necessary qualifications to be a member representing that local government.
  - (c) When the members are duly appointed, the District Planning Committee for the group of local governments is constituted.
- (4) Subject to the direction and approval of the Minister<sup>2</sup>, who is hereby authorised to direct and approve from time to time, procedural matters relating to the holding and conduct of meetings of each District Planning Committee, including the election of chairman, the appointment of deputies, the constitution and powers of a quorum, are such as each District Planning Committee determines.

*[Section 23 amended by No. 80 of 1975 s. 3; No. 92 of 1985 s. 16 and 23; No. 6 of 1986 s. 5; No. 14 of 1996 s. 4.]*

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**24.        Functions of District Planning Committees**

- (1) Each District Planning Committee may, and at the direction of the Commission shall, within the time stipulated by the direction or within such extended time as the Minister may authorise, make inquiries into and report and formulate recommendations in respect to the Metropolitan Region Scheme so far as it relates to the area or part of the area comprising the districts which the District Planning Committee represents.
- (2) Each District Planning Committee shall present its reports and recommendations to the Commission.
- (3) Each District Planning Committee shall perform such functions of the Commission as may be delegated to it under section 20 of the *Western Australian Planning Commission Act 1985*.

*[Section 24 amended by No. 92 of 1985 s. 17 and 23; No. 6 of 1986 s. 6; No. 84 of 1994 s. 43 and 46; No. 14 of 1996 s. 4.]*

*[25.        Repealed by No. 92 of 1985 s. 18.]*

**26.        General provision of Scheme**

- (1) The Commission may make regulations prescribing a set of general provisions or separate sets of general provisions adapted for the whole of, or areas within, the metropolitan region of any special character, for carrying out the general objects of the Metropolitan Region Scheme and in particular for dealing with the matters set out in the First Schedule to the Town Planning Act, and the general provisions or set of general provisions appropriate to the area for which the Metropolitan Region Scheme is made shall take effect as part of the Scheme.
- (2) Regulations may be so made as to impose for a breach of a regulation a maximum penalty of \$500 with or without provision for a maximum daily penalty of \$50 for every day the breach continues.

- (3) The court by or before which a person is found guilty of an offence against regulations made under this section may, whether or not it imposes any other punishment, order that the person convicted pay compensation to the Commission for the costs of any repairs rendered necessary or any loss of property suffered or expenses incurred through or by means of the offence.
- (4) An order made against a person under subsection (3), or the institution of proceedings or the finding of a person to be guilty under regulations made under this section, does not affect any civil remedy against the person.
- (4a) An order made under subsection (1) may be enforced by lodging a certified copy of it, and an affidavit stating to what extent it has not been complied with, with a court of competent jurisdiction.
- (4b) When lodged, the order is to be taken to be a judgment of the court and may be enforced accordingly.
- (5) In any civil proceedings arising from the same circumstances —
- (a) any sum recovered pursuant to an order made under subsection (3) shall be taken into account in the assessment of any damages awarded; and
  - (b) the record of any criminal proceedings under regulations made under this section in relation to an offence shall be admissible as evidence of the matters determined in those criminal proceedings and relevant to the issues.

*[Section 26 amended by No. 113 of 1965 s. 8; No. 73 of 1982 s. 7; No. 92 of 1985 s. 23; No. 59 of 2004 s. 141.]*

*[27-29A. Repealed by No. 92 of 1985 s. 18.]*

## **Part III — Metropolitan Region Scheme**

### **30. Metropolitan Region Scheme**

- (1) The Authority shall make the Metropolitan Region Scheme in accordance with the provisions of this Act, with respect to the whole or any part of the land within the metropolitan region.
- (2) The Scheme may be made for all or any of the objects or purposes, provisions, powers or works, referred to in section 6 of the Town Planning Act and may provide for planning, replanning or reconstructing the whole or a part of the metropolitan region.

### **31. Procedure for submission and approval of plan**

The Authority shall adopt the following procedure for submitting and obtaining approval of the Metropolitan Region Scheme —

- (a) The Scheme when formulated by the Authority shall be submitted, together with such reports, surveys and other material as the Authority considers desirable, to the Minister for his preliminary approval.
- (b) If the Minister so approves, the Authority shall deposit copies of the Scheme, for public inspection during ordinary business hours free of charge —
  - at the office of the Commission;
  - at the offices of the Cities of Perth and Fremantle;
  - in at least 3 other public places situate in the metropolitan region which the Authority considers are most convenient for public inspection of the Scheme.
- (c) As soon as practicable after the deposit of the copies of the Scheme as provided for in paragraph (b), the Authority shall cause to be inserted at least 3 times in each of the following publications —

the *Gazette*;

2 daily newspapers circulating in the metropolitan region; and

one Sunday newspaper circulating in the metropolitan region,

a notice —

stating shortly the purpose of the Scheme;

stating that the Scheme has been deposited and the places and times where it may be inspected free of cost,

and notifying all persons who object to any provisions of the Scheme to lodge written objections on a prescribed form with the Authority at the address stated in the notice.

- (d) Objections to the Scheme may be made at any time within the period prescribed in the notice being not less than 3 months from the date the notice is first published in the *Gazette*.
- (e) The Authority shall take such other steps as it considers necessary to make public the details of the Scheme.
- (f)
  - (i) The Authority shall consider all objections duly lodged and shall not dismiss an objection until the person objecting or his agent has been given the opportunity of being heard on the objection either by the Authority or a sub-committee of the Authority appointed by it for the purpose and which it is hereby authorised to appoint.
  - (ii) Where an objection is made by a group of persons, the group shall appoint one person to represent the group and he only shall be heard on the objection.
- (g) The Authority shall submit the Scheme with or without such modifications as it thinks fit to make after considering the objections, together with a copy of all

written objections and a report by the Authority on the objections, to the Minister for presentation to the Governor for his consideration.

- (h) Before presenting the Scheme to the Governor for his consideration, if the Minister is of opinion that any modification made to the Scheme by the Authority is of such a substantial nature as to warrant such action, he may direct the Authority to again deposit the Scheme as so modified or that portion of the Scheme which is so modified, for public inspection at such time and at such places as he directs.
- (i) The Minister may direct the Authority to publish such notices in connection with the Scheme as he deems appropriate.
- (j) The Authority shall comply with the directions.
- (k) A person who objects to any modifications so made by the Authority may notify the Minister in writing on the prescribed form, and the Minister shall direct the Authority to consider and report on the objection to the Minister in accordance with the procedure set out in paragraphs (f) and (g).
- (l) The Minister shall then present the Scheme to the Governor who may approve the Scheme with or without such modifications as he deems necessary to make and which he is hereby authorised to make.

*[Section 31 amended by No. 44 of 1962 s. 3; No. 84 of 1994 s. 46; No. 14 of 1996 s. 4.]*

**32. Scheme to be submitted to Parliament**

- (1) When the Governor has approved the Scheme whether with or without modifications —
  - (a) the Scheme or the Scheme as so modified but not including any maps, plans or diagrams, shall be published in the *Gazette*, and the maps, plans or

diagrams shall be open for public inspection at such times and such places as the Minister determines;

- (b) the Scheme together with the report of the Authority on the objections made to it referred to in section 31(g) and (k), shall be laid before each House of Parliament within 6 sitting days of the House next following the date of the publication of the Scheme in the *Gazette*.
- (2) If either House does not pass a resolution disallowing the Scheme, of which resolution notice was given at any time within 21 sitting days of that House after the Scheme was laid before it, the Scheme has effect, from and after the last day on which the Scheme might have been disallowed, as though its provisions were enacted by this Act, but if the Scheme is disallowed the disallowance does not affect the validity, or cure the invalidity, of anything done or omitted to be done before the disallowance.

**32A. Power of amendment restricted**

- (1) The Scheme shall not be amended under section 33 or 33A in a manner that is contrary to or inconsistent with any provision of Part 5 of the *Swan River Trust Act 1988* or any amendment made to the Scheme by section 14, 15, 16 or 17 of the *Acts Amendment (Swan River Trust) Act 1988*.
- (2) The Scheme shall not be amended under section 33 or 33A in a manner that is contrary to or inconsistent with any Order made under section 59 of the *Heritage of Western Australia Act 1990*, except in so far as may be ordered on an application or referral made under section 60 of that Act to the State Administrative Tribunal.
- (3) Without limiting section 38 of the *East Perth Redevelopment Act 1991*, section 45 of the *Subiaco Redevelopment Act 1994*, section 45 of the *Midland Redevelopment Act 1999*, section 23 of the *Hope Valley-Wattleup Redevelopment Act 2000* or section 43 of the *Armadale Redevelopment Act 2001*, the Scheme shall not be amended under section 33 or 33A to make any provision in respect of land in the redevelopment area under

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any of those Acts so long as there is in operation in respect of that land a redevelopment scheme or a master plan, within the meaning of the relevant Act.

*[Section 32A inserted by No. 21 of 1988 s. 11; amended by No. 97 of 1990 s. 25; No. 62 of 1991 s. 59; No. 35 of 1994 s. 67; No. 84 of 1994 s. 7; No. 38 of 1999 s. 74(2); No. 77 of 2000 s. 38(2); No. 25 of 2001 s. 69; No. 55 of 2004 s. 748.]*

**33. Scheme may be amended**

- (1) The Scheme may be varied or amplified by an amendment to the Scheme or revoked by a subsequent Scheme formulated by the Commission submitted and approved in accordance with this section.
- (2) Subject to sections 33A and 33B, the Commission shall adopt the procedure set forth in this section for submitting and obtaining approval of any amendment to the Scheme and any revocation of the Scheme by a subsequent Scheme (in this section referred to as “**the amendment**”) formulated by the Commission —
  - (a) Subject to section 33AA, the amendment when formulated by the Commission shall, after sections 33E and 33F have been complied with in relation to the amendment, be submitted, together with such reports, surveys and other material as the Commission considers desirable, to the Minister for his consent to public submissions being sought.
  - (b) If the Minister consents to public submissions being sought, the Commission shall deposit copies of the amendment, for public inspection during ordinary business hours free of charge —
    - (i) at the office of the Commission;
    - (ii) at the offices of the City of Perth and City of Fremantle; and

- (iii) in at least 3 other public places situate in the metropolitan region which the Commission considers are most convenient for public inspection of the amendment.
- (c) As soon as practicable after the deposit of the copies of the amendment as provided for in paragraph (b) the Commission shall cause to be inserted at least 3 times in each of the following publications —
  - (i) the *Gazette*;
  - (ii) 2 daily newspapers circulating in the metropolitan region; and
  - (iii) one Sunday newspaper circulating in the metropolitan region,a notice stating —
  - (iv) in short, the purpose of the amendment; and
  - (v) that the amendment has been deposited and the places and times where it may be inspected free of charge,and notifying all persons who desire to make submissions on any provision of the amendment that such submissions may be made to the Commission in writing in the form prescribed by the Commission in the notice.
- (d) Submissions on the amendment may be made at any time within the period prescribed in the notice being not less than 3 months from the date the notice is first published in the *Gazette*.
- (e) The Commission shall make reasonable endeavours to consult in respect of the amendment such public authorities and persons as appear to the Commission to be likely to be affected by the amendment and may take such other steps as it considers necessary to make public the details of the amendment.
- (f)
  - (i) The Commission shall consider all submissions that have been duly lodged and where a

submission contains an objection to the amendment the Commission shall not dismiss the objection until the person making the submission or his agent has been given the opportunity of being heard on the objection by the Commission or by a committee of the Commission established under section 19 of the *Western Australian Planning Commission Act 1985*.

- (ii) The Commission shall not uphold an objection to the amendment until it has given every person who has duly lodged a submission supporting the provision to which the objection relates, or his agent, the opportunity of being heard in support of that provision by the Commission or by a committee of the Commission established under section 19 of the *Western Australian Planning Commission Act 1985*.
- (iii) Where a submission is made by a group of persons, the group shall appoint one person to represent the group and only he shall be heard under subparagraph (i) or (ii).
- (g) Subject to section 33AB, after sections 33G(1) and 33H have been complied with in relation to the amendment and after considering all submissions that have been duly lodged, the Commission shall submit the amendment to which those submissions relate, with such modifications, if any, as it thinks fit to make, together with a copy of each of those submissions and a report by the Commission on those submissions, to the Minister.
- (gaa) For the purposes of paragraph (g) the Commission may adopt a report by a committee referred to in paragraph (f) and submit it as, or include it in, the report of the Commission.
- (ga) If the report of the Commission, or, in the case of an amendment that would apply to land in the Swan Valley,

a report of the Swan Valley Planning Committee under section 33AB(2), submitted with an amendment under paragraph (g) recommends that the amendment should not be proceeded with, the Minister may, instead of presenting the amendment to the Governor for his consideration, withdraw the amendment.

- (h) Before presenting the amendment to the Governor for his consideration, if the Minister is of opinion that any modification made to the amendment by the Commission is of such a substantial nature as to warrant such action, he may direct the Commission to again deposit the amendment as so modified, or that portion of the Scheme which is so modified, for public inspection at such time and at such places as he directs.
- (i) The Minister may direct the Commission to publish such notices in connection with the amendment as he deems appropriate.
- (j) The Commission shall comply with the directions.
- (k) A person who desires to make any submissions on any modifications so made by the Commission may notify the Minister in writing in the form prescribed by the Commission in any notice of the modification published pursuant to paragraph (i), and the Minister shall direct the Commission to consider and report on the submission to the Minister in accordance with the procedure set out in paragraphs (f) and (g).
- (ka) If the report submitted with an amendment under paragraph (g) as read with paragraph (k) recommends that the amendment should not be proceeded with, the Minister may, instead of presenting the amendment to the Governor for his consideration, withdraw the amendment.

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- (l) The Minister shall then, if he has not withdrawn the amendment under paragraph (ka), present the amendment to the Governor who may approve the amendment with or without such modifications as he deems necessary to make and which he is hereby authorised to make.
  - (m) At any time before the amendment is published in the *Gazette* pursuant to subsection (3), the Governor may revoke the approval given under paragraph (l).
- (3) Except where the approval has, pursuant to subsection (2)(m), been revoked, when the Governor has approved the amendment whether with or without modifications —
- (a) the amendment or the amendment as so modified but not including any maps, plans or diagrams, shall be published in the *Gazette*, and the maps, plans or diagrams shall be open for public inspection at such times and such places as the Minister determines;
  - (b) a copy of the amendment together with a copy of the report of the Commission on the submissions made on the Scheme referred to in subsection (2)(g) and (k), shall be laid before each House of Parliament within 6 sitting days of the House next following the date of the publications of the amendment in the *Gazette*.
- (4) Either House may, by resolution of which resolution notice has been given at any time within 12 sitting days of such House after a copy of the amendment has been laid before it, pass a resolution disallowing the amendment.
- (5) As soon as the amendment is no longer subject to disallowance under subsection (4) the amendment shall have effect as though its provisions were enacted by this Act.

- (6) If either House of Parliament passes a resolution disallowing the amendment the Commission shall cause notice of the disallowance to be published in the *Gazette* within 21 days of the passing of the resolution.

*[Section 33 inserted by No. 115 of 1979 s. 12; amended by No. 73 of 1982 s. 9; No. 92 of 1985 s. 23; No. 6 of 1986 s. 7; No. 35 of 1993 s. 4; No. 84 of 1994 s. 8 and 46; No. 31 of 1995 s. 27; No. 14 of 1996 s. 4; No. 23 of 1996 s. 29.]*

**33AA. Referrals to Swan Valley Planning Committee before public submissions**

- (1) The Commission shall, before submitting to the Minister under section 33(2)(a) an amendment that would apply to land in the Swan Valley, refer the amendment to the Swan Valley Planning Committee.
- (2) The Committee shall, within 42 days after the day on which it receives the referral, or within such longer period as the Commission allows, give to the Commission its advice in writing on the amendment, including any modifications it thinks should be made to the amendment.
- (3) If the Committee fails to give its advice within the time allowed under subsection (2), it shall be taken to have no advice to give on the amendment.
- (4) The Minister may, at the request of the Commission, approve of the Commission disregarding the Committee's advice in whole or in part in formulating the amendment.
- (5) Subject to any approval under subsection (4), the Commission shall formulate the amendment in accordance with any advice given by the Committee under this section.

