



Western Australia

## **Planning and Development Act 2005**

Compare between:

[19 Aug 2010, 01-j0-02] and [18 Sep 2010, 01-k0-02]



Western Australia

## **Planning and Development Act 2005**

**An Act to provide for a system of land use planning and development in the State and for related purposes.**

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Planning and Development Act 2005*<sup>1</sup>.

### **2. Commencement**

- (1) This Act comes into operation on a day fixed by proclamation<sup>1</sup>.
- (2) Different days may be fixed under subsection (1) for different provisions.

### **3. Purposes of this Act**

- (1) The purposes of this Act are to —
  - (a) consolidate the provisions of the Acts repealed by the *Planning and Development (Consequential and Transitional Provisions) Act 2005* (the *Metropolitan Region Town Planning Scheme Act 1959*, the *Town Planning and Development Act 1928* and the *Western Australian Planning Commission Act 1985*) in a rewritten form;
  - (b) provide for an efficient and effective land use planning system in the State; and
  - (c) promote the sustainable use and development of land in the State.
- (2) If —
  - (a) the *Metropolitan Region Town Planning Scheme Act 1959*, the *Town Planning and Development Act 1928* or the *Western Australian Planning Commission Act 1985* expressed an idea in a particular form of words; and

- (b) this Act appears to have expressed the same idea in a different form of words in order to use a clearer or simpler style,

the ideas are not to be taken to be different just because different forms of words were used.

**4. Terms used in this Act**

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

*Account* means the account referred to in section 203(2);

*artificial waterway* means an artificial channel, lake, harbour or embayment, for navigational, ornamental and recreational purposes, or for any of those purposes, and includes any addition to, or alteration of, an artificial waterway as so defined;

*associate member* means an associate member of the board appointed under section 11;

*Authority* means the Western Australian Land Information Authority established by the *Land Information Authority Act 2006* section 5;

*board* means the board referred to in section 9;

*chairperson* means the chairperson of the board;

*chief executive officer* means the chief executive officer of the department principally assisting in the administration of this Act;

*Commission* means the Western Australian Planning Commission established by section 7;

*Crown land* has the meaning given to that term in the *Land Administration Act 1997*;

*deputy member* means a person appointed under Schedule 1 clause 7;

**development** means the development or use of any land, including —

- (a) any demolition, erection, construction, alteration of or addition to any building or structure on the land;
- (b) the carrying out on the land of any excavation or other works;
- (c) in the case of a place to which a Conservation Order made under section 59 of the *Heritage of Western Australia Act 1990* applies, any act or thing that —
  - (i) is likely to change the character of that place or the external appearance of any building; or
  - (ii) would constitute an irreversible alteration of the fabric of any building;

**development application** means an application under a planning scheme, or under an interim development order, for approval of development;

**district** means an area that has been declared to be a district under the *Local Government Act 1995*;

**district planning committee** means a committee established under Schedule 2 clause 9;

**environmental condition** means a condition agreed under section 48F, or decided under section 48J, of the EP Act;

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

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

**Heritage Council** means the Heritage Council of Western Australia established under the *Heritage of Western Australia Act 1990*;

**improvement plan** means an improvement plan referred to in section 119;

**interim development order** means a regional interim development order or a local interim development order;

**LAA Department** means the department principally assisting in the administration of the *Land Administration Act 1997*;

**land** includes —

- (a) land, tenements and hereditaments;
- (b) any interest in land, tenements and hereditaments; and
- (c) houses, buildings, and other works and structures;

**legal practitioner** means an Australian legal practitioner within the meaning of that term in the *Legal Profession Act 2008* section 3;

**local interim development order** means an interim development order made under section 102;

**local order area** means an area affected by, and specified in, a local interim development order;

**local planning scheme** means a planning scheme of effect or continued under Part 5;

**lot** means a defined portion of land —

- (a) depicted on a plan or diagram available from, or deposited with, the Authority and for which a separate Crown grant or certificate of title has been or can be issued; or
- (b) depicted on a diagram or plan of survey of a subdivision approved by the Commission; or
- (c) which is the whole of the land the subject of —
  - (i) a Crown grant issued under the *Land Act 1933*<sup>2</sup>;
  - (ii) a certificate of title registered under the *Transfer of Land Act 1893*;
  - (iii) a survey into a location or lot under section 27(2) of the *Land Administration Act 1997* or a certificate of Crown land title the subject of such a survey;
  - (iv) a part-lot shown on a diagram or plan of survey of a subdivision deposited with the Authority; or

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- (v) a conveyance registered under the *Registration of Deeds Act 1856*,

but does not include a lot in relation to a strata scheme, a lot in relation to a survey-strata scheme, or a lot shown as common property on a survey-strata plan, as those terms are defined in the *Strata Titles Act 1985*;

**member** means a member of the board;

**metropolitan region** means the region described in Schedule 3;

**Metropolitan Region Scheme** means the planning scheme continued under section 33(1), or any region planning scheme made in substitution for that scheme;

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

**MRI Account** means the Metropolitan Region Improvement Account established under section 198;

**officer of the Commission** means either of the following —

- (a) the Secretary to the Commission appointed under section 21(1);
- (b) a public service officer referred to in section 22;

**planning control area** means a planning control area declared and in force under section 112;

**planning scheme** means a local or region planning scheme that has effect under this Act and includes —

- (a) the provisions of the scheme; and
- (b) all maps, plans, specifications and other particulars contained in the scheme and colourings, markings or legends on the scheme;

**public authority** means any of the following —

- (a) a Minister of the Crown in right of the State;
- (b) a department of the Public Service, State trading concern, State instrumentality or State public utility;

- (c) any other person or body, whether corporate or not, who or which, under the authority of a written law, administers or carries on for the benefit of the State, a social service or public utility;

**public work** includes any public work as defined in the *Public Works Act 1902*;

**region** means the metropolitan region or a region referred to in Schedule 4;

**region planning scheme** means either of the following —

- (a) the Metropolitan Region Scheme;
- (b) a planning scheme continued under section 33(2) or of effect under Part 4;

**regional interim development order** means an interim development order made under section 98;

**Regional Minister** means the Minister to whom the Governor has for the time being committed the administration of the *Regional Development Commissions Act 1993*;

**regional order area** means an area affected by, and specified in, a regional interim development order;

**responsible authority** means —

- (a) in relation to a local planning scheme or local interim development order, the local government responsible for the enforcement of the observance of the scheme or order, or the execution of any works which under the scheme or order, or this Act, are to be executed by a local government; and
- (b) in relation to a region planning scheme, regional interim development order or planning control area, the Commission or a local government exercising the powers of the Commission;

**road** means a public thoroughfare for vehicles (as defined in the *Road Traffic Act 1974*) or pedestrians, and includes structures or other things appurtenant to the road that are within its limits,

and a thoroughfare is not prevented from being a road only because it is not open at each end;

**State planning policy** means a planning policy approved under section 29;

**subdivision** includes amalgamation;

**Swan Valley** has the meaning given to that term in the *Swan Valley Planning Act 1995*;

**Swan Valley Planning Committee** has the meaning given to that term in the *Swan Valley Planning Act 1995*;

**utility services** means drainage, electricity, sewerage or water supply services or such other services as are prescribed;

**WALGA** means the body constituted under section 9.58 of the *Local Government Act 1995* and known as the Western Australian Local Government Association.

- (2) In this Act, unless the contrary intention appears, a reference to —
- (a) “the preparation of a local planning scheme” or “the amendment of a local planning scheme” includes a reference to the adoption of a local planning scheme or amendment;
  - (b) “a local planning scheme prepared by a local government” or “an amendment prepared by a local government” includes a reference to a planning scheme or amendment adopted by it,

and other parts of speech and grammatical forms of those phrases have corresponding meanings.

- (3) A provision of this Act relating to a region scheme is to be construed in conjunction with the provisions of this Act relating to local planning schemes as if those provisions related to region schemes but, if the provision relating to a region scheme is in conflict with, or inconsistent with a provision relating to a local planning scheme, for the purpose of construing the provision

relating to a region scheme the provision relating to the region scheme prevails to the extent that it is in conflict or inconsistent.

*[Section 4 amended by No. 60 of 2006 s. 147(2); No. 77 of 2006 s. 17; No. 21 of 2008 s. 690.]*

**5. Crown bound**

- (1) Except as provided in section 6 this Act binds the Crown.
- (2) A region planning scheme binds the Crown.

**6. Act does not interfere with public works**

- (1) Subject to section 5(2) and subsections (2) and (3) of this section, nothing in this Act interferes with the right of the Crown, or the Governor, or the Government of the State, or a local government —
  - (a) to undertake, construct or provide any public work; and
  - (b) to take land for the purposes of that public work.
- (2) Rights referred to in subsection (1) are to be exercised having regard to —
  - (a) the purpose and intent of any planning scheme that has effect in the locality where, and at the time when, the right is exercised; and
  - (b) the orderly and proper planning, and the preservation of the amenity, of that locality at that time.
- (3) The responsible authority is to be consulted at the time when a proposal for any public work, or for the taking of land for a public work, is being formulated to ensure that the undertaking, construction, or provision of, or the taking of land for, the public work will comply with subsection (2).