*[Section 33AA inserted by No. 31 of 1995 s. 27.]*

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**33AB. Referrals to Swan Valley Planning Committee after public submissions**

- (1) Where, as required by section 33AA(5), an amendment has been formulated in accordance with advice given by the Swan Valley Planning Committee and after considering public submissions on the amendment the Commission has modified it in a way which is not in accordance with that advice, the Commission shall, before submitting that amendment to the Minister under section 33(2)(g), refer the amendment, with the other documents referred to in that section, back to the Committee for its comment and advice.
- (2) Where the Committee has any comment to make, or advice to give, on an amendment or the other documents referred to it under subsection (1) it shall furnish a written report to the Commission and that report shall be submitted to the Minister along with the other documents referred to in section 33(2)(g).
- (3) If the Committee does not report to the Commission within 42 days of the referral under subsection (2) it shall be taken to have no comment to make or advice to give.

*[Section 33AB inserted by No. 31 of 1995 s. 27.]*

**33A. Procedure for amendments not constituting substantial alteration to Scheme**

- (1) Notwithstanding section 33, if a proposed amendment does not, in the opinion of the Commission, constitute a substantial alteration to the Scheme, that amendment is not required to be submitted and approved in accordance with the procedure prescribed in section 33(2), (3) and (4).
- (1a) Despite subsection (1), after the commencement of section 27 of the *Swan Valley Planning Act 1995*<sup>1</sup> an amendment cannot be made to the Scheme under this section to change the zoning of any land in the Swan Valley.

- (2) If under subsection (1) a proposed amendment is not required to be submitted and approved in accordance with the procedure prescribed in section 33(2), (3) and (4), the Commission shall, after sections 33E and 33F have been complied with in relation to that amendment —
- (a) send a copy of that amendment to the Minister;
  - (b) publish in the *Gazette* and in a daily newspaper circulating in the metropolitan region —
    - (i) a notice of that amendment describing that amendment, stating where and when that amendment will be available for inspection and notifying all persons who desire to make submissions on any provision of that amendment that those submissions may be made to the Commission in writing in the form set out in that notice; and
    - (ii) a certificate certifying that, in the opinion of the Commission, that amendment does not constitute a substantial alteration to the Scheme;
  - (c) within 7 days of the publication referred to in paragraph (b), notify in writing the owners of land in the opinion of the Commission directly affected by that amendment of that amendment; and
  - (d) make reasonable endeavours to consult in respect of that amendment such public authorities and persons as appear to the Commission to be likely to be affected by that amendment.
- (3) Submissions may be made on any provision of a proposed amendment at any time within the period specified in the relevant notice published under subsection (2), being a period of not less than 60 days after the day on which that notice was so published.
- (4) When a submission is made in accordance with the relevant notice published under subsection (2) by a group of persons, that

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group shall appoint one person to represent that group for the purposes of the submission.

- (5) As soon as practicable after receiving submissions in relation to a proposed amendment, the Commission shall consider, and make a report and recommendation to the Minister on, those submissions.

*[(6) repealed]*

- (7) On receiving a report and recommendation made to him under subsection (5), the Minister may, after the Minister has complied with section 33H in relation to the amendment concerned —
- (a) approve, with such modifications, if any, as he considers it necessary to make; or
  - (b) decline to approve,
- the proposed amendment to which that report and recommendation relate.

- (8) When the Minister has approved a proposed amendment under subsection (7) —
- (a) the Commission shall cause —
    - (i) that amendment or that amendment as modified under that subsection, as the case requires, excluding any maps, plans or diagrams forming part of that amendment, to be published in the *Gazette*; and
    - (ii) any maps, plans or diagrams forming part of that amendment to be open for inspection at such times and places as the Commission determines;and
  - (b) that amendment or that amendment as modified under that subsection, as the case requires, shall on publication under this subsection have effect as though its provisions were enacted by this Act.

*[Section 33A inserted by No. 6 of 1986 s. 8; amended by No. 31 of 1995 s. 27; No. 23 of 1996 s. 30; No. 24 of 2002 s. 26(2)-(4).]*

**33B. Pending amendment of Scheme**

(1) In this section —

**“amending Act”** means the *Metropolitan Region Town Planning Scheme Act Amendment Act (No. 2) 1979*<sup>1</sup>;

**“pending amendment”** means any proposed amendment to the Scheme that was —

- (a) approved, pursuant to section 31(a), by the Minister; or
- (b) certified, pursuant to the substituted section, by the Authority as not being a substantial alteration,

before the proclaimed date but which did not have the force of law as though enacted by this Act immediately before the proclaimed date;

**“proclaimed date”** means the date on which section 12 of the amending Act comes into operation<sup>1</sup>;

**“Second Schedule”** means the Second Schedule as in force immediately before the proclaimed date;

**“substituted section”** means section 33 as in force immediately before the proclaimed date.

- (2) Notwithstanding sections 33 and 33A, but subject to subsection (3) pending amendments shall be continued and dealt with in accordance with the substituted section and the Second Schedule as if those provisions were in force after the proclaimed date.
- (3) Section 33(2)(m) with such modifications as are necessary applies to a pending amendment.
- (4) Nothing in subsection (2) affects the operation of the *Interpretation Act 1918*<sup>3</sup>.

*[Section 33B inserted by No. 115 of 1979 s. 12; amended by No. 73 of 1982 s. 10.]*

**s. 33C**

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**33C. Validation**

- (1) The Scheme, or any amendment to the Scheme made before the coming into operation of the *Metropolitan Region Town Planning Scheme Act Amendment Act 1975*<sup>1</sup> or any act or thing done pursuant to the Scheme or such an amendment to the Scheme shall not be regarded as invalid by reason only of one or more of the following reasons, namely —
- (a) that, in the notice of the Scheme or that amendment to the Scheme, as the case may be, the period prescribed for the making of objections was less than the proper period;
  - (b) that the Authority did not accept for consideration an objection to the Scheme or that amendment to the Scheme, as the case may be, being an objection that was made within the proper period but was not made within the period prescribed for the making of objections in the notice of the Scheme or that amendment;
  - (c) that a form for making objections to the Scheme or any amendment to the Scheme was not prescribed.
- (2) In this section —
- “notice”**, in relation to the Scheme or an amendment to the Scheme, means the notice published pursuant to section 31(c) in respect of the Scheme or that amendment, as the case may be;
- “proper period”**, in relation to the Scheme or an amendment to the Scheme, means the period of 3 months from the date the notice of the Scheme or that amendment, as the case may be, was first published in the *Gazette*.

*[Section 33C inserted as section 33A by No. 80 of 1975 s. 5; renumbered as section 33C by No. 115 of 1979 s. 13.]*

**33D. Consolidation of Scheme**

- (1) Whenever the Minister is of the opinion that it is necessary or desirable to consolidate the Scheme he may direct the

Commission to deliver to him a consolidation of the Scheme as in force at the date specified in the direction.

- (2) On receipt of a direction under subsection (1) the Commission shall cause to be prepared a consolidation of the Scheme incorporating all amendments to the Scheme in force on the day specified in the direction.
- (3) In the preparation of the consolidation there may be included, in addition to or in substitution for any maps, plans and diagrams forming part of the Scheme, such maps, plans or diagrams, prepared on such scale or scales, as, in the opinion of the Commission are necessary to state and represent the scope, effect and details of the Scheme, as amended, in an informative and convenient form, and where such an addition or substitution necessitates the making of any consequential amendment to the text of the Scheme that amendment shall be made in the consolidation.
- (4) Without limiting the generality of subsection (3), on the first occasion upon which a consolidation is prepared under this section the maps, plans and diagrams forming part of the Scheme shall be omitted for the purpose of substituting maps, plans and diagrams which have been prepared on a scale or scales consistent with the metric system of measurement as defined in the *Metric Conversion Act 1972* and which show information in a manner consistent with that system.
- (5) Where any addition, substitution or other amendment is effected under subsection (3) or (4) the Scheme shall be deemed to have been amended accordingly on and from the publication of notice of the consolidation under subsection (8) but the provisions of —
  - (a) sections 33 and 33A; and
  - (b) the *Metric Conversion Act 1972*,

do not apply to any such addition, substitution or other amendment.

**s. 33E**

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- (6) Having prepared the consolidation of the Scheme the Commission shall cause the consolidation to be examined by the Surveyor General in the Department of Land Administration<sup>4</sup>.
- (7) If the Surveyor General certifies that the maps, plans and diagrams in the consolidation are correct the Commission shall —
- (a) seal the consolidation and certify thereon that it is a correct statement and representation of the Scheme as in force at the date specified in the direction given by the Minister; and
  - (b) deliver the consolidation to the Minister.
- (8) If the Minister approves of the consolidation and endorses his signature thereon the Commission shall publish notice of the consolidation in the *Gazette* and as from the publication of the notice the consolidation shall in all courts and by all tribunals, bodies and persons be judicially noticed and shall be deemed to be a correct statement and representation of the Scheme as in force on the date specified in the Minister's direction unless the contrary is shown.
- (9) Where in the opinion of the Minister it is expedient to do so he may instead of directing the Commission to deliver to him a consolidation of the whole Scheme direct the Commission to deliver to him a consolidation of such portion of the Scheme (whether by reference to a map of the Scheme or any other portion thereof) as is specified in his direction and the provisions of this section apply to and in relation to the consolidation of the portion of the Scheme so specified in the direction as though the portion of the Scheme so specified were the whole Scheme.

*[Section 33D inserted by No. 73 of 1980 s. 4; amended by No. 92 of 1985 s. 23.]*

**33E. Reference of proposed amendments to Scheme to Environmental Protection Authority**

When the Commission resolves to formulate an amendment to the Scheme, the Commission shall, whether or not that amendment constitutes, in the opinion of the Commission, a substantial alteration to the Scheme, forthwith refer that amendment to the EPA by giving to the EPA —

- (a) written notice of that resolution; and
- (b) such written information about that amendment as is sufficient to enable the EPA to comply with section 48A of the EP Act in relation to that amendment.

*[Section 33E inserted by No. 23 of 1996 s. 31.]*

**33F. Prerequisite to submission of proposed amendments to Scheme to Minister for consent to public submissions being sought**

- (1) When the EPA has acted under section 48C(1)(a) of the EP Act in relation to a proposed amendment to the Scheme, the Commission shall, if it wishes to proceed with that amendment, undertake an environmental review of that amendment in accordance with the relevant instructions issued under that section and shall not submit that amendment to the Minister under section 33(2)(a) for his consent to public submissions being sought, or act in relation to that amendment under section 33A(2), as the case requires, until —
  - (a) the Commission has forwarded that review to the EPA; and
  - (b) the EPA has advised that that review has been undertaken in accordance with those instructions, or 30 days have elapsed since that forwarding without the EPA having advised whether or not that review has been undertaken in accordance with those instructions, whichever first occurs.

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- (2) If the EPA has advised that the review has not been undertaken in accordance with the relevant instructions issued under section 48C(1)(a) of the EP Act, the Commission may —
- (a) comply with subsection (1) in respect of the amendment concerned; or
  - (b) request the Minister to consult the Minister for the Environment and, if possible, agree with him on whether or not the review has been undertaken in accordance with those instructions.
- (3) If the Minister, having complied with a request under subsection (2), and the Minister for the Environment —
- (a) agree on whether or not the review has been undertaken in accordance with the relevant instructions, their decision shall be final and without appeal; or
  - (b) cannot so agree, section 48J of the EP Act applies.

*[Section 33F inserted by No. 23 of 1996 s. 31.]*

**33G. Role of Commission in relation to environmental submissions**

When the Commission has been informed under section 48A(1)(b)(i) of the EP Act that the proposed amendment to the Scheme should be assessed by the EPA under Division 3 of Part IV of the EP Act, the Commission shall —

- (a) as soon as practicable, but in any event within 7 days after the expiry of the period referred to in section 33(2)(d) or 33A(3), transmit to the EPA a copy of each submission —
    - (i) made to the Commission under section 33(2)(d) or to the Minister under section 33A(3); and
    - (ii) relating wholly or in part to environmental issues raised by the proposed amendment to the Scheme;
- and

- (b) within 42 days, or such longer period as the Minister allows, after the expiry of the period referred to in section 33(2)(d) or 33A(3), inform the EPA of its views on and response to the environmental issues raised by submissions referred to in paragraph (a) and received within that period.

*[Section 33G inserted by No. 23 of 1996 s. 31.]*

**33H. Prerequisite for final approval by Minister of proposed amendment to Scheme**

The Minister shall not approve under section 33(2)(a) or 33A(7)(a) a proposed amendment to the Scheme referred to the EPA under section 33E if he or she has reached agreement with the Minister for the Environment under section 48A(2)(b) of the EP Act, or until —

- (a) he is informed under section 48A(1)(a) of the EP Act that the EPA considers that that amendment should not be assessed by the EPA under Division 3 of Part IV of the EP Act;
- (b) he has received a statement under section 48F(2), or a decision has been made under section 48J, of the EP Act in respect of the conditions, if any, to which that amendment is subject; or
- (c) the period of 28 days referred to in section 48A(1)(b)(i) of the EP Act has expired without the EPA having informed the Commission under that section,

whichever first occurs, and he is satisfied that the conditions, if any, to which that amendment is subject have been incorporated into that amendment.

*[Section 33H inserted by No. 23 of 1996 s. 31.]*

## **Part IV — Local Government Town Planning Schemes**

*[Heading amended by No. 14 of 1996 s. 4.]*

### **34. No town planning schemes or local laws to be made unless consistent with Scheme**

If the Scheme is not disallowed by Parliament under the provisions of section 32 —

a town planning scheme made under the provisions of the Town Planning Act by the City of Perth or by any local government referred to in the First Schedule shall not be approved by the Minister to whom the administration of that Act is for the time being committed by the Governor; and

local laws which if made would affect or be likely to affect the Scheme shall not be made by the local government,

unless the provisions of the town planning scheme or local laws, as the case may be, are in accordance with and consistent with the Scheme.

*[Section 34 amended by No. 7 of 1965 s. 2; No. 80 of 1975 s. 6; No. 14 of 1996 s. 4.]*

### **35. Local governments to make town planning schemes consistent with Metropolitan Region Scheme**

(1) Subject to subsections (1a) and (1b), within a period of 3 years from the day the Scheme has the force of law as provided in section 32, the Council of the Municipality<sup>5</sup> of the City of Perth and each local government referred to in the First Schedule shall —

(a) where on the day the Scheme has the force of law no town planning scheme made under the provisions of the Town Planning Act is operating in its district, prepare and submit, under the provisions of that Act, to the

Minister to whom the administration of that Act is for the time being committed by the Governor, for approval, a town planning scheme for its district which is in accordance and consistent with the provision of the Scheme;

- (b) where on that day a town planning scheme is operating in its district, take such steps to amend the scheme so that it shall conform with the provisions of the Scheme.
- (1a) Where the Council or any local government referred to in subsection (1) makes application in writing to the Minister to have the period of 3 years, referred to in that subsection, extended, if the application is made at any time being more than one month before the expiration of that period, the Minister may extend the period, in so far as it applies to the applicant, as he thinks fit.
- (1b) Where the Minister extends the period pursuant to subsection (1a), subsection (1), so far as it applies to the applicant in respect of which the period is so extended, shall be read and applied as though the reference therein to 3 years, were a reference to the period as so extended.
- (2) Where a local government has not observed the provisions of subsection (1), the Minister may at any time by notice in writing direct the local government to so comply within a period specified in the notice and being not less than 6 months from the giving of the notice.
- (3) (a) If the local government fails to comply with the direction, the Minister on behalf of the local government may cause a town planning scheme to be prepared and submitted under the Town Planning Act to the Minister to whom the administration of that Act is so committed for approval and may take all or any of the steps necessary to have the scheme adopted by the local government.

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- (b) If the local government fails to adopt the scheme within 90 days of the delivery of the scheme to the local government by the Minister, the Minister to whom the administration of the last-mentioned Act is so committed may approve of the scheme and cause it to be published in the *Gazette* and thereupon the scheme has effect as if it were made, published and adopted by the local government and approved by that Minister under the Town Planning Act.
- (4) All costs, charges and expenses incurred by the Minister in the exercise of any of the powers conferred on him by subsection (3) may be recovered from the local government as a debt due to the Crown or may be deducted from any moneys payable by the Crown to the local government.

*[Section 35 amended by No. 7 of 1965 s. 3; No. 80 of 1975 s. 7; No. 14 of 1996 s. 4.]*

**35A. Effect of amendment of the Scheme on local government town planning scheme**

- (1) If for the time being the Scheme delineates land comprised in a town planning scheme under the Town Planning Act as a reserve for a public purpose the town planning scheme, in so far as it operates in relation to that land, is, by force of this section and without any further action under this Act or the Town Planning Act, amended to such extent (if any) as is necessary to give effect to the Scheme.
- (2) Where the Scheme is amended the local government of the district in which the land directly affected by the amendment is situate or the responsible authority in relation to the land under the Town Planning Act, as the case requires, shall —
- (a) not later than 3 months after the date on which the amendment to the Scheme has the force of law, resolve to prepare in relation to the land a town planning

scheme, or an amendment to an existing town planning scheme, which —

- (i) is in accordance with and consistent with the Scheme as so amended; and
- (ii) will not impede the implementation of the Scheme;

and

- (b) within such reasonable time after the passing of that resolution as is directed in writing by the Minister, forward to the Minister for approval the town planning scheme or amendment prepared by it.

(2aa) The operation of subsection (2) extends to an amendment to the Scheme which had the force of law before 1 March 1995 unless, in relation to that amendment, action of the kind required by that subsection was taken by the local authority or responsible authority concerned before 1 March 1995 or between 1 March 1995 and the coming into operation of section 32 of the *Planning Legislation Amendment Act 1996*<sup>1</sup>.

(2ab) For the purposes of subsection (2aa) the reference in subsection (2)(a) to the date on which the amendment to the Scheme has the force of law shall be read as a reference to the date of the coming into operation of section 32 of the *Planning Legislation Amendment Act 1996*<sup>1</sup>.

(2a) The Minister may require the local government to modify the town planning scheme or amendment to a scheme prepared under subsection (2) in such manner as he may specify in order to ensure that the town planning scheme or amendment —

- (a) is in accordance with and consistent with the Scheme as amended; and
- (b) will not impede the implementation of the Scheme.

(3) If the local government or the responsible authority, as the case requires, fails to comply with subsection (2) the Minister, on behalf of the local government, or the responsible authority, as

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the case may be, may cause a town planning scheme, or an amendment to an existing town planning scheme, to be prepared and submitted under the Town Planning Act to the Minister to whom the administration of that Act is committed for approval and may take all or any of the steps necessary to have the scheme adopted by the local government or the responsible authority and if, within a period of 60 days after the scheme or amendment is delivered to it by the Minister the local government or the responsible authority fails to adopt the scheme or amendment the Minister to whom the administration of the Town Planning Act is committed may approve of the scheme or amendment and cause it to be published in the *Gazette*.

- (4) A town planning scheme, or an amendment to an existing town planning scheme, as the case requires, published in the *Gazette* pursuant to subsection (3) takes effect from the date of such publication and has effect as if it were made, published and adopted by the local government or the responsible authority and approved under the Town Planning Act by the Minister to whom the administration of that Act is committed.
- (5) All costs, charges and expenses incurred by the Minister in the exercise of any powers conferred on him by subsections (3) and (4) may be recovered from the local government or the responsible authority, as the case requires, as a debt due to the Crown or may be deducted from any moneys payable by the Crown to the local government or the responsible authority.

*[Section 35A inserted by No. 115 of 1979 s. 14; amended by No. 84 of 1994 s. 9; No. 14 of 1996 s. 4; No. 23 of 1996 s. 32.]*

## Part IVA — Planning control areas

### 35B. Effect of Part IVA

- (1) This Part shall prevail over anything in —
  - (a) any other Part;
  - (b) any town planning scheme that has effect under section 7 of the Town Planning Act;
  - (c) the Scheme; or
  - (d) the Town Planning Act,to the extent of any inconsistency therewith.
- (2) Nothing in this Part affects —
  - (a) the continued use of any land in a planning control area for the purpose for which it was lawfully being used; or
  - (b) the continuation and completion of the development of any land in a planning control area, including the erection, construction, alteration or carrying out, as the case requires, of any building, excavation or other works on that land, which development was lawfully being carried out, immediately before the declaration of the planning control area.
- (3) The power in section 35C(1) shall not be exercised in respect of any land or waters in the management area of the Swan River Trust within the meaning of the *Swan River Trust Act 1988*.
- (4) This Part and the operation of any approval of development granted under this Part shall have effect subject to section 78 of the *Heritage of Western Australia Act 1990*.
- (5) A declaration under section 35C(1) that is in force immediately before the commencement of the *Acts Amendment (Swan River Trust) Act 1988*<sup>1</sup> ceases to have any force on that commencement in respect of any land or waters referred to in subsection (3).

[Section 35B inserted by No. 79 of 1981 s. 7; amended by No. 21 of 1988 s. 12; No. 97 of 1990 s. 26; No. 84 of 1994 s. 10.]

**s. 35C**

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**35C. Declaration of planning control areas**

- (1) If the Commission considers that any land situated in the metropolitan region may be required for one or more of the purposes specified in the Second Schedule, the Commission may by notice published in the *Gazette* and with the approval of the Minister declare that land to be a planning control area.
- (2) The Commission may by notice published in the *Gazette* and with the approval of the Minister amend or revoke a declaration made under subsection (1).
- (3) A declaration made under subsection (1) remains in force until —
  - (a) the expiry of such period, not exceeding 5 years from the date on which the notice by which that declaration was so made was published in the *Gazette*, as is specified in that notice; or
  - (b) revoked under subsection (2),whichever is the sooner.
- (4) Where any land is comprised within an area to which the Commission considers that this section should apply and is land to which the *Heritage of Western Australia Act 1990* applies, the Commission shall satisfy the Minister before seeking approval to the declaration of that land as a planning control area that full disclosure has been made to, and consultations concluded with, the Heritage Council as to the likely effect of the declaration as regards places to which that Act applies.
- (5) Where the Commission considers this section should apply to any land in the Swan Valley it shall, before seeking approval of the declaration —
  - (a) inform the Swan Valley Planning Committee and invite that Committee to make submissions on the matter within 42 days; and

- (b) provide the Minister with a copy of any submissions received from the Committee under paragraph (a).

*[Section 35C inserted by No. 79 of 1981 s. 7; amended by No. 92 of 1985 s. 23; No. 97 of 1990 s. 27; No. 31 of 1995 s. 27.]*

**35D. No development in planning control areas without prior approval**

A person shall not commence and carry out development in a planning control area except —

- (a) with the prior approval of that development obtained under section 35E; and
- (b) in a manner which is in conformity with the approval referred to in paragraph (a) and in accordance with the conditions, if any, subject to which that approval was given.

Penalty: \$2 000 and, in the case of a continuing offence, a further fine of \$200 for each day during which that offence continues.

*[Section 35D inserted by No. 79 of 1981 s. 7.]*

**35E. Applications for approval of development in planning control areas**

- (1) A person who wishes to commence and carry out development in a planning control area shall apply in the prescribed form to the local government in the district of which the planning control area is situated for approval of that development and submit to that local government such plans and other information as that local government may reasonably require.
- (2) The local government to which an application is made under subsection (1) shall, within 30 days of receiving the application, forward the application, together with its recommendation thereon, to the Commission for determination.

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- (3) After receiving an application and recommendation forwarded to it under subsection (2), the Commission may —
- (a) consult with any authority that in the circumstances it thinks appropriate; and
  - (b) having regard to —
    - (i) the purpose for which the land to which that application relates is zoned or reserved under the Scheme;
    - (ii) any special considerations relating to the nature of the planning control area concerned and of the development to which that application relates; and
    - (iii) the orderly and proper planning, and the amenities, of the locality in which the land to which that application relates is situated,
- approve, subject to such conditions as it thinks fit, or refuse to approve that application.
- (4) If the Commission approves an application forwarded to it under subsection (2) and the development concerned is carried out in a manner which is not in conformity with that approval, or any conditions subject to which that approval was given are not complied with, the Commission may revoke that approval, but this subsection does not prevent proceedings for an offence against section 35D in respect of that carrying out or non-compliance alleged to have been committed during the subsistence of that approval.
- (5) The Commission shall issue in the prescribed form to the applicant its decision on an application forwarded to it under subsection (2).
- (6) If the Commission has not within 60 days of receiving an application forwarded to it under subsection (2) issued its decision on that application to the applicant, that application shall be deemed to have been refused.

*[Section 35E inserted by No. 79 of 1981 s. 7; amended by  
No. 92 of 1985 s. 23; No. 14 of 1996 s. 4.]*

**35F. Appeals**

- (1) An applicant whose application has under section 35E been —
- (a) approved subject to conditions which are unacceptable to him; or
  - (b) refused,

may, except when that approval or refusal —

- (c) is in accordance with an operative town planning scheme or with the Scheme; or
- (d) relates to land which is reserved under the Scheme for a public purpose,

apply to the State Administrative Tribunal for a review, in accordance with Part V of the Town Planning Act, of that approval or refusal.

- (2) An application under subsection (1) for a review in relation to any condition which is imposed in consequence of advice furnished by the Heritage Council or by the operation of section 78 of the *Heritage of Western Australia Act 1990* shall be referred to the Heritage Council for advice, and section 61(2) of the Town Planning Act applies in relation to the application referred.

*[Section 35F inserted by No. 79 of 1981 s. 7; amended by  
No. 97 of 1990 s. 28; No. 24 of 2002 s. 26(5); No. 55 of 2004  
s. 749.]*

## **Part V — Compensation, betterment, acquisition**

### **36. Application of sections 11 and 12 of Town Planning Act to Scheme**

- (1) For the purposes of applying the provisions of sections 11 and 12 of the Town Planning Act to the provisions of the Scheme, the former provisions shall be read and construed as if —
  - (a) the Commission were the “responsible authority or local government” wherever referred to in the sections; and
  - (b) the passage, “varied, amplified or revoked by the Commission” were substituted for the passage, “altered or revoked by an order of the Minister under this Act” in section 11(3); and
  - (c) those provisions included subsections (3), (3a), (4), (5) and (6).
- (2)
  - (a) The Scheme may provide that where compensation for injurious affection is claimed as a result of the operation of the provisions of section 12(2a)(b)(i) or (ii) of the Town Planning Act the Commission may at its option elect to acquire the land so affected instead of paying compensation.
  - (b) The Commission shall, within 3 months of the claim for injurious affection being made, or where such a claim is made before the date of the coming into operation of the *Metropolitan Region Town Planning Scheme Act Amendment Act 1968*<sup>1</sup>, within 3 months of that date, by notice in writing given to the claimant, either elect to acquire the land or advise that it does not intend to acquire the land.
- (2a) Where the Commission elects to acquire the land as provided in subsection (2), if the Commission and the owner of the land are unable to agree as to the price to be paid for the land by the Commission, the price at which the land may be acquired by the

Commission shall be the value of the land as determined in accordance with subsection (2b).

- (2b) The value of the land referred to in subsection (2a) shall be the value thereof on the date the Commission elects to acquire the land under that subsection, and that value shall be determined —
- (a) by arbitration in accordance with the *Commercial Arbitration Act 1985*; or
  - (b) by the State Administrative Tribunal on the owner of the land applying to it for a determination of that value;  
or
  - (c) by some other method agreed upon by the Commission and the owner of the land,

and that value shall be determined without regard to any increase or decrease, if any, in value attributable wholly or in part to the Scheme.

- (3) Subject to subsection (4), where under the Scheme any land has been reserved for a public purpose, no compensation is payable by the responsible authority for injurious affection to that land alleged to be due to or arising out of such reservation until —
- (a) the land is first sold following the date of the reservation; or
  - (b) the responsible authority refuses an application made under the Scheme for permission to carry out development on the land or grants permission to carry out development on the land subject to conditions that are unacceptable to the applicant.
- (3a) Compensation for injurious affection to any land is payable only once under subsection (3) and is so payable —
- (a) under paragraph (a) of that subsection to the person who was the owner of the land at the date of reservation; or
  - (b) under paragraph (b) of that subsection to the person who was the owner of the land at the date of application,

referred to in that paragraph, unless after the payment of that compensation further injurious affection to the land results from —

- (c) an alteration of the existing reservation thereof; or
  - (d) the imposition of another reservation thereon.
- (4) Before compensation is payable under subsection (3) —
- (a) where the land is sold, the person lawfully appointed to determine the amount of the compensation shall be satisfied —
    - (i) that the owner of the land has sold the land at a lesser price than he might reasonably have expected to receive had there been no reservation of the land under the Scheme;
    - (ii) that the owner before selling the land gave notice in writing to the responsible authority of his intention to sell the land; and
    - (iii) that the owner sold the land in good faith and took reasonable steps to obtain a fair and reasonable price for the land;
  - or
  - (b) where the responsible authority refuses an application made under the Scheme for permission to carry out development on the land or grants permission to carry out development on the land subject to conditions that are unacceptable to the applicant, the person lawfully appointed to determine the amount of compensation shall be satisfied that the application was made in good faith.
- (5) A claim for compensation under subsection (3) shall be made at any time within 6 months after the land is sold or the application for permission to carry out development on the land is refused or the permission is granted subject to conditions that are unacceptable to the applicant.

- (6) (a) Subject to this section, the compensation payable for injurious affection due to or arising out of the land being reserved under the Scheme for a public purpose, where no part of the land is purchased or acquired by the Commission, shall not exceed the difference between —
- (i) the value of the land as so affected by the existence of such reservation; and
  - (ii) the value of the land as not so affected.
- (b) The value referred to in paragraph (a)(i) and (ii) shall be assessed as at the date the land is sold as referred to in subsection (3)(a) or the date on which the application for permission to carry out development on the land is refused or the permission is granted subject to conditions that are unacceptable to the applicant.
- (7) Where compensation for injurious affection to any land has been paid under subsection (3), the Commission may lodge with the Registrar of Titles a caveat against the land specifying —
- (a) the date of payment of compensation;
  - (b) the amount of compensation so paid; and
  - (c) the proportion (expressed as a percentage), which the compensation bears to the unaffected value of the land (as assessed under subsection (6)(b)).
- (8) On receipt of the caveat from the Commission, the Registrar of Titles shall enter it in the Register within the meaning of the *Transfer of Land Act 1893*.
- (9) Where —
- (a) compensation for injurious affection to land (the “**original compensation**”) has been paid to an owner of the land in the circumstances set out in subsection (3); and
  - (b) as a result of the Scheme being amended or revoked the reservation of the land for a public purpose is revoked or

the area of the land the subject of the reservation is reduced,

the Commission is entitled to recover from the owner of the land at the date of the revocation or reduction of the reservation an amount (“**the refund**”) which is determined by calculating the relevant proportion (as determined under subsections (12) to (15)) of the value of the land as at the date on which the refund becomes payable under subsection (10).