## **Part 2 — The Western Australian Planning Commission**

### **Division 1 — Establishment and management**

#### **7. Commission established**

- (1) A body called the Western Australian Planning Commission is established.
- (2) The Commission is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Commission in its corporate name.

#### **8. Status**

The Commission is an agent of the State and has the status, immunities and privileges of the State.

#### **9. Management**

- (1) The Commission is to have a board of management.
- (2) The board is the governing body of the Commission.
- (3) The board, in the name of the Commission, is to perform the functions of the Commission under this Act or any other written law.

#### **10. Membership of board**

- (1) The board is to consist of the following members —
  - (a) a chairperson appointed by the Governor on the nomination of the Minister;
  - (b) 6 members appointed by the Governor, of whom —
    - (i) one is to be a person nominated by the Minister from a list of the names of 4 persons representing the interests of local governments within the

metropolitan region submitted to the Minister by WALGA;

- (ii) one is to be a person nominated by the Minister from a list of the names of 4 persons representing the interests of the local governments outside the metropolitan region submitted to the Minister by WALGA;
- (iii) one is to be a person nominated by the Minister as having experience of the field of coastal planning and management;
- (iv) one is to be a person nominated by the Minister as having practical knowledge of and experience in one or more of the fields of urban and regional planning, property development, commerce and industry, business management, financial management, engineering, surveying, valuation, transport or urban design;
- (v) one is to be a person nominated by the Minister as having practical knowledge of and experience in one or more of the fields of environmental conservation, natural resource management or heritage interests; and
- (vi) one is to be a person nominated by the Minister as having practical knowledge of and experience in one or more of the fields of planning and provision of community services, community affairs or indigenous interests;

and

- (c) the least number of other members who include —
  - (i) the chief executive officer of the department principally assisting in the administration of this Act;

- (ii) the chief executive officer of the Water and Rivers Commission established by the *Water and Rivers Commission Act 1995*;
  - (iii) the chief executive officer of the department principally assisting in the administration of the *Transport Co-ordination Act 1966*;
  - (iv) the chief executive officer of the department principally assisting in the administration of the *Environmental Protection Act 1986*;
  - (v) the chief executive officer of the department principally assisting in the administration of the *Government Agreements Act 1979*;
  - (vi) the chief executive officer of the department principally assisting in the administration of the *Housing Act 1980*;
  - (vii) a person, whether a member under another subparagraph or another person nominated by the Minister, who has experience in the field of urban and regional planning and is employed in an agency, as defined in the *Public Sector Management Act 1994*, for which the Minister is responsible; and
  - (viii) a person nominated by the Regional Minister.
- (2) When the submission of a list of names is required for the purposes of subsection (1)(b)(i) or (ii), that submission is to be made to the Minister in writing signed on behalf of WALGA within such reasonable time after the receipt by WALGA of a notice from the Minister stating that the submission is required as is specified in the notice.
- (3) If a submission is not made under subsection (2) within the time specified under that subsection, the Minister may nominate a person the Minister thinks fit to be a member in place of the person referred to in subsection (1)(b)(i) or (ii).

**11. Associate members**

- (1) In this section —  
*regional matter* means a matter that, in the opinion of the chairperson, affects more than one local government in a region referred to in Schedule 4.
- (2) The Governor may, on the nomination of the Minister, appoint an associate member for a region referred to in Schedule 4.
- (3) Each nomination by the Minister for appointment as an associate member under subsection (2) is to be made on the recommendation of the Regional Minister.
- (4) Where it appears to the chairperson that a regional matter is to be considered at a meeting of the board the chairperson may, by written notice specifying the time and place of the meeting, request the associate member for that region to attend that meeting for the consideration of that matter.

**12. Constitution and proceedings**

Schedule 1 has effect.

**13. Remuneration and allowances**

A member, a deputy member, an associate member or a member of a committee established under Schedule 2 is to be paid such remuneration and allowances as are determined by the Minister on the recommendation of the Minister for Public Sector Management.

**Division 2 — Functions and powers**

**14. Functions of the Commission**

The functions of the Commission are —

- (a) to advise the Minister on —

- (i) the coordination and promotion of land use, transport planning and land development in the State in a sustainable manner;
  - (ii) the administration, revision and reform of legislation relating to land use, transport planning and land development;
  - (iii) local planning schemes, and amendments to those schemes, made or proposed to be made for any part of the State;
- (b) to prepare and keep under review —
  - (i) a planning strategy for the State; and
  - (ii) planning policies,  
as a basis for coordinating and promoting land use planning, transport planning and land development in a sustainable manner, and for the guidance of public authorities and local governments on those matters;
- (c) to plan for the coordinated provision of transport and infrastructure for land development;
- (d) to provide advice and assistance to any body or person on land use planning and land development and in particular to local governments in relation to local planning schemes and their planning and development functions;
- (e) to undertake research and develop planning methods and models relating to land use planning, land development and associated matters;
- (f) to keep under review the strategic planning for the metropolitan region and any other part of the State to which a region planning scheme applies and to make recommendations to the Minister on that strategic planning;
- (g) to prepare and amend State planning policies under Part 3;

- (h) to prepare region planning schemes under Part 4;
- (i) to keep under review each region planning scheme, to review the scheme completely whenever requested by the Minister to do so and to submit for approval under Part 4 any amendment of a region planning scheme considered necessary as a result of a review;
- (j) to develop, maintain and manage land held by it that is reserved under a region planning scheme and to carry out such works, including the provision of facilities on the land, as may be incidental to development, maintenance or management or to be conducive to the use of the land for any purpose for which it is reserved;
- (k) to establish, and exercise powers in relation to, committees under Schedule 2;
- (l) to do all things that are necessary for the purpose of carrying out this Act and region planning schemes; and
- (m) to do anything else that it is required or authorised to do by this or any other written law.

**15. Powers**

- (1) The Commission may do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting subsection (1), the Commission may, for the purpose of performing a function —
  - (a) subject to this Act, acquire, hold and dispose of real and personal property;
  - (b) enter into an agreement with any person under which that person may acquire a lease of, a licence in respect of, or any other estate or interest in, any land mentioned in section 14(j);
  - (c) develop and turn to account any technology, software or other intellectual property that relates to the function,

and, for that purpose, apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights;

- (d) enter into a contract or arrangement with a person or body (including a local government or a department of the Public Service, or other agency or instrumentality, in the State or elsewhere) —
    - (i) for the supply of equipment by that person or body;
    - (ii) to provide consultancy or advisory services to that person or body; or
    - (iii) for the commercial exploitation of the knowledge, expertise and resources of the Commission and the rights referred to in paragraph (c);
  - (e) subject to subsection (3), enter into a contract or arrangement with a person or body (including a local government or a department of the Public Service, or other agency or instrumentality, in the State or elsewhere) for the performance by that person or body of any work or the supply of services;
  - (f) on terms and conditions approved by the Minister and the Treasurer, participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement; and
  - (g) act in conjunction with a person, a firm, a local government or a department of the Public Service, or other agency or instrumentality, of the State, another State or Territory or the Commonwealth.
- (3) The Commission is not to enter into a contract or arrangement referred to in subsection (2)(e) unless —
- (a) the Minister has approved; and
  - (b) the contract or arrangement is entered into in such circumstances and for such periods as the Minister may

from time to time specify by written notice given to the Commission.

- (4) For the purposes of subsection (2)(f) the Minister and the Treasurer may approve terms and conditions in respect of a specific business arrangement or class of business arrangement or in respect of business arrangements generally.
- (5) In this section —
- business arrangement*** means a company, a partnership, a trust, a joint venture, an arrangement for sharing profits or an arrangement for sponsorship;
- participate*** includes form, promote, establish, enter into, manage, dissolve, wind up, and do anything incidental to the participating in a business arrangement.

**16. Delegation by Commission**

- (1) The Commission may, by resolution, delegate to a person or body referred to in subsection (3) any function of the Commission under this Act or any other written law, except this power of delegation.
- (2) A resolution referred to in subsection (1) takes effect when notice of the resolution is published in the *Gazette*.
- (3) A delegation under subsection (1) may be made to —
- (a) a member or associate member;
  - (b) a committee established under Schedule 2, or a member of such a committee;
  - (c) an officer of the Commission;
  - (d) a public authority or a member or officer of a public authority; or
  - (e) a local government, a committee established under the *Local Government Act 1995* or an employee of a local government.