- (10) The refund is not payable by the owner of the land until the land is first sold or subdivided following the date of the revocation or reduction referred to in subsection (9)(b) unless otherwise agreed by the owner and the Commission.
- (11) If the land is owned by 2 or more people they are jointly and severally liable to pay the refund.
- (12) Where the reservation has been revoked the relevant proportion for the purposes of subsection (9) is the same as the proportion referred to in subsection (7)(c) in relation to the original compensation.
- (13) Where the area of the reservation has been reduced the relevant proportion for the purposes of subsection (9) shall be determined as follows —
  - (a) a notional amount of compensation is determined under subsections (3) and (6) as if —
    - (i) the reservation had never occurred;
    - (ii) a reservation of the reduced area had occurred when the reduction occurred; and
    - (iii) the land were being sold;
  - (b) the proportion (expressed as a percentage) which that notional amount of compensation bears to the current value of the land (unaffected by the existence of the reservation) is calculated; and

- (c) the relevant proportion is then determined by deducting the proportion calculated under paragraph (b) from the proportion referred to in subsection (7)(c) in relation to the original compensation.

Example:

Original compensation proportion	25%
less	
Notional compensation proportion	<u>15%</u>
Relevant proportion =	10%

- (14) Despite subsection (12), where the reservation is revoked after an amount has been recovered under subsection (10) in respect of a previous reduction of the reservation, the relevant proportion is the same as the notional compensation proportion calculated under subsection (13)(a) and (b) in respect of the previous reduction.
- (15) Despite subsection (13), where the reservation is reduced after an amount has been recovered under subsection (10) in respect of a previous reduction of the reservation, the relevant proportion shall be determined as follows —
- (a) a notional compensation proportion is calculated under subsection (13)(a) and (b) in respect of the subsequent reduction; and
- (b) the relevant proportion is then determined by deducting the proportion referred to in paragraph (a) from the notional compensation proportion calculated under subsection (13)(a) and (b) in respect of the previous reduction.

Example:

Notional compensation proportion calculated under subsection (13)(a) and (b) on previous reduction	15%
less	
Notional compensation	

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proportion calculated  
under subsection (13)(a)  
and (b) on subsequent  
reduction 8%  
Relevant proportion  
on subsequent  
reduction = 7%

- (16) For the purposes of subsections (9) and (13)(b) the value of the land shall be determined by one of the methods set out in subsection (2b)(a), (b) or (c), but that value is to be determined without regard to any increase in value attributable to factors unrelated to the reservation or to its revocation or reduction.
- (17) When the Commission has an entitlement to recover an amount under subsection (9) it has an interest in the land and may lodge with the Registrar of Titles a caveat against the land giving notice of the existence of that interest, and may withdraw any caveat so lodged.
- (18) On receipt of the caveat from the Commission, the Registrar of Titles shall enter it in the Register Book.
- (19) Before selling or subdividing land against which a caveat is lodged under subsection (17), the owner of the land shall give notice in writing to the Commission, in accordance with the regulations, of the owner's intention to sell or subdivide the land.
- (20) Where a caveat is lodged under subsection (17) the Registrar shall not register a transfer of the land without the consent of the Commission.
- (21) Subsection (9) has effect whether the reservation of the land occurred before the commencement of the amending section or occurs after that commencement.
- (22) Where the reservation of the land occurred before the commencement of the amending section, subsection (9) does not have effect if —

- (a) the revocation or reduction of the reservation occurred before 1 July 1988; or
- (b) the sale or subdivision referred to in subsection (10) occurred before the commencement of the amending section,

but otherwise has effect whether the revocation or reduction occurred before the commencement of the amending section or occurs after that commencement.

- (23) In subsections (21) and (22) “**amending section**” means section 11 of the *Planning Legislation Amendment Act (No. 2) 1994*.

*[Section 36 amended by No. 44 of 1962 s. 5; No. 29 of 1963 s. 2; No. 62 of 1968 s. 3; No. 104 of 1969 s. 2; No. 92 of 1985 s. 23; No. 109 of 1985 s. 3; No. 6 of 1986 s. 9; No. 84 of 1994 s. 11; No. 14 of 1996 s. 4; No. 81 of 1996 s. 153(1); No. 55 of 2004 s. 750.]*

**36A. Compensation in relation to planning control areas**

- (1) Compensation is payable in respect of land injuriously affected by the declaration, or by the amendment of the declaration, of a planning control area, and land so affected may be acquired by the Commission, in the same circumstances and to the same extent as if the land in the planning control area, instead of being in a planning control area, had been reserved under the Scheme for a public purpose.
- (2) Section 36 applies to compensation payable under this section as if a reference in that section to compensation for injurious affection to any land were a reference to compensation under this section for injurious affection as a result of the declaration, or the amendment to the declaration, of a planning control area under section 35C.

*[Section 36A inserted by No. 79 of 1981 s. 10; amended by No. 92 of 1985 s. 23; No. 84 of 1994 s. 12.]*

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**36AA. Effect of payment of compensation**

Where compensation has been paid under section 36 or 36A in relation to a matter no further compensation shall be payable under any other provision of this Act as a result of the same matter.

*[Section 36AA inserted by No. 84 of 1994 s. 13.]*

**36B. Board of Valuers**

- (1) A Board of Valuers (in this section and in succeeding sections called “**the Board**”) is established.
- (2) The Board shall consist of 4 members, including the Chairman, appointed by the Governor, each to hold office for 2 years and to be eligible for reappointment.
- (3) Each of the persons appointed to the Board shall be an Associate or a Fellow of the Australian Property Institute, an association incorporated under the laws of South Australia, and, of those persons —
  - (a) one, who shall be Chairman, shall be nominated by the Commission; and
  - (b) 3 shall be nominated by the body known as The Real Estate Institute of Western Australia, incorporated pursuant to the *Associations Incorporation Act 1895*<sup>6</sup>.
- (4) The Board is constituted by the Chairman and any 2 members and may meet notwithstanding there being a vacancy on the Board.
- (5) A vacancy on the Board occurs where a member dies, resigns or is removed by the Governor on the ground of his inefficiency, incapacity or misconduct.
- (6) The members of the Board are entitled to such fees and expenses, in respect of attendances at meetings of, or while engaged in the business of, the Board, as the Governor may from time to time determine.

- (6a) In determining under subsection (6) any fees to which the members of the Board are entitled while engaged in the business of the Board, the Governor may adopt —
- (a) wholly or in part; and
  - (b) with or without alteration,
- all or any of the maximum amounts of remuneration fixed under section 25 of the *Land Valuers Licensing Act 1978* for the various kinds of services rendered by licensed valuers and those maximum amounts of remuneration, if so adopted, shall be deemed to be fees determined under that subsection as fees to which the members of the Board are entitled while engaged in the business of the Board.
- (6b) An adoption made under subsection (6a) may be made by reference to the citation of the relevant notice published in the *Gazette* under section 25 of the *Land Valuers Licensing Act 1978* and to any provisions of that notice, and it shall not be necessary to set out in the relevant determination made under subsection (6) the full text of that notice or of any provision thereof.
- (7) Judicial notice shall be taken of the signature of the Chairman subscribed to any finding of the Board.

*[Section 36B inserted as section 36A by No. 84 of 1966 s. 4; renumbered as section 36B by No. 79 of 1981 s. 8; amended by No. 92 of 1985 s. 23; No. 6 of 1986 s. 10; No. 74 of 2003 s. 81.]*

### **36C. Valuations by the Board**

- (1) The owner of land that is subjected to injurious affection due to, or arising out of, the land being reserved under the Scheme for a public purpose who gives notice of his intention to sell the land and claim compensation shall, unless the Commission waives the requirement apply to the Board, in the prescribed manner, for a valuation of the land as not so affected and the Board shall thereupon make such a valuation.

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- (2) Subject to subsection (3a), a valuation made by the Board pursuant to subsection (1) shall be communicated to the applicant and to the Commission and, for the purposes of section 36, a valuation so made is final.
- (3) Upon receipt of a valuation made by the Board under this section, the Commission shall advise the owner of the subject land of the minimum price at which the land may be sold without affecting the amount of compensation (if any) payable to him under section 36.
- (3a) Where any land with respect to which a valuation has been made under this section is not sold within a period of one year from the making of the valuation, the Board may, at the request of the owner of the land, if in the circumstances of the case it thinks it just to do, review the valuation and either confirm the valuation or vary it.
- (3b) Where the Board reviews a valuation pursuant to subsection (3a), it shall notify the owner of the land and the Commission accordingly and thereupon subsection (3), with such modification as circumstances require, applies to the valuation as reviewed by the Board.
- (4) The Governor may make regulations prescribing procedures for, and the fees payable on, applications to the Board and those regulations may make provision for the applicant to be heard and for his submissions to be supported by statutory declarations made under, and by virtue of, section 106 of the *Evidence Act 1906*.
- (5) In making under subsection (4) any regulations prescribing the fees payable on applications to the Board, the Governor may adopt —
  - (a) wholly or in part; and
  - (b) with or without alteration,

all or any of the maximum amounts of remuneration fixed under section 25 of the *Land Valuers Licensing Act 1978* for the various kinds of services rendered by licensed valuers and those maximum amounts of remuneration, if so adopted, shall be deemed to be fees prescribed by regulations made under that subsection as fees payable on applications to the Board.

- (6) An adoption made under subsection (5) may be made by reference to the citation of the relevant notice published in the *Gazette* under section 25 of the *Land Valuers Licensing Act 1978* and to any provisions of that notice, and it shall not be necessary to set out in the relevant regulations made under subsection (4) the full text of that notice or of any provision thereof.

*[Section 36C inserted as section 36B by No. 84 of 1966 s. 5; amended by No. 62 of 1968 s. 4; renumbered as section 36C by No. 79 of 1981 s. 9; amended by No. 92 of 1985 s. 23; No. 6 of 1986 s. 11.]*

**37. Commission is responsible authority**

- (1) For the purposes of this Act and the Town Planning Act in relation to a Scheme, the Commission shall be deemed to be the responsible authority and has all the powers, rights, duties and authority conferred or imposed on a responsible authority.
- (2) Any purchase moneys or rents or profits or other money received by the Commission from land acquired by it or arising out of the use or occupation of the land by the Commission shall be credited to the Fund.
- (3) If before the Scheme, or an amendment to the Scheme, has the force of law the Commission is satisfied that any land is or is likely to be comprised in the Scheme, it may purchase the land.
- (4) After the Commission is appointed to administer and carry out any order as provided in section 25, it becomes the public authority responsible for the payment of compensation or the cost of purchasing any land under the provisions of section 7A(12)(b) of the Town Planning Act.

- (5) (a) Notwithstanding anything contained in Part 10 of the *Land Administration Act 1997*, the value of any land or improvements thereon which is compulsorily acquired by the Commission under this section or section 13 of the Town Planning Act shall for the purpose of assessing the amount of compensation to be paid for the land and improvements, be assessed without regard to any increase or decrease in value attributed wholly or in part to any of the provisions contained in, or to the operation or effect of, the Scheme and having regard to values current at the time of acquisition but in assessing the amount of compensation regard shall be had to any amounts of compensation already paid or payable in respect of the land under section 36.
- (b) Where compensation has been paid, or is payable, in respect of land pursuant to section 36, then, subject to the succeeding provisions of this subsection, there shall be deducted from the compensation assessed pursuant to paragraph (a) an amount that bears the same ratio to the compensation so assessed as the compensation paid or payable pursuant to that section bears to the unaffected value of the land, as determined under this Act.
- (c) In assessing the amount to be deducted from compensation under the provisions of paragraph (b), the person lawfully appointed to determine the amount of compensation shall have regard to —
- (i) any improvements or demolitions lawfully made to or on the land, subsequently to the determination of the unaffected value of the land; and
  - (ii) to the earlier termination of the tenure of the land, where the compensation might otherwise have been affected by an assurance given by the Commission, and which the Commission is authorised by this subparagraph to give, that the tenure was to be of a greater period.

- (6) (a) The Commission shall hold for the purposes of the Scheme any land acquired by it under this Act or the Town Planning Act, including land purchased under section 36A or subsection (3), and may, subject to paragraphs (b) and (c), dispose of or alienate that land —
- (i) for or in furtherance of the provisions or likely provisions of the Scheme; or
  - (ii) if that land is no longer required by the Commission.
- (b) Subject to paragraph (c), the Commission shall not except with the consent of the Governor dispose of or alienate any land compulsorily acquired by it other than for or in furtherance of the provisions or likely provisions of the Scheme.
- (c) In exercising a power to dispose of or alienate land conferred by this subsection, the Commission shall have regard to the general principle that in such cases land acquired by the Commission should, if in the opinion of the Minister it is practicable and appropriate to do so, be first offered for sale at a reasonable price determined by the Minister to the person from whom that land was so acquired.
- (7) (a) Where any land held, taken, resumed or otherwise acquired under any Act, for any public work, is in the opinion of the Governor not required for that work and is required for the purposes or likely purposes of the Scheme, the Governor notwithstanding the provisions of Division 5 of Part 9 of the *Land Administration Act 1997*, may declare by notice published in the *Gazette*, that the land shall be held and may be used for the purposes of the Scheme.
- (b) From the date of the publication of the notice the land described therein, by force of this subsection, vests in the Commission for the purposes of the Scheme.

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*[Section 37 amended by No. 29 of 1963 s. 3; No. 95 of 1965 s. 2; No. 84 of 1966 s. 6; No. 115 of 1979 s. 15; No. 79 of 1981 s. 11; No. 92 of 1985 s. 23; No. 49 of 1996 s. 64; No. 31 of 1997 s. 70(1) and (2) and 142.]*

**37A. Power of Commission to acquire certain land**

- (1) Where the Commission certifies in writing to the Minister that for the purpose of advancing the planning, development and use of any land within the metropolitan region —
- (a) the land should be dealt with in all or any of the following ways, namely — planned, replanned, designed, redesigned, consolidated, resubdivided, cleared, developed, reconstructed or rehabilitated; or
  - (b) provision should be made for the land to be used for such residential, commercial, industrial, public, recreational, institutional, religious, charitable or other uses, buildings, works, improvements or facilities, or spaces therefor, as may be appropriate or necessary,

and recommends to the Minister that the land should be so dealt with or used for that purpose and made the subject of an improvement plan (a copy of which shall accompany the recommendation together with such supporting maps and texts as the Minister may require) the Minister shall, if he accepts the recommendation of the Commission, forward the recommendation as soon as practicable after such acceptance to the Governor.

- (2) If the Governor accepts the recommendation of the Commission, the Commission may while the Scheme has the force of law as provided in this Act, purchase or otherwise acquire any land included in the improvement plan by agreement with the owner thereof or in default of such agreement, the Commission may acquire the land compulsorily under and subject to Part 9 of the *Land Administration Act 1997*, as modified by this section.

- (2a) The Commission may —
- (a) amend an improvement plan by notice of amendment; or
  - (b) revoke an improvement plan by a notice of revocation,
- and subsection (1) applies to a notice of amendment or revocation under paragraph (a) or (b) as if it were an improvement plan.
- (3) Subject to this section, the provisions of Parts 9 and 10 of the *Land Administration Act 1997*, apply to the taking of any land compulsorily under this section, with such modifications as circumstances require and in so applying those provisions any reference to the Minister administering that Act shall be read as a reference to the Minister for Town Planning<sup>2</sup>.
- (4) For the purpose of advancing the development of land in the metropolitan region in accordance with an improvement plan referred to in subsection (1) the Commission with the approval of the Governor, may —
- (a) construct, repair, rehabilitate or improve buildings, works, improvements or facilities on land acquired or held by it under this Act;
  - (b) return, sell, lease, exchange or otherwise dispose of any buildings, works, improvements or facilities and the land appurtenant thereto and any land howsoever acquired by the Commission under this Act, to any person, or public authority upon such terms and conditions as the Commission with the approval of the Governor thinks fit; and particulars of any return, sale, lease, exchange or disposal to any person shall within one month of the Governor's approval be notified by the Commission in the *Government Gazette*;
  - (c) in respect of the land included in an improvement plan but not acquired or held by it under this Act, enter into an agreement with any owner of the land relating to —
    - (i) the planning, replanning, design, redesign, consolidation, resubdivision, clearing,

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- development, reconstruction or rehabilitation of the land;
- (ii) the construction, repair, rehabilitation or improvement of any buildings, works, services, improvements or facilities on the land;
  - (iii) the sale, purchase, exchange, surrender, vesting, allocation or other disposal of the land, the adjustment or alteration of the boundaries of the land, the pooling of the lands of several owners, the adjustment of rights between owners of the land or other persons interested in the land whether by payments of money or transfers or exchanges of land or otherwise, the valuation of the land and the provision of land for any public open space, public work as defined by the *Public Works Act 1902* or any other public purpose;
  - (iv) the payment, satisfaction or recovery of costs incurred in implementing the agreement; and
  - (v) such other acts, matters or things as are or may be necessary to give effect to the improvement plan;
- (d) do any act, matter or thing for the purpose of carrying out any agreement entered into pursuant to paragraph (c).
- (4a) The validity of any agreement entered into by the Authority before the date of the coming into operation of the *Metropolitan Region Town Planning Scheme Act Amendment Act 1975*<sup>1</sup>, pursuant to this section as in force before that date or of any act, matter or thing done pursuant to such an agreement shall not be challenged or called in question in any court by reason only that this section did not at the time that the agreement was entered into confer power on the Authority to enter into such an agreement.

- (5) Nothing in this section shall be construed as taking away or in any way derogating from or diminishing any power otherwise conferred by this or any other Act upon the Commission or any other authority or body or person.

*[Section 37A inserted by No. 95 of 1965 s. 3; amended by No. 84 of 1966 s. 7; No. 7 of 1970 s. 2; No. 80 of 1975 s. 8; No. 92 of 1985 s. 23; No. 84 of 1994 s. 14; No. 31 of 1997 s. 70(3) and 142.]*

## **Part VI — Finance**

### **38. The Metropolitan Region Improvement Fund**

- (1)
  - (a) For the purpose of making, carrying out and giving effect to the Scheme, a fund called The Metropolitan Region Improvement Fund is established at the Treasury forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*.
  - (b) The Commission shall control the Fund and the Fund may be operated upon for the purpose in such manner as from time to time the Treasurer approves and is hereby authorised to approve.
- (2) The Commission shall credit or cause to be credited to the Fund —
  - (a) moneys appropriated to the Metropolitan Region Improvement Fund under section 41AA(2);
  - (b) money borrowed by the Commission for the purpose of the performance of any function referred to in section 18(1)(e) of the *Western Australian Planning Commission Act 1985*; and
  - (c) any other payments made to the Commission in connection with the performance of any such function.
- (3) The Commission is authorised to apply money represented in the Fund to payment of all expenditure incurred by it for the purpose of formulating, promulgating, carrying out and giving effect to the Scheme, including without limiting the generality of that authorisation —
  - (a) payment of capital expenditure, costs and other expenses incurred by the Commission in and in connection with, the acquisition, whether by agreement or compulsorily, of any property under any provisions of this Act; and

- (b) all expenses incurred by the Commission in or in connection with the Scheme or an order or the establishment and maintenance of any works in connection with the Scheme or order or the development, maintenance and management of any land held by the Commission that is reserved under the Scheme or the carrying out of any works, including the provision of facilities thereon, incidental to such development, maintenance and management or conducive to the use of such land for any purpose for which it is reserved.
- (4) The Commission is also authorised to apply money standing to the credit of the Fund to payment of expenditure required for the purpose of carrying out the *East Perth Redevelopment Act 1991*, the *Subiaco Redevelopment Act 1994*, the *Midland Redevelopment Act 1999*, the *Hope Valley-Wattleup Redevelopment Act 2000* or the *Armadale Redevelopment Act 2001*.

*[Section 38 amended by No. 95 of 1965 s. 4; No. 115 of 1979 s. 16; No. 73 of 1982 s. 11; No. 92 of 1985 s. 19 and 23; No. 98 of 1985 s. 3 (as amended by No. 4 of 1986 s. 3); No. 62 of 1991 s. 59; No. 6 of 1993 s. 5; No. 35 of 1994 s. 67; No. 84 of 1994 s. 43 and 46; No. 49 of 1996 s. 64; No. 38 of 1999 s. 74(3); No. 77 of 2000 s. 38(3); No. 25 of 2001 s. 69.]*

*[39, 40. Repealed by No. 92 of 1985 s. 20.]*

## **Part VII — Administration, penalties**

### **41. Owners' liability to pay Metropolitan Region Improvement Tax**

- (1) Subject to the provisions of subsection (2), every person who, at midnight on 30 June 1959, and at that time in each year thereafter, is the owner of land situate within the metropolitan region shall in accordance with the provisions of this Act pay Metropolitan Region Improvement Tax on the land which is hereby chargeable with the tax imposed by and at the rate imposed by section 2 of the *Metropolitan Region Improvement Tax Act 1959*, for the then current financial year.
- (1a) An owner of land situate within the metropolitan region is also liable to pay Metropolitan Region Improvement Tax in accordance with sections 14 and 15 of the *Land Tax Assessment Act 2002* and, for that purpose, the said section shall apply as if references therein to land tax and the *Land Tax Act 2002* were respectively references to Metropolitan Region Improvement Tax and the *Metropolitan Region Improvement Tax Act 1959*.
- (2) For the purposes of this Act the provisions of the *Land Tax Assessment Act 2002* and the *Taxation Administration Act 2003*, relating to land tax and land so far as they can be made applicable with all necessary modifications or adaptations apply to the Metropolitan Region Improvement Tax and land situate within the metropolitan region.
- [(3) repealed]*
- (4) Notwithstanding anything contained in any other law, the amount of the tax which the Commissioner of State Revenue shall treat as having come into his possession under this Act in each financial year commencing with the financial year that commenced on 1 July 1959, shall be the amount of the tax which becomes payable in that financial year.

*[Section 41 amended by No. 21 of 1970 s. 21; No. 8 of 1976 s. 3; No. 30 of 1980 s. 2; No. 45 of 2002 s. 17.]*

**41AA. How tax collections are dealt with**

- (1) The proceeds of the Metropolitan Region Improvement Tax referred to in section 41 shall be credited to the Consolidated Fund.
- (2) An amount equal to the amount credited to the Consolidated Fund under subsection (1) shall be credited to the Metropolitan Region Improvement Fund and charged to the Consolidated Fund, and this subsection appropriates the Consolidated Fund accordingly.

*[Section 41AA inserted by No. 6 of 1993 s. 5.]*

**41A. Land of Commission not subject to rates etc.**

No rate, tax, or assessment shall be imposed, levied, charged or made upon any land acquired by the Commission under and for the purposes of this Act while the Commission is the owner of the land, but if any such land is leased by the Commission, the Commission shall pay in respect thereof out of the rent received therefrom by the Commission, the whole or such portion of the amount of any rate, tax, or assessment that would but for this section have been imposed, levied, charged or made on the land so leased, as the Commission certifies in writing to be available for the purpose.

*[Section 41A inserted by No. 69 of 1968 s. 3; amended by No. 92 of 1985 s. 23.]*

**42. Offences and penalties**

A person who —

- (a) after the Scheme has the force of law commences or continues to carry out any development in any part of the metropolitan region the subject of the Scheme otherwise than in accordance with the provisions of the Scheme or commences or continues to carry out any

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such development otherwise than in accordance with any condition imposed by the Commission or a local government pursuant to this Act with respect to the development or otherwise fails to comply with any such condition; or

(b) at any time contravenes the provisions of this Act, commits an offence.

Penalty: \$50 000 and in the case of a continuing offence, a further fine of \$5 000 for each day during which the offence continues.

*[Section 42 amended by No. 113 of 1965 s. 8; No. 115 of 1979 s. 16; No. 92 of 1985 s. 23; No. 84 of 1994 s. 15; No. 14 of 1996 s. 4.]*

**43. Power to Commission to direct removal, etc. of development contrary to Scheme**

- (1) The Commission or a local government exercising the powers of the Commission, may by notice in writing served on the owner of any land situate in the metropolitan region direct him within such period, being not less than 40 days after the service of the notice, as is specified in the notice, to remove, pull down, take up, or alter any building or work or cease any development commenced, continued or carried out on the land in contravention of the Scheme.
- (2) The Commission may by notice in writing served on the owner of any land situated in a planning control area direct him within such period, being not less than 40 days after the service of that notice, as is specified in that notice to cease any development carried out on that land in contravention of section 35D.
- (3) An owner on whom a notice is served under subsection (1) or (2) may apply to the State Administrative Tribunal for a review in accordance with Part V of the Town Planning Act of any direction contained in the notice.

- (3a) If the State Administrative Tribunal confirms or varies the direction, the it may, by notice in writing served on the owner, direct the owner to comply with the direction as so confirmed or varied, within a period of not less than 40 days after the service of the notice, as is specified in the notice.

*[(4) repealed]*

- (5) Where —

- (a) a notice is served pursuant to subsection (1) on an owner of any land directing him to carry out such work as is specified therein and the owner fails to —

- (i) carry out the directions within the time specified in the notice; or  
(ii) apply under subsection (3) for a review of any of the directions;

or

- (b) on an application by an owner of any land for a review of a direction specified in a notice served on the owner under subsection (1), the direction is confirmed or varied and the owner fails to carry out the direction as confirmed or varied within the time specified by the State Administrative Tribunal in the notice given under subsection (3a),

the Commission or local government, as the case requires, may itself remove, pull down, take up or alter the building, work or development accordingly and may recover the costs incurred by it in carrying out such work in any court of competent jurisdiction.

*[Section 43 amended by No. 115 of 1979 s. 18; No. 79 of 1981 s. 12; No. 92 of 1985 s. 23; No. 73 of 1994 s. 4; No. 14 of 1996 s. 4; No. 24 of 2002 s. 26(6)-(8); No. 55 of 2004 s. 751.]*

#### **43A. Injunction**

- (1) Without prejudice to any proceedings for an offence against this Act, where —

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- (a) a person contravenes a provision of this Act or the Scheme; or
- (b) the Commission or a local government exercising the powers delegated to it by the Commission grants any application for approval to commence or carry out development subject to conditions and the development is commenced, continued or completed contrary to or otherwise than in accordance with any condition imposed with respect to the development by the Commission or the local government pursuant to this Act,

the Supreme Court may, on application by the Commission or the local government, as the case requires, grant an injunction —

- (c) where the application is with respect to a contravention of the Act or the Scheme, restraining the person from engaging in any conduct or doing any act, that constitutes or is likely to constitute a contravention of this Act or the Scheme; or
- (d) where the application is with respect to the commencement, continuation or completion of a development contrary to or otherwise than in accordance with any condition imposed by the Commission or the local government with respect to the development —
  - (i) in the case where the development is commenced but not completed, restraining the continuation or completion of the development or any use thereof;
  - (ii) in the case where the development is completed, restraining the use of the development,until the condition is complied with.

- (2) An injunction granted under subsection (1) —

- (a) shall have effect for such period specified therein or until further order of the Court;
- (b) may be varied or rescinded by the Court.

*[Section 43A inserted by No. 115 of 1979 s. 19; amended by No. 79 of 1981 s. 13; No. 92 of 1985 s. 21; No. 84 of 1994 s. 43; No. 14 of 1996 s. 4.]*

**43B. Powers of Minister to ensure that environmental conditions are met**

- (1) In this section —

**“assessed scheme”** means an amendment to the Scheme that is an assessed scheme within the meaning of the EP Act;

**“environmental condition”** means a condition agreed under section 48F of the EP Act or decided under section 48J of the EP Act.

- (2) After receiving advice from the Minister for the Environment under section 48H(4) of the EP Act the Minister may exercise one or more of the powers set out in subsection (3) in relation to a development implementing an assessed scheme.
- (3) For the purposes of subsection (2) the Minister may —
- (a) by order in writing served on the person who is undertaking the development, direct the person to stop doing so for such period, beginning immediately and lasting not more than 24 hours, as is specified in the order;
  - (b) cause the Commission, or a local authority exercising the powers of the Commission, to serve a notice on the person who is undertaking the development directing the person to take such steps as are specified in the notice, within such period as is so specified, for the purpose of —
    - (i) complying with; or
    - (ii) preventing any non-compliance with, the environmental condition to which the Minister for the Environment’s advice relates; or

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- (c) advise the Commission, or a local authority exercising the powers of the Commission, to cause such steps to be taken as are necessary for the purpose of —
  - (i) complying with; or
  - (ii) preventing any non-compliance with, the environmental condition to which the Minister for the Environment's advice relates.
- (4) A person shall comply with an order or notice served on the person under subsection (3)(a) or (b).
- (5) Nothing in this section prevents or otherwise affects the application of Part V of the EP Act to —
  - (a) a development referred to in subsection (2); or
  - (b) pollution or environmental harm caused by any non-compliance with an environmental condition referred to in subsection (3).

*[Section 43B inserted by No. 23 of 1996 s. 33; amended by No. 54 of 2003 s. 68(5).]*

**44. Power of Governor to make regulations**

The Governor may make regulations prescribing forms, fees and matters which by this Act are contemplated, required or permitted to be prescribed or which appear to him necessary, convenient or desirable to be prescribed for the purpose of effectually carrying out the provisions of this Act and the regulations may impose a penalty not exceeding \$50 000 for a breach of any of the regulations.

*[Section 44 amended by No. 115 of 1979 s. 20; No. 84 of 1994 s. 16.]*

**45. Crown bound**

The Scheme binds the Crown.

*[Section 45 inserted by No. 115 of 1979 s. 2.]*

[46. *Repealed by No. 39 of 1960 s. 2.*]

**First Schedule**

[Section 23]

1. SOUTH-WEST GROUP:
  - City of Cockburn
  - City of Fremantle
  - City of Melville
  - City of Rockingham
  - Town of East Fremantle
  - Town of Kwinana.
2. WESTERN SUBURBS GROUP:
  - City of Nedlands
  - City of Subiaco
  - Town of Cambridge
  - Town of Claremont
  - Town of Cottesloe
  - Town of Mosman Park
  - Shire of Peppermint Grove.
3. NORTH-WEST GROUP:
  - City of Stirling
  - City of Wanneroo
  - Town of Vincent.
4. SOUTH-EAST GROUP:
  - City of Armadale
  - City of Canning
  - City of Gosnells
  - City of South Perth
  - Town of Victoria Park
  - Shire of Serpentine-Jarrahdale.
5. EASTERN GROUP:
  - City of Bayswater

Town of Bassendean  
City of Belmont  
Shire of Kalamunda  
Shire of Mundaring  
Shire of Swan.

*[First Schedule inserted by No. 38 of 1993 s. 34(1); amended by  
No. 14 of 1996 s. 4; No. 57 of 1997 s. 86; No. 24 of 2000 s. 24.]*

## **Second Schedule**

[Section 35C]

### **Purposes for which land may be required**

<b>Item</b>	<b>Purpose</b>
1.	Car parks.
2.	Civic and cultural amenities.
3.	Commonwealth Government.
4.	Highways and important regional roads.
5.	Hospitals.
6.	Water Services, including sewerage and drainage.
7.	Parks and recreation areas.
8.	Port installations.
9.	Prisons.
10.	Railways.
11.	Schools.
12.	Special uses.
13.	The generation, transmission and distribution of electricity.
[13A	<i>deleted</i> ]
14.	State forests.
15.	Universities.
16.	Water catchments.
17.	Waterways.
18.	Cultural heritage conservation.