- (4) The reference to functions in subsection (1) extends, without limitation or restriction, to all of the powers, privileges, authorities, discretions, duties and responsibilities vested in or imposed on the Commission by this Act or any other written law.
- (5) Without limiting the generality of subsection (1), where the Commission has delegated its functions under section 14(i) and (l), the delegation includes, subject to the instrument of delegation, a delegation of every function of the Commission under Part 4.
- (6) A delegate cannot subdelegate the exercise or performance of any function.
- (7) A delegate exercising or performing a function as authorised under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (8) Nothing in this section limits the ability of the Commission to act through an officer or agent.
- (9) This section does not apply to the execution of documents but authority to execute documents on behalf of the Commission can be given under section 24.

**17. Directions by Minister**

- (1) The Minister may give written directions to the Commission with respect to the exercise or performance of its functions, either generally or in relation to a particular matter, and the Commission is to give effect to any such direction.
- (2) The Minister is to cause the text of any direction given under subsection (1) to be laid before each House of Parliament, or dealt with under subsection (3), within 14 days after the direction is given.
- (3) If —

- (a) at the commencement of the period referred to in subsection (2) a House of Parliament is not sitting; and
- (b) the Minister is of the opinion that that House will not sit during that period,

the Minister is to transmit a copy of the direction to the Clerk of that House.

- (4) A copy of a direction transmitted to the Clerk of a House is to be taken to have been laid before that House.
- (5) The laying of a copy of a direction that is regarded as having occurred under subsection (4) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.
- (6) The text of any direction given under subsection (1) is to be included in the annual report submitted by the accountable authority of the Commission under Part 5 of the *Financial Management Act 2006*.
- (7) Nothing in this section applies to a direction of the Minister given under section 26(1), 28(4)(b), 31(1), 31(2), 43(5)(b), 51(1), 51(2), 52(2), 63(1) or 67(1).

*[Section 17 amended by No. 77 of 2006 s. 17.]*

## **18. Minister to have access to information**

- (1) The Minister is entitled —
  - (a) to have information in the possession of the Commission; and
  - (b) if the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
  - (a) request the Commission to give information to the Minister;

- (b) request the Commission to give the Minister access to information; and
  - (c) for the purposes of paragraph (b) make use of the staff of the Commission to obtain the information and give it to the Minister.
- (3) The Commission has to comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) In this section —  
*document* includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;  
*information* means information specified, or of a description specified, by the Minister that relates to the functions of the Commission.

**19. Committees**

Schedule 2 has effect with respect to committees established by the Commission under that Schedule.

**20. Fees**

- (1) The Minister may by notice published in the *Gazette* set fees to be charged in respect of anything done under this Act and services provided by the Commission in connection with its functions.
- (2) Fees set under subsection (1) are payable by the person at whose request or on whose application the act is done.

**Division 3 — Administration**

**21. Secretary**

- (1) The Commission may appoint a person to the office of Secretary to the Commission.

- (2) The office of Secretary to the Commission may be held under a contract entered into with the Commission or under Part 3 of the *Public Sector Management Act 1994*.

**22. Staff of Commission**

Public service officers are to be appointed or made available under Part 3 of the *Public Sector Management Act 1994* to enable the Commission and its committees to perform their respective functions.

**23. Use of staff and facilities of public authorities**

- (1) The Commission may, by arrangement made between it and the relevant employer, make use, either full-time or part-time, of the services of any officer or employee employed —
- (a) in the Public Service;
  - (b) in a State agency; or
  - (c) otherwise in the service of the State.
- (2) The Commission may by arrangement with —
- (a) a department of the Public Service; or
  - (b) a State agency,
- make use of any facilities of the department or agency.
- (3) An arrangement under subsection (1) or (2) is to be made on terms agreed to by the parties.

**Division 4 — Miscellaneous**

**24. Execution of documents**

- (1) The Commission is to have a common seal.
- (2) A document is duly executed by the Commission if —
- (a) the common seal of the Commission is affixed to it in accordance with subsections (3) and (4); or

- (b) it is signed on behalf of the Commission by a person or persons authorised to do so under subsection (5).
- (3) The common seal of the Commission is not to be affixed to any document except as authorised by the Commission.
- (4) The common seal of the Commission is to be affixed to a document in the presence of the chairperson and another member, or the chairperson and an officer of the Commission authorised by the Commission either generally or in any particular case to be so present, and each of them is to sign the document to attest that the common seal was so affixed.
- (5) The Commission may, by writing under its common seal, authorise a member or members or an officer or officers of the Commission to sign documents on behalf of the Commission, either generally or subject to such conditions or restrictions as are specified in the authorisation.
- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.
- (7) A document executed by a person under this section without the common seal of the Commission is not to be regarded as a deed unless the person executes it as a deed and is authorised under subsection (5) to do so.
- (8) When a document is produced bearing a seal purporting to be the common seal of the Commission, it is to be presumed that the seal is the common seal of the Commission until the contrary is shown.

### **Part 3 — State planning policies**

**25. Continuation of statements of planning policy**

Any statement of planning policy in force under the *Town Planning and Development Act 1928* immediately before this section comes into operation —

- (a) continues in force as a State planning policy under this Act; and
- (b) has effect accordingly.

**26. Preparation of State planning policy**

- (1) The Commission may, with the approval or on the direction of the Minister, prepare State planning policies.
- (2) A State planning policy is to be directed primarily towards broad general planning and facilitating the coordination of planning throughout the State by local governments.
- (3) Despite subsection (2), a State planning policy may make provision for any matter which may be the subject of a local planning scheme.
- (4) A State planning policy may be prepared so as to apply —
  - (a) generally or in a particular class of matter or in particular classes of matter; and
  - (b) throughout the State or in a specified portion or specified portions of the State, whether or not a local planning scheme has been prepared or is being prepared in that portion or those portions of the State.

**27. Matters to which Commission is to have regard**

In the preparation of a State planning policy the Commission is to have regard to —

- (a) demographic, social and economic factors and influences;

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- (b) conservation of natural or cultural resources for social, economic, environmental, ecological and scientific purposes;
- (c) characteristics of land;
- (d) characteristics and disposition of land use;
- (e) amenity, design and environment;
- (f) communications; and
- (g) developmental requirements of public authorities,

in respect of the State or the portion of the State, or portions of the State, to which the State planning policy is to apply, as the case requires.

**28. Consultation**

- (1) When preparing a State planning policy, the Commission —
  - (a) if the State planning policy is likely to affect a district or districts in particular, is to consult the local government for that district or the local governments for those districts; and
  - (b) in any other case is to consult WALGA,with respect to the proposed State planning policy.
- (2) The Commission is to deposit copies of the proposed State planning policy for public inspection during ordinary business hours free of charge —
  - (a) at the office of the Commission; and
  - (b) at not less than 3 other public places which the Commission considers to be convenient for public inspection.
- (3) As soon as practicable after the deposit of the copies of the proposed State planning policy under subsection (2) the Commission is to cause to be inserted in a daily newspaper and a Sunday newspaper a notice stating —

- (a) in short, the purpose of the proposed State planning policy;
  - (b) that the proposed policy has been deposited and the places and times at which it may be inspected free of charge; and
  - (c) the period (being a period of not less than 60 days after the day on which the notice is published) within which, and the form in which, submissions may be made to the Commission on any provision of the proposal.
- (4) Without limiting subsections (1), (2) and (3), the Commission —
- (a) is to make reasonable endeavours to consult in respect of the proposed State planning policy such public authorities and persons as appear to the Commission to be likely to be affected by the policy; and
  - (b) is to take such steps to make public the details of the proposed State planning policy as the Minister may direct,
- and may take such other steps as it considers necessary to make public the details of the proposed policy.
- (5) The Commission is to consider any submissions with respect to the proposed State planning policy and may modify the proposed policy as it thinks fit.

## **29. Approval of Governor**

- (1) The Governor may approve a State planning policy prepared by the Commission with or without such modifications as the Minister may recommend and the Governor thinks necessary to make and which the Governor is by this subsection authorised to make.
- (2) A State planning policy has no force or effect until it is approved by the Governor and published in the *Gazette*.

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**30. Publication of State planning policy**

The Commission is to cause a copy of any State planning policy approved by the Governor —

- (a) to be published in the *Gazette*; and
- (b) to be forwarded to each local government, any portion of the district of which is included in the area covered by the policy.

**31. Amendment or repeal of State planning policy**

- (1) A State planning policy may be amended by amendments prepared by the Commission with the approval of the Minister, or on a direction of the Minister.
- (2) A State planning policy may be repealed by —
  - (a) a subsequent State planning policy; or
  - (b) an instrument of repeal —
    - (i) made by the Commission with the approval of the Minister, or on a direction of the Minister; and
    - (ii) approved by the Minister and published in the *Gazette*.
- (3) Sections 26, 27, 28, 29 and 30 apply, with such modifications as are necessary, to and in relation to an amendment as if the amendment were a State planning policy.

**32. Environmental review**

The Commission may, in relation to a particular State planning policy or an amendment to such a policy, act under sections 81, 82, 84, 85 and 86 as if —

- (a) the Commission were a local government; and
  - (b) that policy or amendment were a local planning scheme,
- but otherwise this Part applies to that policy or amendment.

## **Part 4 — Region planning schemes**

### **Division 1 — Continuation and formulation of region planning schemes**

#### **33. Planning schemes continued**

- (1) The Metropolitan Region Scheme in force under the *Metropolitan Region Town Planning Scheme Act 1959* immediately before this section comes into operation —
  - (a) continues in force as a region planning scheme under this Act; and
  - (b) has effect as if it were enacted by this Act.
- (2) Any regional planning scheme in force under the *Western Australian Planning Commission Act 1985* immediately before this section comes into operation —
  - (a) continues in force as a region planning scheme under this Act; and
  - (b) has effect as if it were enacted by this Act.

#### **34. Region planning schemes**

- (1) If, in the opinion of the Commission or the Minister, matters of State or regional importance so require, the Commission is to prepare such region planning schemes, and amendments to region planning schemes, as may be necessary for the purposes of this Act.
- (2) A region planning scheme may be prepared for all or any of the objects, purposes, provisions, powers or works referred to in section 69(1) and may provide for planning, replanning or reconstructing the whole or any part of a region.

**35. Preparation of region planning scheme or amendment**

- (1) Subject to section 36, the Commission may resolve to prepare a region planning scheme or an amendment to a region planning scheme.
- (2) Immediately after resolving to prepare a region planning scheme, the Commission is to ensure compliance with the relevant procedures set out in Divisions 2 and 3.
- (3) Immediately after resolving to prepare an amendment to a region planning scheme, the Commission is to ensure compliance in respect of that amendment with the relevant procedures set out in Divisions 2, 3 and 4.

**36. Restrictions on making or amendment of region planning scheme for metropolitan region**

The Metropolitan Region Scheme and any other region scheme applicable to the metropolitan region are not to be made or amended under this Act —

- (a) in a manner that is contrary to or inconsistent with —
  - (i) the *Swan and Canning Rivers Management Act 2006* Part 5;
  - (ii) any amendment made to the Metropolitan Region Scheme by the *Acts Amendment (Swan River Trust) Act 1988* section 14, 15 or 17; or
  - (iii) any amendment made to the Metropolitan Region Scheme by the *Swan and Canning Rivers (Consequential and Transitional Provisions) Act 2006* section 21;
- (b) 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;

- (c) 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* or section 43 of the *Armada Redevelopment Act 2001*, to make any provision in respect of land in the redevelopment area under any of those Acts so long as there is in operation in respect of that land a redevelopment scheme under Part 4 of any of those Acts; or
- (d) without limiting section 23 of the *Hope Valley-Wattleup Redevelopment Act 2000*, to make any provision in respect of land in the redevelopment area as defined in that Act.

*[Section 36 amended by No. 52 of 2006 s. 6.]*

**37. Region planning scheme may be amended or repealed**

- (1) A region planning scheme may be amended under this Act.
- (2) A region planning scheme may be repealed by —
  - (a) a subsequent region planning scheme; or
  - (b) an instrument of repeal prepared by the Commission, approved by the Minister and published in the *Gazette*.

**Division 2 — Prerequisites to region planning scheme or amendment**

**38. All proposed region planning schemes and amendments to be referred to EPA**

- (1) When the Commission resolves to prepare a region planning scheme or an amendment to a region planning scheme, the Commission is to forthwith refer that scheme or amendment to the EPA by giving to the EPA —
  - (a) written notice of the resolution; and
  - (b) such written information about that scheme or amendment as is sufficient to enable the EPA to comply

with section 48A of the EP Act in relation to the scheme or amendment.

- (2) This section applies in respect of an amendment whether or not the amendment constitutes a substantial alteration to a region planning scheme.

**39. Environmental review and consent to public submissions**

- (1) In this section —

*instructions* means instructions issued under section 48C(1)(a) of the EP Act.

- (2) When the EPA has acted under section 48C(1)(a) of the EP Act in relation to a proposed region planning scheme or amendment to a region planning scheme, the Commission, if it wishes to proceed with that scheme or amendment, is to undertake an environmental review of that scheme or amendment in accordance with the relevant instructions.

- (3) The Commission is not to submit a scheme or an amendment referred to in subsection (2) to the Minister under section 42 for consent to public submissions being sought, or act in relation to that scheme under section 58, as the case requires, until —

- (a) the Commission has forwarded the environmental review to the EPA; and
- (b) the EPA has advised that that review has been undertaken in accordance with the relevant instructions, or 30 days have elapsed since the review was forwarded without the EPA having advised whether or not that review has been undertaken in accordance with those instructions, whichever first occurs.

- (4) If the EPA has advised that the review has not been undertaken in accordance with the relevant instructions, the Commission may —

- (a) comply with subsection (2) in respect of the scheme or amendment concerned; or

- (b) request the Minister to consult the Minister for the Environment and, if possible, agree with the Minister for the Environment on whether or not the review has been undertaken in accordance with those instructions.
- (5) If the Minister, having complied with a request under subsection (4), 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 is final and without appeal or review; or
  - (b) cannot so agree, section 48J of the EP Act applies.

**40. Referrals to Swan Valley Planning Committee before public submissions**

- (1) The Commission, before submitting to the Minister under section 42 a scheme or amendment that would apply to land in the Swan Valley, is to refer the scheme or amendment to the Swan Valley Planning Committee.
- (2) The Committee, within 42 days after the day on which it receives the referral, or within such longer period as the Commission allows, is to give to the Commission its written advice on the scheme or amendment including any modifications it thinks should be made.
- (3) If the Committee fails to give its advice within the time allowed under subsection (2), it is to be taken to have no advice to give on the scheme or 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 preparing the scheme or amendment.
- (5) Subject to any approval under subsection (4), the Commission is to prepare the scheme or amendment in accordance with any advice given by the Committee under this section.

**Division 3 — Making of region planning scheme and amendments**

**41. Procedure**

Subject to Division 4, the Commission is to adopt the procedure set out in this Division for submitting and obtaining approval of any region planning scheme or amendment to a region planning scheme (in this Division referred as the *scheme or amendment*) formulated by the Commission.

**42. Consent to public submissions**

Subject to Division 4, the scheme or amendment when prepared by the Commission and after sections 38 and 39 have been complied with, is to be submitted, together with such reports, surveys and other material as the Commission considers desirable, to the Minister for the Minister's consent to public submissions being sought.

**43. Deposit and notification of scheme or amendment**

- (1) If the Minister consents to public submissions being sought in respect of the scheme or amendment the Commission is to deposit copies of —
- (a) the scheme or amendment; and
  - (b) a statement setting out the purpose and planning objectives of the scheme or amendment,

for public inspection during ordinary business hours free of charge at the places listed in subsection (2).

- (2) For the purposes of subsection (1) the scheme or amendment and statement are to be deposited —
- (a) in the case of a region planning scheme, or an amendment to a region planning scheme other than the Metropolitan Region Scheme —
    - (i) at the offices of the local governments of the districts which lie within or partly within the area to which the region planning scheme applies; and
    - (ii) at not less than 3 other public places which the Commission considers to be most convenient for public inspection;
  - and
  - (b) in the case of an amendment to the Metropolitan Region Scheme —
    - (i) at the offices of the Commission;
    - (ii) at the offices of the City of Perth and the City of Fremantle; and
    - (iii) at not less than 3 other public places in the metropolitan region which the Commission considers to be most convenient for public inspection.
- (3) As soon as practicable after the deposit of the copies under subsection (1) the Commission is to cause to be inserted at least 3 times in each of the following publications —
- (a) the *Gazette*;
  - (b) a daily newspaper circulating in the area to which the region planning scheme applies;
  - (c) a Sunday newspaper circulating in the area to which the region planning scheme applies,
- a notice stating —
- (d) in short, the purpose and planning objectives of the scheme or amendment;

- (e) that the scheme or amendment has been deposited and the places and times at which it may be inspected free of charge; and
  - (f) that submissions on any provision of the scheme or amendment may be made to the Commission in the form specified in the notice within the period specified in the notice (being a period not less than 3 months from the date the notice is first published in the *Gazette*).
- (4) If the scheme or amendment changes the zoning or reservation of land, the Commission, within 7 days of the publication of the notice in the *Gazette*, is to make reasonable endeavours to give written notice of the scheme or amendment to the owners of land of which the zoning or reservation is changed.
- (5) The Commission is to —
- (a) make reasonable endeavours to consult in respect of the scheme or amendment such public authorities and persons as appear to the Commission to be likely to be affected by the scheme or amendment; and
  - (b) take such steps to make public the details of the scheme or amendment as the Minister may direct,

and may take such other steps as it considers necessary to make public the details of the scheme or amendment.

**44. Submissions to Commission**

- (1) Submissions on the scheme or amendment may be made at any time within the period prescribed in the notice under section 43(3)(f).
- (2) The Commission is to consider all submissions that are duly lodged.