*[Second Schedule inserted by No. 79 of 1981 s. 14; amended by No. 97 of 1990 s. 30; No. 89 of 1994 s. 109; No. 73 of 1995 s. 188; No. 58 of 1999 s. 105; No. 24 of 2000 s. 14(13); No. 18 of 2005 s. 139.]*

## Third Schedule

[Section 6]

### Description of metropolitan region

All that portion of the State bounded by a line starting from the south-western corner of Swan Location 2745 (South Latitude 31 degrees 27 minutes 23.105 seconds, East Longitude 115 degrees 33 minutes 35.604 seconds), being a point on the northernmost northern boundary of the local government district of Wanneroo, and extending easterly, generally southerly, again easterly, again generally southerly and again easterly along the boundaries of that district to the intersection of the prolongation northerly of the eastern boundary of Location 1584 with the prolongation westerly of the northern boundary of Location 2478, being a north-western corner of the local government district of Swan; thence generally easterly, generally northerly, generally easterly, southerly, easterly and again southerly along the boundaries of that district to the easternmost south-eastern corner of Location 1817, being a point on the northernmost northern boundary of the local government district of Mundaring; thence easterly, generally southerly, again easterly, again generally southerly, generally westerly, again southerly, again easterly, again southerly and again westerly and generally north-westerly along boundaries of the local government district of Mundaring to the intersection of the left bank of the Darkin River with the prolongation northerly of the western boundary of late pre-emptive Poison Right 8/228, being the easternmost north-eastern corner of the local government district of Kalamunda; thence southerly along the easternmost eastern boundary of the local government district of Kalamunda to the prolongation east of the southern boundary of Canning Location 710, being a north-eastern corner of the local government district of Armadale; thence generally southerly, generally south-easterly, westerly and south-westerly along the boundaries of the local government district of Armadale to the 33 Mile Post on the north-eastern side of Albany Highway, being a north-eastern corner of the local government district of Serpentine-Jarrahdale; thence generally south-easterly, southerly, generally westerly and northerly along boundaries of the local government district of Serpentine-Jarrahdale to the north-eastern corner of Lot 3 of Cockburn Sound Location 16, as shown on Department within the meaning of the *Transfer of Land Act 1893* Diagram 2909, being a south-eastern corner of the local government district of Rockingham; thence generally westerly along the boundaries of the local government district of Rockingham to the south-western corner of Lot 236 as shown on Department within the meaning of the *Transfer of Land Act 1893* Plan 7931(2), (South Latitude 32 degrees 27 minutes 24.586 seconds, East Longitude 115 degrees 44 minutes 52.324 seconds);

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**Third Schedule**

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thence west 17 820.4 metres to East Longitude 115 degrees 33 minutes  
30 seconds; thence north 110 932.1 metres to South Latitude 31 degrees  
27 minutes 23.105 seconds and thence east 148 metres to the starting point.

*[Third Schedule inserted by No. 73 of 1982 s. 13; amended by No. 14  
of 1996 s. 4; No. 81 of 1996 s. 153(3).]*

### Notes

<sup>1</sup> This is a compilation of the *Metropolitan Region Town Planning Scheme Act 1959* and includes the amendments made by the other written laws referred to in the following table <sup>1a, 12, 13, 14</sup>. The table also contains information about any reprint.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>Metropolitan Region Town Planning Scheme Act 1959</i>	78 of 1959	14 Dec 1959	19 Feb 1960 (see s. 2 and <i>Gazette</i> 19 Feb 1960 p. 412)
<i>Metropolitan Region Town Planning Scheme Act Amendment Act 1960</i>	39 of 1960	3 Nov 1960	3 Nov 1960
<i>Metropolitan Region Town Planning Scheme Act Amendment Act 1962</i>	44 of 1962	1 Nov 1962	16 Aug 1963 (see s. 2 and <i>Gazette</i> 16 Aug 1963 p. 2377)
<i>Metropolitan Region Town Planning Scheme Act Amendment Act 1963</i>	29 of 1963	13 Nov 1963	13 Nov 1963
<i>Metropolitan Region Town Planning Scheme Act Amendment Act 1965</i>	7 of 1965	15 Sep 1965	15 Sep 1965
<i>Metropolitan Region Town Planning Scheme Act Amendment Act (No. 2) 1965</i>	95 of 1965	8 Dec 1965	8 Dec 1965
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	s. 4-9: 14 Feb 1966 (see s. 2(2)); balance: 21 Dec 1965 (see s. 2(1))
<b>Reprint of the <i>Metropolitan Region Town Planning Scheme Act 1959</i> approved 21 Jun 1966 (not in a Volume) (includes amendments listed above)</b>			
<i>Metropolitan Region Town Planning Scheme Act Amendment Act 1966</i>	84 of 1966	12 Dec 1966	Act except s. 3: 31 Mar 1967 (see s. 2 and <i>Gazette</i> 31 Mar 1967 p. 829); s. 3: 19 Jun 1967 (see s. 2)
<i>Metropolitan Region Town Planning Scheme Act Amendment Act 1968</i>	62 of 1968	13 Nov 1968	17 Jan 1969 (see s. 2 and <i>Gazette</i> 17 Jan 1969 p. 154)

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Short title	Number and year	Assent	Commencement
<i>Metropolitan Region Town Planning Scheme Act Amendment Act (No. 2) 1968</i>	69 of 1968	18 Nov 1968	19 Feb 1960 (see s. 2 and <i>Gazette</i> 19 Feb 1960 p. 412)
<i>Metropolitan Region Town Planning Scheme Act Amendment Act 1969</i>	104 of 1969	25 Nov 1969	25 Nov 1969
<i>Metropolitan Region Town Planning Scheme Act Amendment Act 1970</i>	7 of 1970	29 Apr 1970	29 Apr 1970
<i>Acts Amendment (Commissioner of State Taxation) Act 1970 Pt. IV</i>	21 of 1970	8 May 1970	1 Jul 1970 (see s. 2 and <i>Gazette</i> 26 Jun 1970 p. 1831)
<b>Reprint of the Metropolitan Region Town Planning Scheme Act 1959 approved 26 Feb 1973</b> (includes amendments listed above)			
<i>Metropolitan Region Town Planning Scheme Act Amendment Act 1973</i>	103 of 1973	28 Dec 1973	28 Dec 1973
<i>Metropolitan Region Town Planning Scheme Act Amendment Act 1974</i>	12 of 1974	27 Sep 1974	27 Sep 1974
<i>Metropolitan Region Town Planning Scheme Act Amendment Act 1975</i>	80 of 1975	17 Nov 1975	17 Nov 1975
<i>Metropolitan Region Town Planning Scheme Act Amendment Act 1976</i>	8 of 1976	27 May 1976	1 Jul 1976 (see s. 2)
<b>Reprint of the Metropolitan Region Town Planning Scheme Act 1959 approved 27 Dec 1978</b> (includes amendments listed above)			
<i>Metropolitan Region Town Planning Scheme Act Amendment Act (No. 2) 1979</i>	115 of 1979	21 Dec 1979	15 Feb 1980 (see s. 2 and <i>Gazette</i> 15 Feb 1980 p. 457)
<i>Metropolitan Region Town Planning Scheme Amendment Act 1980</i>	30 of 1980	28 Oct 1980	28 Oct 1980

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Metropolitan Region Town Planning Scheme Amendment Act (No. 2) 1980</i>	73 of 1980	26 Nov 1980	26 Nov 1980
<i>Environmental Protection Amendment Act 1980 s. 26</i>	78 of 1980	5 Dec 1980	30 Jan 1981 (see s. 2 and <i>Gazette</i> 30 Jan 1981 p. 441)
<i>Acts Amendment (Land Use Planning) Act 1981 Pt. II</i>	79 of 1981	9 Nov 1981	18 Dec 1981 (see s. 2 and <i>Gazette</i> 18 Dec 1981 p. 5166)
<i>Acts Amendment (Metropolitan Region Town Planning Scheme) Act 1982 Pt. II</i>	73 of 1982	29 Oct 1982	29 Oct 1982
<b>Reprint of the Metropolitan Region Town Planning Scheme Act 1959 approved 20 Feb 1984</b> (includes amendments listed above)			
<i>Acts Amendment and Repeal (Transport Co-ordination) Act 1985 s. 59</i>	54 of 1985	28 Oct 1985	1 Jan 1986 (see s. 2 and <i>Gazette</i> 20 Dec 1985 p. 4822)
<i>Acts Amendment (State Planning Commission) Act 1985 Pt. III</i>	92 of 1985	4 Dec 1985	6 Dec 1985 (see s. 2 and <i>Gazette</i> 6 Dec 1985 p. 4591)
<i>Acts Amendment (Financial Administration and Audit) Act 1985 s. 3</i>	98 of 1985 (as amended by No. 4 of 1986 s. 3)	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Commercial Arbitration Act 1985 s. 3</i>	109 of 1985	7 Jan 1986	1 Apr 1986 (see s. 2 and <i>Gazette</i> 28 Feb 1986 p. 605)
<i>Metropolitan Region Town Planning Scheme Amendment Act 1986</i>	6 of 1986	15 Jul 1986	15 Jul 1986 (see s. 2)
<i>Acts Amendment (Swan River Trust) Act 1988 Pt. 6</i>	21 of 1988	5 Oct 1988	1 Mar 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 264)
<i>Acts Amendment (Heritage Council) Act 1990 Pt. 2 Div. 5</i>	97 of 1990	22 Dec 1990	25 Feb 1991 (see s. 2 and <i>Gazette</i> 22 Feb 1991 p. 868)
<i>East Perth Redevelopment Act 1991 s. 59</i>	62 of 1991	30 Dec 1991	1 Jul 1992 (see s. 2 and <i>Gazette</i> 1 Jul 1992 p. 2945)

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Short title	Number and year	Assent	Commencement
<b>Reprint of the Metropolitan Region Town Planning Scheme Act 1959 as at 11 Mar 1993</b> (includes amendments listed above) (Correction to reprint 5 May 1995 p. 1704)			
<i>Financial Administration Legislation Amendment Act 1993 s. 5</i>	6 of 1993	27 Aug 1993	27 Aug 1993 (see s. 2)
<i>Planning Legislation Amendment Act 1993 Pt. 2</i>	35 of 1993	16 Dec 1993	16 Dec 1993 (see s. 2)
<i>City of Perth Restructuring Act 1993 s. 34</i>	38 of 1993	20 Dec 1993	1 Jul 1994 (see s. 3(1) and 34(2))
<i>Subiaco Redevelopment Act 1994 s. 67</i>	35 of 1994	8 Jul 1994	24 Aug 1994 (see s. 2 and <i>Gazette</i> 23 Aug 1994 p. 4364)
<i>Statutes (Repeals and Minor Amendments) Act 1994 s. 4</i>	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Planning Legislation Amendment Act (No. 2) 1994 Pt. 3 and s. 43 and 46(1), (2) and (10)</i>	84 of 1994	13 Jan 1995	1 Mar 1995 (see s. 2 and <i>Gazette</i> 21 Feb 1995 p. 567)
<i>Energy Corporations (Transitional and Consequential Provisions) Act 1994 s. 109</i>	89 of 1994	15 Dec 1994	1 Jan 1995 (see s. 2(2) and <i>Gazette</i> 23 Dec 1994 p. 7069)
<i>Swan Valley Planning Act 1995 s. 27<sup>7</sup></i>	31 of 1995	18 Sep 1995	25 Nov 1995 (see s. 2 and <i>Gazette</i> 24 Nov 1995 p. 5389)
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995 s. 188</i>	73 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2(2) and <i>Gazette</i> 29 Dec 1995 p. 6291)
<b>Reprint of the Metropolitan Region Town Planning Scheme Act 1959 as at 7 Mar 1996</b> (includes amendments listed above)			
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Planning Legislation Amendment Act 1996 Pt. 4<sup>8</sup></i>	23 of 1996	11 Jul 1996	4 Aug 1996 (see s. 2 and <i>Gazette</i> 2 Aug 1996 p. 3615)

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Financial Legislation Amendment Act 1996</i> s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Transfer of Land Amendment Act 1996</i> s. 153(1) and (3)	81 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2(1))
<i>Acts Amendment (Land Administration) Act 1997</i> Pt. 43 and s. 142 <sup>9</sup>	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 86	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Midland Redevelopment Act 1999</i> s. 74	38 of 1999	11 Nov 1999	1 Jan 2000 (see s. 2 and <i>Gazette</i> 31 Dec 1999 p. 7059)
<i>Gas Corporation (Business Disposal) Act 1999</i> s. 105	58 of 1999	24 Dec 1999	16 Dec 2000 (see s. 2(5) and <i>Gazette</i> 15 Dec 2000 p. 7201)
<b>Reprint of the Metropolitan Region Town Planning Scheme Act 1959 as at 4 Feb 2000</b> (includes amendments listed above except those in the <i>Gas Corporation (Business Disposal) Act 1999</i> )			
<i>Statutes (Repeals and Minor Amendments) Act 2000</i> s. 14(13) and 24	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
<i>Hope Valley-Wattleup Redevelopment Act 2000</i> s. 38	77 of 2000	7 Dec 2000	1 Jan 2001 (see s. 2 and <i>Gazette</i> 29 Dec 2000 p. 7904)
<b>Reprint of the Metropolitan Region Town Planning Scheme Act 1959 as at 7 Sep 2001</b> (includes amendments listed above)			
<i>Armadale Redevelopment Act 2001</i> s. 69	25 of 2001	26 Nov 2001	23 Mar 2002 (see s. 2 and <i>Gazette</i> 22 Mar 2002 p. 1651)
<i>Planning Appeals Amendment Act 2002</i> s. 20 and 26 <sup>10</sup>	24 of 2002	24 Sep 2002	18 Apr 2003 (see s. 2 and <i>Gazette</i> 17 Apr 2003 p. 1243)
<i>Taxation Administration (Consequential Provisions) Act 2002</i> s. 17 <sup>11</sup>	45 of 2002	20 Mar 2003	1 Jul 2003 (see s. 2(1) and <i>Gazette</i> 27 Jun 2003 p. 2383)

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Short title	Number and year	Assent	Commencement
<b>Reprint 9: The Metropolitan Region Town Planning Scheme Act 1959 as at 1 Aug 2003</b> (includes amendments listed above)			
<i>Environmental Protection Amendment Act 2003</i> s. 68(5)	54 of 2003	20 Oct 2003	19 Nov 2003 (see s. 2 and <i>Gazette</i> 18 Nov 2003 p. 4723)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 81	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 82 <sup>16, 17</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Electricity Corporations Act 2005</i> s. 139	18 of 2005	13 Oct 2005	1 Apr 2006 (see s. 2(2) and <i>Gazette</i> 31 Mar 2006 p. 1153)
<b>This Act was repealed by the <i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i> s. 4 (No. 38 of 2005) as at 9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)</b>			

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<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

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Short title	Number and Year	Assent	Commencement
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 142 <sup>15</sup>	59 of 2004	23 Nov 2004	To be proclaimed (see s. 2)
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i> s. 4 <sup>19</sup>	38 of 2005	12 Dec 2005	To be proclaimed (see s. 2)

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<sup>2</sup> At the date of this compilation the Minister responsible for the administration of this Act, formerly called the Minister for Town Planning, is the Minister for Planning and Infrastructure.

<sup>3</sup> Repealed by the *Interpretation Act 1984*.

<sup>4</sup> At the date of this compilation the former Department of Land Administration is called the Department of Land Information.

<sup>5</sup> Under the *Local Government Act 1995* Sch 9.3 cl. 3(2) a reference to a municipality under the *Local Government Act 1960* may, where the context so requires, be read as if it had been amended to include or be a reference to a local government under the *Local Government Act 1995*.

<sup>6</sup> Repealed by the *Associations Incorporation Act 1987*.