**45. Role of Commission in relation to environmental submissions on scheme or amendment**

- (1) In this section —
- proposed amendment*** means proposed amendment to a region planning scheme under this Division.
- (2) When the Commission has been informed under section 48A(1)(b)(i) of the EP Act that the proposed scheme or proposed amendment should be assessed by the EPA under Part IV Division 3 of the EP Act, the Commission is to —
- (a) as soon as practicable, but in any event within 7 days after the expiry of the period referred to in section 44(1), transmit to the EPA a copy of each submission made to the Commission under section 44(1) and relating wholly or in part to environmental issues raised by the proposed scheme or proposed amendment; and
  - (b) within 42 days, or such longer period as the Minister allows, after the expiry of the period referred to in section 44(1), inform the EPA of its views on and response to the environmental issues raised by the submissions referred to in paragraph (a) and received within that period.

**46. Person making submission may be heard**

- (1) The Commission is to give each person making a submission or the person's agent the opportunity of being heard on the submission by the Commission or by a committee established under Schedule 2.
- (2) Where a submission is made by a group of persons, the group is to appoint one person to represent the group and only that person may be heard under subsection (1).

**47. Referrals to Swan Valley Planning Committee after public submissions**

- (1) Where as required by section 40(5), a scheme or amendment has been prepared in accordance with advice given by the Swan Valley Planning Committee and after considering public submissions on the scheme or amendment the Commission has modified the scheme or amendment in a way which is not in accordance with that advice, the Commission is to, before submitting that scheme or amendment to the Minister under section 48, refer the scheme or amendment, with the other documents referred to in that section, back to the Committee for its comments and advice.
- (2) Where the Swan Valley Planning Committee has any comment to make, or advice to give, on a scheme or amendment or the other documents referred to it under subsection (1) it is to give a written report to the Commission and that report is to be submitted to the Minister along with the other documents referred to in section 48.
- (3) If the Swan Valley Planning Committee does not report to the Commission within 42 days of the referral under subsection (2) it is to be taken to have no comment to make or advice to give.

**48. Submissions to Minister**

- (1) Subject to section 47, after —
  - (a) sections 38 and 39 have been complied with in relation to the scheme or amendment; and
  - (b) considering all submissions that have been duly lodged,the Commission is to submit to the Minister —
  - (c) the scheme or amendment to which those submissions relate, with the modifications, if any, it thinks fit to make;
  - (d) a copy of each of those submissions; and
  - (e) a report by the Commission on those submissions.

- (2) For the purposes of subsection (1) the Commission may adopt a report by a committee referred to in section 46(1) and submit it as, or include it in, the report of the Commission.

**49. Minister may withdraw scheme or amendment**

If —

- (a) the report of the Commission; or
- (b) in the case of a scheme or amendment that would apply to land in the Swan Valley, a report of the Swan Valley Planning Committee under section 47,

submitted with a scheme or amendment under section 48, recommends that the scheme or amendment should not proceed, the Minister may, instead of presenting the scheme or amendment to the Governor for consideration, withdraw the scheme or amendment.

**50. Prerequisite for final approval of Minister**

The Minister is not to present to the Governor a proposed scheme or amendment referred to the EPA under section 38 if the Minister has reached agreement with the Minister for the Environment under section 48A(2)(b) of the EP Act, or until —

- (a) the Minister is informed under section 48A(1)(a) of the EP Act that the EPA considers that that scheme or amendment should not be assessed by the EPA under Part IV Division 3 of the EP Act;
- (b) the Minister 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 scheme or 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 the Minister is satisfied that the conditions, if any, to which that scheme or amendment is subject have been incorporated into that scheme or amendment.

**51. Directions by Minister**

- (1) Before presenting the scheme or amendment to the Governor for consideration, if the Minister is of the opinion that any modification made to the scheme or amendment by the Commission is of such a substantial nature as to warrant such action, the Minister may direct the Commission to again deposit the scheme or amendment as so modified, or that portion of the scheme or amendment which is so modified, for public inspection at such time and at such places as the Minister directs.
- (2) The Minister may direct the Commission to publish such notices in connection with the scheme or amendment as the Minister thinks appropriate.
- (3) The Commission is to comply with the directions.

**52. Procedure on modifications**

- (1) A person who desires to make a submission on modifications made by the Commission may notify the Minister in writing in the form approved by the Commission.
- (2) The Minister is to direct the Commission to consider and report on the submission to the Minister in accordance with the procedure set out in sections 46 and 48.
- (3) If a report submitted with a scheme or amendment under section 48 as read with subsections (1) and (2) recommends that the scheme or amendment should not be proceeded with, the Minister may, instead of presenting the scheme or amendment to the Governor for consideration, withdraw the scheme or amendment.

**53. Approval of Governor**

- (1) If the Minister has not withdrawn the scheme or amendment under section 49 or 52(3), the Minister is to present the scheme or amendment to the Governor.
- (2) The Governor may approve the scheme or amendment with or without such modifications as the Minister may recommend and the Governor thinks necessary to make and the Governor is by this subsection authorised to make such modifications.

**54. Publication of scheme or amendment**

When the Governor has approved the scheme or amendment, whether with or without modifications —

- (a) the scheme or amendment, or the scheme or amendment as so modified, but not including any maps, plans or diagrams, is to be published in the *Gazette*; and
- (b) the maps, plans and diagrams are to be open for public inspection at such times and such places as the Minister determines.

**55. Approval of scheme or amendment may be revoked**

- (1) The Governor may, on the recommendation of the Minister and at any time before the scheme or amendment has effect, revoke his or her approval of the scheme or amendment.
- (2) The Governor may, on the recommendation of the Minister and at any time before the scheme or amendment is published in the *Gazette*, revoke his or her approval of part of the scheme or amendment.
- (3) If the approval is revoked under subsection (1) or (2) before the scheme or amendment has been published in the *Gazette*, section 54 does not apply in respect of the scheme or amendment, or, if the approval is revoked in respect of part of the scheme or amendment, the part of the scheme or amendment in respect of which the approval is revoked, as the case requires.

- (4) If the approval is revoked under subsection (1) after notice of the scheme or amendment has been published in the *Gazette* and before the scheme is laid before both Houses of Parliament —
  - (a) section 56(1) does not apply in respect of the scheme or amendment; and
  - (b) notice of the revocation is to be published in the *Gazette*.
- (5) If the approval of the scheme or amendment is revoked under subsection (1) after the scheme or amendment is laid before both Houses of Parliament —
  - (a) the scheme or amendment is to be withdrawn; and
  - (b) notice of the revocation is to be published in the *Gazette*.

**56. Scheme or amendment may be disallowed**

- (1) A copy of the scheme or amendment and a copy of the report of the Commission on the submissions referred to in sections 48 and 52 are to be laid before each House of Parliament within 6 sitting days of that House next following the date of the publication of the scheme or amendment in the *Gazette*.
- (2) Either House of Parliament may, by resolution of which notice has been given within 12 sitting days of that House after the scheme or amendment has been laid before it under subsection (1), pass a resolution disallowing the scheme or amendment.
- (3) As soon as the scheme or amendment is no longer subject to disallowance under subsection (2), the scheme or amendment has effect as if it were enacted by this Act.
- (4) If either House of Parliament passes a resolution disallowing the scheme or amendment, notice of the disallowance is to be published in the *Gazette* within 21 days of the passing of the resolution.
- (5) It does not matter whether or not the period of —

- (a) 6 sitting days referred to in subsection (1) or some of them; or
- (b) 12 sitting days referred to in subsection (2) or some of them,

occur during the same session of Parliament, or the same Parliament, as that in which the relevant scheme or amendment is laid before the House of Parliament concerned.

#### **Division 4 — Minor amendments to region planning scheme**

##### **57. Minor amendment**

- (1) If a proposed amendment does not, in the opinion of the Commission, constitute a substantial alteration to a region planning scheme, that amendment —
  - (a) is not required to be submitted and approved in accordance with the procedure prescribed in Division 3; and
  - (b) instead, may be submitted and approved in accordance with the procedure prescribed in this Division.
- (2) Despite subsection (1), an amendment cannot be made to the Metropolitan Region Scheme under this Division to change the zoning of any land in the Swan Valley.

##### **58. Notification of minor amendment**

- (1) If under section 57 a proposed amendment is not required to be submitted and approved in accordance with the procedure prescribed in Division 3, the Commission, after sections 38 and 39 have been complied with in relation to that amendment, is to —
  - (a) send a copy of the amendment to the Minister;
  - (b) publish in the *Gazette* and in a daily newspaper circulating in the area to which the region scheme applies a notice —

- (i) describing the amendment;
  - (ii) stating where and when the amendment will be available for inspection;
  - (iii) stating that submissions on any provision of the amendment may be made to the Commission in the form set out in that notice within the period specified in the notice (being a period of not less than 60 days after publication of the notice); and
  - (iv) certifying that, in the opinion of the Commission, the amendment does not constitute a substantial alteration to the relevant region planning scheme;
- (c) if the amendment changes the zoning or reservation of land, within 7 days of the publication referred to in paragraph (b), make reasonable endeavours to give written notice of the amendment to the owner of land of which the zoning or reservation is changed; 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.
- (2) When a submission is made by a group of persons, that group is to appoint one person to represent that group for the purposes of the submission.