<sup>7</sup> The *Swan Valley Planning Act 1995* Sch. 2 cl. 4(2) and (3) read as follows:

“

(2) The provisions inserted by subclause (1) do not apply to any amendments to a scheme submitted to the Minister under section 33(2)(a) of the *Metropolitan Region Town Planning Scheme Act 1959* before the commencement of section 27 of this Act.

(3) In subsection (2) “**scheme**” means the Metropolitan Region Scheme as defined by the *Metropolitan Region Town Planning Scheme Act 1959*.

”

<sup>8</sup> The *Planning Legislation Amendment Act 1996* s. 31(2), (3) and (4) read as follows:

“

(2) Subject to subsections (3) and (4), sections 33E, 33F, 33G and 33H of the principal Act do not apply to or in relation to an amendment to the Scheme which the Commission has resolved to formulate for submission to the Minister under section 33(2)(a), or for publication under section 33A(2), of the principal Act before the commencement of this section.

(3) The Minister may —

(a) on receiving a proposed amendment to the Scheme referred to in subsection (2), which amendment was submitted to him or her under section 33(2)(a), or copied to him or her under section 33A(2)(a), of the principal Act; and

(b) before taking any other action in relation to that amendment,

direct the Commission to ensure compliance with sections 33E and 33F of the principal Act, and the Commission shall comply with that direction before resubmitting or recopying that amendment to him or her under section 33(2)(a) or 33A(2)(a) of the principal Act.

- (4) If the Minister consents under section 33(2)(a) of the principal Act to public submissions being sought, or the Commission publishes a notice and certificate under section 33A(2)(b) of the principal Act, in relation to an amendment in respect of which a direction given under subsection (3) has been complied with, the Commission shall, if it wishes to proceed with that amendment, ensure that sections 33G and 33H of the principal Act are complied with in respect of that amendment.

”.

<sup>9</sup> The amendment by the *Acts Amendment (Land Administration) Act 1997* s. 142 to s. 37(7)(a) is not included because the section it sought to amend was previously amended in s. 70(2) of this Act.

<sup>10</sup> The *Planning Appeals Amendment Act 2002* s. 20 reads as follows:

“

**20. Submissions under *Metropolitan Region Town Planning Scheme Act 1959***

On the coming into operation of section 26 of this Act, any submission received by the Minister under section 33A of the *Metropolitan Region Town Planning Scheme Act 1959*, and not reported on under section 33A(5) of that Act, is to be dealt with by the Commission as if the submission had been received by the Commission under section 33A of the *Metropolitan Region Town Planning Scheme Act 1959* as amended by this Act.

”.

<sup>11</sup> The *Taxation Administration (Consequential Provisions) Act 2003* s. 3 and 4 and Pt. 4 read as follows:

“

**3. Relationship with other Acts**

The *Taxation Administration Act 2003* is to be read with this Act as if they formed a single Act.

**4. Meaning of terms used in this Act**

The Glossary at the end of the *Taxation Administration Act 2003* defines or affects the meaning of some of the words and

expressions used in this Act and also affects the operation of other provisions.

## **Part 4 — Transitional provisions**

### **Division 1 — Interpretation**

#### **33. Definitions**

In this Part —

“**commencement day**” means the day on which the *Taxation Administration Act 2003* comes into operation;

“**old Act**” means —

- (a) an Act repealed by section 5;
- (b) the old Stamp Act; or
- (c) section 41 of the *Metropolitan Region Town Planning Scheme Act 1959* as in force immediately before the commencement day;

“**old Stamp Act**” means the *Stamp Act 1921* as in force immediately before the commencement day;

“**substantive provisions**”, in relation to an old Act, means the provisions of the old Act other than those dealing with matters dealt with in the *Taxation Administration Act 2003*.

### **Division 2 — General transitional provisions**

#### **34. General transitional arrangements**

- (1) Section 37(1) of the *Interpretation Act 1984*, except paragraphs (a) and (b), does not apply in relation to the repeal of an old Act.
- (2) The repeal of an old Act does not, unless the contrary intention appears —
  - (a) affect any right, interest, title, power or privilege created, acquired, accrued, established or exercisable or any status or capacity existing prior to the repeal;
  - (b) affect any duty, obligation, liability, or burden of proof imposed, created, or incurred prior to the repeal;
  - (c) subject to section 11 of *The Criminal Code* and section 10 of the *Sentencing Act 1995*, affect any penalty or forfeiture incurred or liable to be incurred in respect of an offence committed against the old Act; or
  - (d) affect any investigation, legal proceeding or remedy in respect of any such right, interest, title, power, privilege, status, capacity, duty, obligation, liability, burden of proof, penalty or forfeiture.

- (3) Subject to subsections (4) and (5) —
- (a) a right, interest, title, power, privilege, duty, obligation, liability or burden of proof referred to in subsection (2)(a) or (b) may be exercised or enforced;
  - (b) a penalty or forfeiture referred to in subsection (2)(c) may be imposed and enforced; and
  - (c) an investigation, legal proceeding or remedy referred to in subsection (2)(d) may be instituted, continued, or enforced,
- as if the substantive provisions of the relevant old Act —
- (d) had not been repealed;
  - (e) were a taxation Act for the purposes of the *Taxation Administration Act 2003*; and
  - (f) had been amended to make any modifications necessary for this section to have effect.
- (4) If an objection, appeal or other legal proceeding (the “**action**”) was instituted under an old Act and was not finally determined before the commencement day —
- (a) the action may be continued;
  - (b) any requirement to pay interest on an amount of tax determined in the action to have been overpaid applies and may be enforced;
  - (c) any penalty may be imposed and enforced; and
  - (d) any decision, order or determination made in the action has effect, and may be enforced,
- as if this Act and the taxation Acts had not commenced.
- (5) If the time limited by an old Act for doing anything is longer than the time limited by a taxation Act for doing the equivalent thing under that Act, then in relation to a matter to which subsection (3) applies, the time limited under the old Act applies in relation to the doing of the thing under the taxation Act.
- (6) If the time limited by an old Act for commencing proceedings in relation to an offence under that Act is shorter than the 5 year period limited by section 111 of the *Taxation Administration Act 2003*, then despite section 111, proceedings in relation to an offence under the old Act (including an offence under a provision of the old Act that is continued in force under this Part) cannot be commenced after the expiry of the shorter period provided for by the old Act.

- (7) In this section a reference, in relation to the *Stamp Act 1921*, to the repeal of the old Act is a reference to the amendment of the Act by the *Stamp Amendment Act 2003*.

**35. Commissioner not to increase tax liability**

Despite Part 3 Division 1 of the *Taxation Administration Act 2003*, the Commissioner must not make a reassessment that increases the amount of tax a person is liable to pay in relation to anything that happened before the commencement day if the reassessment could not have been made under the relevant old Act.

**36. Delegations**

A delegation made under an old Act and in force immediately before the commencement day continues in force on and after that day as a delegation made under section 10 of the *Taxation Administration Act 2003*.

**Division 3 — Debits tax**

**37. Certificates of exemption from tax (*Debits Tax Assessment Act 1990, s. 11*)**

- (1) A certificate issued under section 11 of the *Debits Tax Assessment Act 1990* and in force immediately before the commencement day continues in force on and after that day as a certificate issued under section 10 of the *Debits Tax Assessment Act 2002*.
- (2) Where section 13(1) of the *Debits Tax Assessment Act 2002* applies in relation to a certificate issued under section 11 of the *Debits Tax Assessment Act 1990* the Commissioner cannot make a reassessment of the amount of debits tax payable on a debit for the purpose of giving effect to that section more than 3 years after —
- (a) if the financial institution has recovered the amount of the debits tax paid on the debit from the customer — the date on which that amount was recovered; or
  - (b) otherwise — the date on which the debits tax on the debits was paid.

**Division 4 — Land tax**

**38. Exemptions for certain home unit owners (*Land Tax Assessment Act 1976, s. 19*)**

If the amount of land tax payable on land for the financial year commencing on 1 July 2001 was assessed under section 19 of the *Land Tax Assessment Act 1976*, then on and after the commencement day section 16 of the *Land Tax Assessment Act 2002* applies in relation to that land as if that assessment had been made under section 16.

- 39. Inner city residential property rebate (*Land Tax Assessment Act 1976, s. 23AB*)**  
A notice given by the Commissioner under section 23AB(7) of the *Land Tax Assessment Act 1976* and in force immediately before the commencement day continues in force on and after that day as a notice under section 28(4) of the *Land Tax Assessment Act 2002*.
- 40. Land tax relief Acts**  
Despite —
- (a) the repeal of the *Land Tax Assessment Act 1976* and *Land Tax Act 1976*; and
  - (b) the amendment of section 41 of the *Metropolitan Region Town Planning Scheme Act 1959*,
- on and after the commencement day the *Land Tax Relief Act 1991* and *Land Tax Relief Act 1992* apply as if the substantive provisions of the Acts mentioned in paragraphs (a) and (b) —
- (c) had not been repealed;
  - (d) were a taxation Act for the purposes of the *Taxation Administration Act 2003*; and
  - (e) had been amended to make any modifications necessary for this section to have effect.

**Division 5 — Pay-roll tax**

- 41. Treatment of certain contributions (*Pay-roll Tax Assessment Act 1971, Sch. 2 cl. 5*)**  
Despite the repeal of the *Pay-roll Tax Assessment Act 1971*, Schedule 2 clause 5 of that Act continues to apply on and after the commencement day in relation to contributions wholly or partly in respect of services performed or rendered before 1 July 1997 as if that Act had not been repealed.
- 42. Reassessments and refunds (*Pay-roll Tax Assessment Act 1971, s. 19*)**  
Despite sections 16(3), 20(3) and 22(4) of the *Pay-roll Tax Assessment Act 2002* and section 16(1)(a) of the *Taxation Administration Act 2003*, the Commissioner is not required to make a reassessment of the amount of pay-roll tax payable by an employer in respect of wages paid or payable before the commencement day unless an application for a reassessment is made within 2 years after the tax was paid.

**Division 6 — Stamp duty**

- 43. Adhesive stamps (*Stamp Act 1921*, s. 15, 21 and 23)**
- (1) Despite its repeal by the *Stamp Amendment Act 2003*, section 15 of the old Stamp Act continues in force for 12 months after the commencement day in relation to adhesive stamps that were affixed on instruments before that day.
  - (2) Despite their repeal by the *Stamp Amendment Act 2003*, sections 21 and 23 of the old Stamp Act continue in force for 3 months after the commencement day in relation to adhesive stamps that were affixed on instruments before that day.
  - (3) If adhesive stamps affixed to an instrument have been cancelled in accordance with the old Stamp Act (including the provisions of the old Stamp Act continued in force by subsections (1) and (2)) the instrument is taken to have been endorsed in accordance with section 17C of the *Stamp Act 1921*.
- 44. Printing of “Stamp Duty Paid” on cheques (*Stamp Act 1921*, s. 52)**
- (1) An authorisation of a financial institution granted under section 52 of the old Stamp Act and in force immediately before the commencement day continues in force on and after that day as a special tax arrangement made under the *Taxation Administration Act 2003*.
  - (2) Any requirement that applied, immediately before the commencement day, to a person to whom an authorisation continued by subsection (1) had been granted (whether imposed by the old Stamp Act or as a condition to which the authorisation was subject), continues as a condition to which the special tax arrangement referred to in subsection (1) is subject.
- 45. First home owners — reassessment (*Stamp Act 1921*, s. 75AG)**
- Despite section 17(1) of the *Taxation Administration Act 2003*, if property that included a dwellinghouse was conveyed or transferred before the commencement day, an application for a reassessment of the duty payable on the conveyance or transfer on the basis that a rebate under section 75AG of the old Stamp Act should have been, but was not, allowed cannot be made more than 12 months after the date of the original assessment.
- 46. Reassessment of duty on grant or transfer of vehicle licences (*Stamp Act 1921*, s. 76C(18) and (19), 76CA(3a) and 76CB(9))**
- (1) This section applies in relation to a grant or transfer of a licence that occurred before the commencement day.

- (2) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on the grant or transfer of a licence on the basis that the duty should not have been paid because —
- (a) in the case of a grant — no vehicle licence fee was payable under the *Road Traffic Act 1974* in respect of the licence; or
  - (b) in the case of a transfer — had the transferee applied for the licence on the date of the transfer no vehicle licence fee would have been payable under the *Road Traffic Act 1974*,

cannot be made more than 15 months after the licence was granted or transferred.

- (3) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty paid on the transfer of a licence on the basis that the duty should have been, but was not, charged in accordance with item 6 of the Second Schedule to the old Stamp Act because the transfer did not pass a beneficial interest, cannot be made more than 12 months after the licence was transferred.
- (4) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on the grant or transfer of a licence on the basis that the duty should have been, but was not, assessed on the net market value of the vehicle (as defined in section 76CB of the old Stamp Act), cannot be made more than 12 months after the licence was granted or transferred.

**47. Alternative to stamping individual insurance policies  
(Stamp Act 1921, s. 95A)**

- (1) A permission granted under section 95A of the old Stamp Act and in force immediately before the commencement day continues in force on and after that day as a special tax arrangement made under the *Taxation Administration Act 2003*.
- (2) Any requirement that applied, immediately before the commencement day, to a person to whom a permission continued by subsection (1) had been granted (whether imposed by the old Stamp Act or as a condition to which the permission was subject), continues as a condition to which the special tax arrangement referred to in subsection (1) is subject.

- 48. Workers' compensation insurance (*Stamp Act 1921, s. 97 and item 16 of the Second Schedule*)**
- (1) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on the issue or renewal of a policy of insurance that occurred before the commencement day on the basis that the duty was assessed under item 16(1)(a)(i) of the Second Schedule to the old Stamp Act but should have been assessed under item 16(1)(a)(ii), cannot be made more than 2 years after the beginning of the insurance policy's cover period.
  - (2) Despite the amendment of Schedule 2 item 16(1)(a) of the *Stamp Act 1921*, on and for 12 months after the commencement day —
    - (a) the reference in Schedule 2 item 16(1)(a)(i)(A) to the *Pay-roll Tax Assessment Act 2002* includes a reference to the *Pay-roll Tax Assessment Act 1971*; and
    - (b) the reference in Schedule 2 item 16(1)(a)(i)(B) to section 39 or 40 of the *Pay-roll Tax Assessment Act 2002* includes a reference to section 10 of the *Pay-roll Tax Assessment Act 1971*.
- 49. Payment of duty by returns (*Stamp Act 1921, s. 112V*)**
- (1) A permission granted under section 112V of the old Stamp Act and in force immediately before the commencement day continues in force on and after that day as a special tax arrangement under the *Taxation Administration Act 2003*.
  - (2) Any requirement that applied, immediately before the commencement day, to a person to whom a permission continued by subsection (1) had been granted (whether imposed by the old Stamp Act or as a condition to which the permission was subject), continues as a condition to which the special tax arrangement referred to in subsection (1) is subject.

”.

<sup>12</sup> The *State Planning Commission (Amendment and Validation) Act 1990* s. 4, 6 and 7 read as follows:

“

- 4. Application of sections 6 and 7**
- (1) Subject to this section, sections 6 and 7 have effect notwithstanding any judgment or order in any proceedings before a court or any writ or other relief, or an entitlement to the issue of any writ or the grant of other relief, in those proceeding.
  - (2) Section 7 does not make good any error or insufficiency held by a court to have occurred in relation to Metropolitan Region Scheme

Amendment No. 774/33A affecting certain land in Helena Valley being the proposed amendment in respect of which notice under section 33A(2) of the Metropolitan Scheme Act appeared in the *Government Gazette* on 12 May 1989 at page 1453.

- (3) Section 6 does not apply to the following amendments —
- (a) Metropolitan Region Scheme Amendment No. 696/33A affecting certain land in Padbury known as Hepburn Heights being the amendment in respect of which notice under section 33A(8) of the Metropolitan Scheme Act appeared in the *Government Gazette* on 10 March 1989 at page 715; and
  - (b) Metropolitan Region Scheme Amendment No. 692/33A affecting certain land known as the old Swan Brewery site being the amendment in respect of which notice under section 33A(8) of the Metropolitan Scheme Act appeared in the *Government Gazette* on 30 October 1987 at page 4010.
- (4) Section 7 does not apply to Metropolitan Region Scheme Amendment No. 776/33A affecting certain land in Leda near Kwinana being the proposed amendment in respect of which notice under section 33A(2) of the Metropolitan Scheme Act appeared in the *Government Gazette* on 30 June 1989 at page 1950.
- (5) Sections 6 and 7 have effect subject to any judgment or order, relating to an amendment to the Metropolitan Region Scheme, that is consequential on a finding by a court to the effect that an opinion under section 33A(1) of the Metropolitan Scheme Act that the amendment did not constitute a substantial alteration to that Scheme was not one that could reasonably have been held for the purposes of that subsection.
- (6) For the purposes of reaching a finding referred to in subsection (5) a court shall not assume that the absence of any proper record of the basis for forming the opinion indicates any failure to —
- (a) give proper consideration to relevant matters; or
  - (b) exclude consideration of irrelevant matters,
- nor shall it reach or base such a finding on the ground of the absence of a proper record.
- (7) Subsection (5) applies to a judgment or order whether it is given or made before or after the commencement of this Act.

**6. Validation of certain amendments to Scheme**

- (1) An amendment to the Metropolitan Region Scheme published in the *Government Gazette* under section 33A(8) of the Metropolitan Scheme Act after the commencement of the principal Act and before the commencement of this Act and every act or omission done or made, or purporting to have been done or made, under or for the purposes of or in reliance on that amendment or that Scheme as so amended —
  - (a) is and always has been valid notwithstanding the matters set out in subsection (2); and
  - (b) is not to be held in any proceedings to be, or ever to have been, invalid by reason only of any of those matters.
- (2) The matters referred to in subsection (1) are —
  - (a) any failure by the Commission, either itself or through a person acting or purporting to act on its behalf, to comply with section 33A(1) of the Metropolitan Scheme Act in respect of the formation of an opinion under that subsection that the amendment did not constitute a substantial alteration to the Scheme; or
  - (b) the terms of any delegation or supposed delegation by the Commission of its functions under section 33 or 33A of that Act.
- (3) Section 7(1)(a), (b) and (c) applies to an amendment referred to in subsection (1) in the same way as it applies to a pending amendment under that section.

**7. Amendments in progress**

- (1) For the purposes of the Metropolitan Scheme Act and any pending amendment of the Metropolitan Region Scheme —
  - (a) the Commission is to be taken to have properly and effectually formed the opinion under section 33A(1) of that Act that the pending amendment does not constitute a substantial alteration to that Scheme;
  - (b) without limiting paragraph (a), the Commission is to be taken to have properly and effectually delegated to the Council as from the commencement of the principal Act all of its functions, powers, privileges, authorities, discretions, duties and responsibilities under sections 33 and 33A of that Act; and
  - (c) effect is to be given accordingly to every notice and certificate under section 33A(2) of that Act relating to any pending amendment that has appeared in the *Government Gazette* and to all things done or remaining

to be done in respect of the pending amendment in order to comply with that section.

- (2) In subsection (1) “**pending amendment**” means an amendment in respect of which a notice and certificate have appeared in the *Government Gazette* for the purposes of section 33A(2) of the Metropolitan Scheme Act but which has not taken effect under subsection (8) of that section before the commencement of this Act.

”.

<sup>13</sup> Under the *Commonwealth Places (Mirror Taxes Administration) Act 1999* s. 7 this Act is to be read and construed with any modifications referred to in subsection (1) of that section and, in particular, with the modifications set out in the *Commonwealth Places (Mirror Taxes Administration) Regulations 2002*. Pt. 1 and Pt. 5 Div. 2 of those regulations read as follows:

“

### **Part 1 — Preliminary**

#### **1. Citation**

These regulations may be cited as the *Commonwealth Places (Mirror Taxes Administration) Regulations 2002*.

#### **2. Commencement**

- (1) These regulations do not have effect unless an arrangement is in operation under section 5 of the Act.
- (2) When such an arrangement is in operation, these regulations and the modifications they prescribe are deemed to have taken effect on 6 October 1997.
- (3) If a State taxing law was repealed before these regulations take effect then, despite the repeal, when these regulations are deemed under subsection (2) to have taken effect, the repealed law is deemed to have been modified, in accordance with these regulations, on 6 October 1997.

#### **3. Modification of State taxing laws**

- (1) In its operation as an applied WA law, the Act is modified by omitting section 7.
- (2) For the purposes of section 7(2) of the Act, each State taxing law is taken to be modified to the extent necessary to give effect to subregulation (3).
- (3) If —
- (a) a State taxing law applies, or could apply, to any extent, to or in relation to an event, state of affairs or transaction,

and the corresponding applied law also applies, or could apply, to any extent, to or in relation to the same event, state of affairs or transaction;

- (b) a person is required or permitted, or could be required or permitted, to take an action under both the State taxing law and the corresponding applied law in relation to the event, state of affairs or transaction;
- (c) the person has taken the action in accordance with the corresponding applied law; and
- (d) the Commissioner has enough information about the event, state of affairs or transaction to carry out his or her functions in relation to it under the State taxing law or the corresponding applied law or both, as the case requires,

then —

- (e) the person is not required to take the action under the State taxing law; and
  - (f) the Commissioner may carry out his or her functions in relation to the event, state of affairs or transaction as if the person had taken whatever action is required or permitted under the State taxing law in relation to the event, state of affairs or transaction.
- (4) The particular modifications set out in these regulations of certain State taxing laws have effect for the purposes of section 7(2) of the Act.

## **Part 5 — Metropolitan region improvement and planning**

### **Division 2 — The *Metropolitan Region Town Planning Scheme Act 1959***

#### **44. Modification of the *Metropolitan Region Town Planning Scheme Act 1959***

This Division sets out modifications of the *Metropolitan Region Town Planning Scheme Act 1959*.

#### **45. Section 4 inserted**

After section 3 the following section is inserted —

“

#### **4. Application of Act in non-Commonwealth places**

- (1) In this Act, unless the contrary intention appears —

- (a) a reference to this Act is to be read as a reference to this Act in its application as a law of Western Australia;
  - (b) a reference to the *Land Tax Assessment Act 1976* is to be read as a reference to that Act in its application as a law of Western Australia; and
  - (c) a reference to the *Metropolitan Region Improvement Tax Act 1959* is to be read as a reference to that Act in its application as a law of Western Australia.
- (2) This Act is to be read with the applied Metropolitan Region Town Planning Scheme Act as a single body of law.
- (3) In this section —
- “applied Metropolitan Region Town Planning Scheme Act”** means the *Metropolitan Region Town Planning Scheme Act 1959* in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;
- “Commonwealth Mirror Taxes Act”** means the *Commonwealth Places (Mirror Taxes) Act 1998* of the Commonwealth;
- “Commonwealth place”** means a Commonwealth place in or in relation to which the applied Metropolitan Region Town Planning Scheme Act applies or is taken to have applied under the Commonwealth Mirror Taxes Act.

”  
”

<sup>14</sup> Under the *Commonwealth Places (Mirror Taxes) Act 1998* s. 8(2) of the Commonwealth, the Treasurer of a State may, by notice in writing, prescribe certain modifications of the applied laws of the State. Modifications are set out in the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2002* Pt. 1 and Pt. 5 Div. 2 of that notice read as follows:

“

## **Part 1 — Preliminary**

### **1. Citation**

This notice may be cited as the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2002*.

**2. Commencement**

- (1) This notice does not have effect unless an arrangement is in operation under section 9 of the Commonwealth Places Mirror Taxes Act in relation to Western Australia.
- (2) When such an arrangement is in operation, this notice and the modifications it prescribes are deemed to have taken effect on 6 October 1997.
- (3) If an applied WA law was repealed before this notice takes effect then, despite the repeal, when this notice is deemed under subsection (2) to have taken effect, the repealed law is deemed to have been modified on 6 October 1997 as set out in this notice.

**3. Definitions**

In this notice —

“**applied WA law**” means the provisions of a State taxing law of Western Australia that apply or are taken to have applied in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;

“**Commonwealth Mirror Taxes Act**” means the *Commonwealth Places (Mirror Taxes) Act 1998* of the Commonwealth;

“**WA taxing law**” means a State taxing law of Western Australia.

**4. Modification of applied WA laws**

- (1) For the purposes of section 8 of the Commonwealth Mirror Taxes Act, each applied WA law is taken to be modified to the extent necessary to give effect to subregulation (2).
- (2) If —
  - (a) an applied WA law applies, or could apply, to any extent, to or in relation to an event, state of affairs or transaction, and the corresponding State taxing law also applies, or could apply, to any extent, to or in relation to the same event, state of affairs or transaction;
  - (b) a person is required or permitted, or could be required or permitted, to take an action under both the applied WA law and the corresponding State taxing law in relation to the event, state of affairs or transaction;
  - (c) the person has taken the action in accordance with the corresponding State taxing law; and
  - (d) the Commissioner has enough information about the event, state of affairs or transaction to carry out his or her functions in relation to it under the applied WA law or the corresponding State taxing law or both, as the case requires,

then —

- (e) the person is not required to take the action under the applied WA law; and
  - (f) the Commissioner may carry out his or her functions in relation to the event, state of affairs or transaction as if the person had taken whatever action is required or permitted under the applied WA law in relation to the event, state of affairs or transaction.
- (3) The particular modifications set out in this notice of certain applied WA laws have effect for the purposes of section 8 of the Commonwealth Mirror Taxes Act.

## **Part 5 — Metropolitan region improvement and planning**

### **Division 2 — The applied *Metropolitan Region Town Planning Scheme Act 1959***

#### **62. Modification of the applied Act**

This Division sets out modifications of the *Metropolitan Region Town Planning Scheme Act 1959* of Western Australia.

#### **63. Section 4 inserted**

After section 3 the following section is inserted —

“

#### **4. Application of Act in Commonwealth places**

- (1) In this Act, unless the contrary intention appears —
  - (a) a reference to this Act is to be read as a reference to this Act in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;
  - (b) a reference to the *Land Tax Assessment Act 1976* is to be read as a reference to the applied Land Tax Assessment Act;
  - (c) a reference to the *Heritage of Western Australia Act 1990* is a reference to the Act of that name of the Parliament of Western Australia; and
  - (d) a reference to the *Metropolitan Region Improvement Tax Act 1959* is to be read as a reference to the applied Metropolitan Region Improvement Tax Act.

- (2) This Act is to be read with the corresponding Metropolitan Region Town Planning Scheme Act as a single body of law.
- (3) In addition to being modified as prescribed by the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2002*, this Act is deemed to be further modified to any extent that is necessary or convenient —
  - (a) to enable this Act to operate effectively as a law of the Commonwealth; and
  - (b) to ensure that the combined liability of a taxpayer under this Act and the corresponding Metropolitan Region Town Planning Scheme Act is as nearly as possible the same as the taxpayer's liability would be under the corresponding Metropolitan Region Town Planning Scheme Act alone if the Commonwealth places in Western Australia were not Commonwealth places.

”.

**64. Section 6 modified**

Section 6 is modified by inserting the following definitions in their appropriate alphabetical positions —

“

**“applied Land Tax Assessment Act”** means the *Land Tax Assessment Act 1976* of Western Australia in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;

**“applied Metropolitan Region Improvement Tax Act”** means the *Metropolitan Region Improvement Tax Act 1959* of Western Australia in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;

**“Commonwealth Mirror Taxes Act”** means the *Commonwealth Places (Mirror Taxes) Act 1998* of the Commonwealth;

**“Commonwealth place”** means a Commonwealth place in or in relation to which this Act applies or is taken to have applied under section 6 of the Commonwealth Mirror Taxes Act;

**“corresponding Metropolitan Region Town Planning Scheme Act”** means the *Metropolitan Region Town Planning Scheme*

*Act 1959* of Western Australia in its application as a law of Western Australia;

”.

**65. Section 41AA modified**

(1) Section 41AA(1) is modified by deleting “Consolidated Fund” and inserting instead —

“ Consolidated Revenue Fund of the Commonwealth ”.

(2) Section 41AA(2) is repealed.

”.

<sup>15</sup> On the date as at which this compilation was prepared, the *Courts Legislation Amendment and Repeal Act 2004* s. 142, which gives effect to Sch. 2 had not come into operation. It reads as follows:

“

**142. Other amendments to various Acts**

Each Act listed in Schedule 2 is amended as set out in that Schedule immediately below the short title of the Act.

”.

Schedule 2 cl. 31 reads as follows:

“

**Schedule 2 — Other Amendments to Acts**

**31. Metropolitan Region Town Planning Scheme Act 1959**

s. 36(2b)(b)(i)	Delete “a Local Court, sitting at a” and insert instead — “ the Magistrates Court at the ”. Delete “\$1 000” and insert instead — “ the jurisdictional limit of that court (within the meaning of the <i>Magistrates Court (Civil Proceedings) Act 2004</i> ) ”.
s. 36(2b)(b)(ii)	Delete “\$1 000” and insert instead — “ that jurisdictional limit ”.

”.

<sup>16</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169,

and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

<sup>17</sup> The *State Administrative Tribunal Regulations 2004* r. 57 reads as follows:

“

**57. Metropolitan Region Town Planning Scheme Act 1959**

(1) In this regulation —

“**commencement day**” means the day on which the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Part 2 Division 82 comes into operation;

“**the MRTPS Act**” means the *Metropolitan Region Town Planning Scheme Act 1959*.

(2) If, before the commencement day, a determination or an order is made under the *Heritage of Western Australia Act 1990* section 60, on and after the commencement day the MRTPS Act section 32A(2) applies to that determination or order as if the determination or order had been made on an application or referral made under the *Heritage of Western Australia Act 1990* section 60 to the State Administrative Tribunal.

(3) If —

(a) before the commencement day, a direction is confirmed or varied under the MRTPS Act section 43(3); and

(b) the owner fails to carry out the direction as confirmed or varied,

the Western Australian Planning Commission or local government may, on or after the commencement day, take the action specified in the MRTPS Act section 43(5).

”.

<sup>18</sup> Footnote no longer applicable.

<sup>19</sup> On the date as at which this compilation was prepared, the *Planning and Development (Consequential and Transitional Provisions) Act 2005* s. 4, which gives effect to Sch. 1, had not come into operation. It reads as follows:

“

**4. Acts in Schedule 1 repealed**

The Acts mentioned in Schedule 1 are repealed.

”.

Schedule 1 reads as follows:

“

**Schedule 1 — Acts repealed**

[s. 4]

*Metropolitan Region Town Planning Scheme Act 1959*

”.

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
amending Act.....	33B(1)
amending section .....	36(23)
assessed scheme .....	43B(1)
Authority.....	6
Commission .....	6
District Planning Committee.....	6
environmental condition .....	43B(1)
EP Act.....	6
EPA.....	6
Fund .....	6
Heritage Council .....	6
metropolitan region.....	6
Metropolitan Region Scheme .....	6
Minister for the Environment.....	6
notice .....	33C(2)
order.....	6
original compensation.....	36(9)
pending amendment .....	33B(1)
planning control area .....	6
proclaimed date.....	33B(1)
proper period.....	33C(2)
Scheme.....	6
Second Schedule .....	33B(1)
substituted section.....	33B(1)
Swan Valley .....	6
Swan Valley Planning Committee .....	6
the amendment.....	33(2)
the Board.....	36B(1)
the refund .....	36(9)
Town Planning Act .....	6