**59. Consideration of submissions on minor amendment**

If the Commission receives any submissions in accordance with the relevant notice published under section 58 the Commission is to consider, and make a report and recommendation to the Minister on, those submissions.

**60. Role of Commission in relation to environmental submissions on minor amendment**

- (1) In this section —

***proposed amendment*** means proposed amendment to a region planning scheme under this Division.

- (2) When the Commission has been informed under section 48A(1)(b)(i) of the EP Act that the proposed amendment should be assessed by the EPA under Part IV Division 3 of the EP Act, the Commission is to —
- (a) as soon as practicable, but in any event within 7 days after the expiry of the period referred to in section 58(1)(b)(iii), transmit to the EPA a copy of each submission made to the Minister under section 58(1)(b)(iii) and relating wholly or in part to environmental issues raised by the proposed amendment; and
  - (b) within 42 days, or such longer period as the Minister allows, after the expiry of the period referred to in section 58(1)(b)(iii), inform the EPA of its views on and response to the environmental issues raised by the submissions referred to in paragraph (a) and received within that period.

**61. Prerequisite for final approval by Minister of proposed minor amendment**

The Minister is not to approve under section 62(1) a proposed amendment to a region planning scheme referred to the EPA under section 60 if the Minister has reached agreement with the Minister for the Environment under section 48A(2)(b) of the EP Act, or until —

- (a) the Minister 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 Part IV Division 3 of the EP Act;
- (b) the Minister 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 the Minister is satisfied that the conditions, if any, to which that amendment is subject have been incorporated into that amendment.

**62. Minister may approve or decline to approve minor amendment**

- (1) On receiving a report and recommendation made to the Minister under section 59, the Minister may, after complying with section 61 in relation to the amendment concerned —

- (a) approve, with such modifications, if any, as the Minister considers it necessary to make; or
- (b) decline to approve,

the proposed amendment to which that report and recommendation relate.

- (2) When the Minister has approved a proposed amendment under subsection (1) the Commission is to cause —
  - (a) that amendment or that amendment as modified under subsection (1), as the case requires, excluding any maps, plans or diagrams forming part of that amendment, to be published in the *Gazette*; and
  - (b) any maps, plans or diagrams forming part of that amendment to be open for inspection at such times and places as the Commission determines.
- (3) The amendment or the amendment as modified under subsection (1), as the case requires, has effect on publication under subsection (2) as if it were enacted by this Act.

### **Division 5 — Consolidation of region planning scheme**

**63. Minister may direct consolidation**

- (1) The Minister may direct the Commission to deliver to the Minister a consolidation of a region planning scheme as in force at the date specified in the direction.
- (2) On receipt of a direction under subsection (1) the Commission is to cause to be prepared a consolidation of the region planning scheme incorporating all amendments to the scheme in force on the date specified in the direction.

**64. Maps, plans, diagrams may be added or substituted**

- (1) 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 region planning 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, in an informative and convenient form, the scope, effect and details of the region planning scheme as amended.
- (2) Where an addition or substitution under subsection (1) necessitates the making of a consequential amendment to the text of the region planning scheme, that amendment is to be made in the consolidation.
- (3) Where an addition, substitution or other amendment is effected under subsection (1) or (2) the region planning scheme is to be taken to be amended accordingly on and from the publication of notice of consolidation under section 66(1) but the provisions of Divisions 3 and 4 and the *Metric Conversion Act 1972* do not apply to any such addition, substitution or other amendment.

**65. Certification and delivery of consolidation**

After preparing the consolidation the Commission is to —

- (a) seal the consolidation and certify on the consolidation that it is a correct statement and representation of the region planning scheme as in force at the date specified in the direction given by the Minister; and
- (b) deliver the consolidation to the Minister.

**66. Proof of consolidation**

- (1) If the Minister approves of the consolidation and signs the consolidation, the Commission is to publish notice of the consolidation in the *Gazette*.
- (2) After publication of the notice —
  - (a) the consolidation is to be judicially noticed by all courts, tribunals, bodies and persons; and
  - (b) the consolidation is to be taken, unless the contrary intention is shown, to be a correct statement and representation of the region planning scheme as in force on the date specified in the Minister's direction.

**67. Consolidation of portion of region planning scheme**

- (1) The Minister may direct the Commission to deliver to the Minister a consolidation of the portion of a region planning scheme (whether by reference to a map of the scheme or any other portion of the scheme) as is specified in the direction.
- (2) The provisions of this Division 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.

## **Part 5 — Local planning schemes**

### **Division 1 — Continuation and formulation of local planning schemes**

**68. Town planning schemes continued as local planning schemes**

- (1) Any town planning scheme in force under the *Town Planning and Development Act 1928* on the day on which this section comes into operation —
  - (a) continues in force as a local planning scheme under this Act; and
  - (b) has effect as if it were enacted by this Act.
- (2) Nothing in this Act affects the validity of a town planning scheme continued under subsection (1).

**69. General objects of local planning scheme**

- (1) A local planning scheme may be made under this Act with respect to any land —
  - (a) with the general objects of making suitable provision for the improvement, development and use of land in the local planning scheme area; and
  - (b) making provision for all or any of the purposes, provisions, powers or works referred to in Schedule 7.
- (2) With those objects a local planning scheme may provide for planning, replanning, or reconstructing, the whole or any part of the local planning scheme area.

**70. Scheme may be made for land outside scheme or be concurrent with another scheme**

- (1) Nothing in this Act prevents —
  - (a) a local planning scheme from being made with respect to land comprised in another local planning scheme; or

- (b) subject to subsection (2), 2 or more local planning schemes from having force and effect concurrently with respect to any land.
- (2) The zoning of land in an area to which a local planning scheme applies is not to be provided for in more than one local planning scheme applicable to that area.

**71. Prohibition on making local planning scheme in redevelopment area**

A local planning scheme is not to be made for any land that is —

- (a) in the development area as defined in the *East Perth Redevelopment Act 1991*, the *Subiaco Redevelopment Act 1994*, the *Midland Redevelopment Act 1999* or the *Armadale Redevelopment Act 2001*, so long as there is in operation in respect of that land a redevelopment scheme under Part 4 of any of those Acts; or
- (b) in the redevelopment area as defined in the *Hope Valley-Wattleup Redevelopment Act 2000*.

**72. Local government may prepare or adopt scheme**

- (1) Subject to section 71, a local government may —
  - (a) prepare a local planning scheme with reference to any land within its district, or with reference to land within its district and other land within any adjacent district; or
  - (b) adopt, with or without modifications, a local planning scheme proposed by all or any of the owners of any land with respect to which the local government might itself have prepared a scheme.
- (2) A local government and another local government may —
  - (a) jointly prepare a local planning scheme with respect to land that is partly in the district of the first-mentioned

- local government and partly in the district of the other local government; or
- (b) jointly adopt, with or without modifications, a local planning scheme proposed by all or any of the owners of any land with respect to which the local governments might themselves have prepared a scheme.
- (3) Where a local planning scheme is prepared or adopted under subsection (2) a reference in this Act to the local government or responsible authority that is preparing or has prepared the scheme is to be read as a reference to the local governments that join in the preparation or adoption of the scheme.

**73. Provisions of local planning scheme**

- (1) A local planning scheme is to —
- (a) define in such manner as may be prescribed by the regulations the area to which the scheme is to apply;
  - (b) specify the local government to be responsible for enforcing the observance of the scheme, and for the execution of any works which, under the scheme or this Act, are to be executed by a local government;
  - (c) provide for matters which may be dealt with by general provisions prescribed under section 256;
  - (d) otherwise supplement, exclude or vary the general provisions to the extent approved by the Minister; and
  - (e) deal with any special circumstances or contingencies for which adequate provision is not made by the general provisions.
- (2) Where land included in a local planning scheme is in the districts of more than one local government, or is in the district of a local government by which the scheme was not prepared, the responsible authority in relation to the local planning scheme may be one of those local governments, or for certain

purposes of the scheme one local government, and for other purposes of the scheme another local government.

**74. Local planning scheme may be repealed**

A local planning scheme may be repealed by —

- (a) a subsequent local planning scheme; or
- (b) an instrument of repeal prepared by the local government, approved by the Minister and published in the *Gazette*.

**75. Local planning scheme may be amended**

A local government may amend a local planning scheme with reference to any land within its district, or with reference to land within its district and other land within any adjacent district, by an amendment —

- (a) prepared by the local government, approved by the Minister and published in the *Gazette*; or
- (b) proposed by all or any of the owners of any land in the scheme area, adopted, with or without modifications, by the local government, approved by the Minister and published in the *Gazette*.

**Division 2 — Minister's powers in relation to local planning schemes**

**76. Minister may order local government to prepare or adopt local planning scheme**

- (1) If the Minister is satisfied on any representation that a local government —
  - (a) has failed to take the requisite steps for having a satisfactory local planning scheme prepared and approved in a case where a local planning scheme ought to be made;

- (b) has failed to adopt any scheme proposed by owners of any land, in a case where a local planning scheme ought to be adopted; or
- (c) has refused to consent to any modifications or conditions imposed by the Minister,

the Minister may order the local government, within such time as is specified in the order, to prepare and submit for the approval of the Minister a local planning scheme, or to adopt a local planning scheme, or to consent to the modifications or conditions imposed.

- (2) If the representation under subsection (1) is that a local government has failed to adopt a scheme, the Minister, in lieu of making an order to adopt the scheme, may approve of the proposed scheme subject to such modifications and conditions, if any, as the Minister thinks fit.
- (3) A scheme approved under subsection (2) has effect as if it had been adopted by the local government and approved by the Minister under this Part.

### **Division 3 — Relevant considerations in preparation or amendment of local planning scheme**

#### **77. Effect of State planning policy**

- (1) Every local government in preparing or amending a local planning scheme —
  - (a) is to have due regard to any State planning policy which affects its district; and
  - (b) may include in the scheme a provision that a specified State planning policy, with such modifications as may be set out in the scheme, is to be read as part of the scheme, or a provision however expressed to the same effect.

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- (2) Where a scheme includes a provision referred to in subsection (1)(b) —
  - (a) the scheme is to have effect as if the State planning policy, as from time to time amended, or any subsequent policy by which it is repealed under this Act, were set out in full in the scheme; and
  - (b) the State planning policy is to have effect as part of the scheme subject to any modifications set out in the scheme.
- (3) Modifications referred to in subsection (2)(b) prevail over any later amendment of the State planning policy, or subsequent policy referred to in subsection (2)(a), which is inconsistent with the modifications.

**78. Schemes and amendments applicable to the Swan Valley**

- (1) If the City of Swan resolves to prepare or adopt a local planning scheme, or an amendment to a local planning scheme, that would apply to land in the Swan Valley, that City, before the scheme or the amendment is advertised for public inspection under the regulations, is to refer the proposed scheme or amendment to the Swan Valley Planning Committee.
- (2) The Swan Valley Planning Committee, within 42 days after the day on which it receives the referral, or within such longer period as the City of Swan allows, is to give to the City its written advice on the proposed scheme or amendment, including any modifications it thinks should be made.
- (3) If the Swan Valley Planning Committee fails to give its advice within the time allowed under subsection (2), it is to be taken to have no advice to give on the proposed scheme or amendment.
- (4) The Commission may, at the request of the City of Swan, approve of the City disregarding the Committee's advice in whole or in part in preparing the scheme or amendment.

- (5) Subject to any approval under subsection (4), the City of Swan is to prepare the local planning scheme or the amendment in accordance with any advice given by the Swan Valley Planning Committee under this section.

**79. Advice from Heritage Council**

If an entry in the Register or on any inventory maintained under section 45 or 46 of the *Heritage of Western Australia Act 1990* relates to land or waters that are within or abut a local government district, the local government in preparing or amending a local planning scheme —

- (a) is to refer the proposed scheme or amendment to the Heritage Council for advice in so far as any proposal under that scheme or amendment affects or may affect any such land or waters;
- (b) is to have regard to any advice given; and
- (c) is not to proceed, without the consent of the Minister, with the proposal unless or until that advice has been received.

**80. Swan River management programme**

If a strategic document in force under the *Swan and Canning Rivers Management Act 2006* Part 4 relates to land or waters that are within or abut the district of a local government referred to in Schedule 7 of that Act, the local government in preparing or amending a local planning scheme is to have due regard to that management programme.

*[Section 80 amended by No. 52 of 2006 s. 6.]*

**81. Referral of scheme or amendment to EPA**

When a local government resolves to prepare or adopt a local planning scheme, or an amendment to a local planning scheme, the local government is to forthwith refer the proposed local planning scheme or amendment to the EPA by giving to the EPA —

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

**82. Environmental review**

- (1) When the EPA has acted under section 48C(1)(a) of the EP Act in relation to a proposed local planning scheme or a proposed amendment to a local planning scheme, the local government concerned, if it wishes to proceed with that local planning scheme or amendment, is to undertake, or cause under subsection (5) to be undertaken, an environmental review of that local planning scheme or amendment in accordance with the relevant instructions issued under that section.
- (2) The local government is not to advertise that local planning scheme or amendment under section 84 until —
  - (a) the local government has forwarded the environmental 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.
- (3) 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 local government may —
  - (a) comply with subsection (1) in respect of the local planning scheme or amendment concerned; or
  - (b) request the Minister to consult the Minister for the Environment and, if possible, agree with that Minister on whether or not the review has been undertaken in accordance with those instructions.

- (4) If the Minister, having complied with a request made under subsection (3), 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 is final and without appeal or review; or
  - (b) cannot so agree, section 48J of the EP Act applies.
- (5) If —
- (a) the resolution to prepare or adopt a local planning scheme, or an amendment to a local planning scheme, referred to in subsection (1) was passed at the request of the owner of land to which that local planning scheme or amendment relates;
  - (b) the local government referred to in that subsection by written notice served on that owner requests the owner to undertake an environmental review of that local planning scheme or amendment in accordance with the relevant instructions issued under section 48C(1)(a) of the EP Act; and
  - (c) that owner wishes that local planning scheme or amendment to proceed,
- the owner is to undertake the environmental review and forward that review to that local government.
- (6) The local government may, in accordance with regulations made under section 259, recover the expenses incurred by the local government in undertaking an environmental review in accordance with instructions issued under section 48C(1)(a) of the EP Act.

**83. Consultation of persons likely to be affected**

A local government, before submitting a local planning scheme or amendment to the Minister under section 87, is to make reasonable endeavours to consult in respect of the local planning scheme or amendment such public authorities and persons as

appear to the local government to be likely to be affected by the local planning scheme or amendment.

#### **Division 4 — Advertisement and approval**

##### **84. Advertisement of scheme or amendment**

After compliance with sections 81 and 82, a local planning scheme prepared or adopted, or an amendment to a local planning scheme prepared or adopted, by a local government, is to be advertised for public inspection in accordance with the regulations.

##### **85. Role of local governments in relation to environmental submissions**

- (1) When a local government has been informed under section 48A(1)(b)(i) of the EP Act that a proposed local planning scheme or amendment should be assessed by the EPA under Part IV Division 3 of the EP Act, the local government is to —
  - (a) as soon as practicable, but in any event within 7 days after the expiry of the period during which that local planning scheme or amendment is advertised under section 84, transmit to the EPA a copy of each submission —
    - (i) made during that period; and
    - (ii) relating wholly or in part to environmental issues raised by that local planning scheme or amendment;
  - and
  - (b) within 42 days, or such longer period as the Minister allows, after the expiry of the period referred to in paragraph (a) inform the EPA of its views on and response to the environmental issues referred to in paragraph (a) and received within that period.

**86. Prerequisite to final approval by Minister**

The Minister is not to approve under section 87(2) of a proposed local planning scheme or amendment referred to the EPA under section 81 if the Minister has reached agreement with the Minister for the Environment under section 48A(2)(b) of the EP Act, or until —

- (a) the Minister is informed under section 48A(1)(a) of the EP Act that the EPA considers that that local planning scheme or amendment should not be assessed by the EPA under Part IV Division 3 of the EP Act;
- (b) the Minister 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 local planning scheme or 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 local government under that section,

whichever first occurs, and the Minister is satisfied that the conditions, if any, to which that amendment is subject have been incorporated into that local planning scheme or amendment.

**87. Approval and publication of scheme or amendment**

- (1) Subject to section 83, after advertisement under section 84 and compliance with sections 85 and 86, a local planning scheme prepared or adopted, or an amendment to a local planning scheme prepared or adopted, by a local government is to be submitted to the Minister for the approval of the Minister.
- (2) The Minister may, in relation to a local planning scheme or amendment submitted to the Minister under subsection (1) —
  - (a) approve of that local planning scheme or amendment;
  - (b) require the local government concerned to modify that local planning scheme or amendment in such manner as

the Minister specifies before the local planning scheme or amendment is resubmitted for the Minister's approval under this subsection; or

- (c) refuse to approve of that local planning scheme or amendment.
- (3) When the Minister has approved a local planning scheme or an amendment to a local planning scheme, the local government is to —
- (a) cause the scheme or amendment to be published in the *Gazette*;
  - (b) advertise the scheme or amendment in accordance with the regulations; and
  - (c) ensure that copies of the scheme or amendment are available to the public.
- (4) A local planning scheme or amendment to a local planning scheme, when approved by the Minister and published in the *Gazette*, has full force and effect as if it were enacted by this Act.
- (5) It is sufficient compliance with subsection (3) if a local planning scheme or amendment to a local planning scheme is published in the *Gazette* without any maps, plans or diagrams which form part of the local planning scheme or amendment.

### **Division 5 — Review of local planning schemes**

#### **88. Local government to prepare consolidation**

- (1) For the purposes of section 90, a local government by which a local planning scheme was prepared is to prepare a consolidation of the scheme incorporating all the amendments that have been made to the scheme and are of effect on the day on which the resolution to prepare the consolidation is made.

- (2) The consolidation is to be prepared —
- (a) in the fifth year after approval was given to the scheme by the Minister under section 87;
  - (b) in the case of a scheme in respect of which a consolidation has been published in the *Gazette* under this Part, in the fifth year after the consolidation of the scheme was last so published; and
  - (c) in the case of a scheme in respect of which an exemption is granted under subsection (4)(b) or section 91(3), in the fifth year after the notice of exemption was published in the *Gazette*.
- (3) Despite subsections (1) and (2), a local government is not required to prepare a consolidation of the scheme if the local government resolves instead to prepare a new scheme in substitution for that scheme.
- (4) Despite subsections (1) and (2), the Minister may at any time, by notice in the *Gazette* —
- (a) direct the local government by which a local planning scheme was prepared to prepare, within the period specified in the notice, a consolidation of the scheme; or
  - (b) exempt a local government from compliance with those subsections if the scheme does not contain any provision for the zoning or classification of land.
- (5) If a consolidation is required under subsection (4)(a) before a consolidation has been prepared under a paragraph of subsection (2), the consolidation is not required under that paragraph.
- (6) The Minister is to consult the local government before giving a direction under subsection (4)(a).

**89. Submissions on consolidated scheme**

- (1) After preparing the consolidation the local government is to ensure that the consolidation is approved by the Commission and made available for inspection.
- (2) When the consolidation has been approved by the Commission, the local government is to invite submissions from the public on the effectiveness of the scheme, the need for amendment of the scheme and the need for the making of a new scheme.

**90. Report on scheme**

- (1) Not later than 6 months after preparing a consolidation of a local planning scheme, the local government is to make a report to the Minister on the operation of the scheme.
- (2) In its report the local government is to —
  - (a) include all submissions received under section 89;
  - (b) report and make recommendations on the submissions; and
  - (c) report and make recommendations as to whether or not the scheme —
    - (i) is satisfactory in its existing form;
    - (ii) should be amended;
    - (iii) should be repealed and a new scheme prepared in its place; or
    - (iv) should be repealed.

**91. Procedure where no change to scheme**

- (1) If —
  - (a) a report of a local government under section 90 recommends that a local planning scheme is satisfactory in its existing form and the Minister concurs; or

(b) the Minister, after considering the report of the local government, advises the local government that the local planning scheme is satisfactory in its existing form,

the local government is to cause the consolidation of the local planning scheme prepared under section 88 to be published in the *Gazette*.

- (2) It is sufficient compliance with subsection (1) if a consolidation of a local planning scheme is published in the *Gazette* without any maps, plans or diagrams which form part of the local planning scheme.
- (3) If the Minister considers that the publication of a consolidation of a local planning scheme under subsection (1) is unnecessary or inexpedient the Minister may by notice published in the *Gazette* declare that the scheme is satisfactory in its existing form and exempt the local government from the requirement to publish the consolidation.

**92. Procedure where amendments proposed**

- (1) If —
- (a) a report of a local government under section 90 recommends amendment of a local planning scheme and the Minister concurs; or
- (b) the Minister, after considering the report, advises the local government that amendment is recommended,
- the local government, within 3 months or such longer period as the Minister may in writing agree from the date of the report or the Minister's advice as the case may be, is to amend the local planning scheme in accordance with this Part.

- (2) After the Minister has under section 87(2), approved the amendments prepared for the purposes of subsection (1), the local government is to —
- (a) prepare a consolidation of the local planning scheme, incorporating —
    - (i) all the amendments that have been made to the scheme and are of effect on the day on which the resolution to prepare the consolidation is made; and
    - (ii) the amendments prepared for the purposes of subsection (1) and approved by the Minister under section 87(2);
  - and
  - (b) publish the consolidation of the local planning scheme in the *Gazette*.
- (3) It is sufficient compliance with subsection (2)(b) if a consolidation of a local planning scheme is published in the *Gazette* without any maps, plans or diagrams which form part of the local planning scheme.

**93. Effect of publication of consolidation**

- (1) As from the publication of a consolidation of a local planning scheme under section 91 or 92 the consolidation of the local planning scheme —
- (a) is to be judicially noticed by all tribunals, bodies and persons; and
  - (b) is to be taken to be a correct statement and representation of the local planning scheme as of effect on the day on which the resolution to prepare the consolidation was made and, in the case of a consolidation published under section 92, including the amendments prepared for the purposes of subsection (1) of that section and approved by the Minister.

- (2) A reference in this or any other Act to a local planning scheme is to be read and construed as including a reference to a consolidation of a local planning scheme published under section 91 or 92.

**94. Procedure where new scheme prepared following report**

If —

- (a) a report of a local government under section 90 recommends that a local planning scheme should be repealed and a new scheme prepared in its place and the Minister concurs; or
- (b) the Minister, after considering the report, advises the local government that the local planning scheme should be repealed and a new scheme prepared in its place,

the new scheme is to be prepared by the local government and made in accordance with this Part, within the period of 6 months or such longer period as the Minister may in writing agree from the date of the report or the date of the Minister's advice as the case may be.

**95. Procedure where scheme repealed following report**

If —

- (a) a report of a local government under section 90 recommends that a local planning scheme should be repealed and not replaced and the Minister concurs; or
- (b) the Minister, after considering the report, advises the local government that the local planning scheme should be repealed and not replaced,

the local government is to prepare an instrument of repeal, and forward it to the Minister under section 74(b) within the period of 42 days or such longer period as the Minister may in writing agree from the date of the report or the date of the Minister's advice as the case may be.

**96. Consolidation of 2 or more local planning schemes**

Where 2 or more local planning schemes are consolidated, the provisions of the Division apply to those schemes as so consolidated with effect from the date on which they were last published in the *Gazette* as a consolidation of a scheme with the approval of the Minister.

**Division 6 — Crown land**

**97. Planning of town and suburban lands**

- (1) If Crown land is to be sold, leased or disposed of, the Commission may prepare a scheme in respect of the land.
- (2) The Commission may prepare a scheme in respect of the land with the general objects and provisions set out in section 69.
- (3) A scheme prepared under this section, if approved by the Minister and published in the *Gazette*, has the same effect as a local planning scheme made and approved under this Part.
- (4) The provisions of this Act, other than Part 10, so far as consistent and applicable, apply to and in respect of a scheme prepared under this section, as if the Commission were the responsible authority.
- (5) If —
  - (a) a scheme is prepared, approved and published under this section; and
  - (b) Crown land the subject of the scheme is sold, leased or disposed of,the Commission, with the approval of the Minister, may —
  - (c) suspend, vary, supplement, or supersede any of the provisions of the scheme;
  - (d) agree with a local government to be jointly responsible with that local government, as the responsible authority

under and for the purposes of the scheme either with respect to all, or part, of the scheme; or

- (e) agree with a local government that the local government is to be substituted as the responsible authority under and for the purposes of the scheme, either with respect to all, or part, of the scheme.
- (6) After subsection (7) has been complied with in respect of a scheme to which subsection (5)(e) applies, the scheme is to be taken to be a local planning scheme prepared by the local government substituted as the responsible authority and this Act applies accordingly.
- (7) Where the Commission exercises a power under subsection (5) and as a result a scheme is amended, the Minister is to cause notice of the amendment to be published in the *Gazette*.

## **Part 6 — Interim development orders**

### **Division 1 — Regional interim development orders**

#### **98. Regional interim development orders**

(1) Subject to this Part, if —

- (a) the Commission is of the opinion that the development of land outside the metropolitan region and within a part of the State in respect of which the Commission has resolved under section 35 to prepare a region planning scheme might materially affect the preparation or implementation of the region planning scheme; and
- (b) the Minister approves,

the Commission may make such regional interim development orders as are necessary for regulating, restricting or prohibiting that development.

(2) A regional interim development order may be made by the Commission at any time —

- (a) before the relevant procedures set out in Part 4 have been fully complied with in respect of the region planning scheme; and
- (b) after the Commission has complied with subsection (3).

(3) Before making a regional interim development order the Commission is to —

- (a) inform each local government of a district which lies within or partly within the area to which the proposed regional interim development order will apply of the proposal;
- (b) invite that local government to make submissions on the proposal within 28 days; and
- (c) provide the Minister with a copy of any submission received under paragraph (b).

**99. Contents of regional interim development order**

- (1) A regional interim development order is to specify the land affected by the regional development order.
- (2) A regional interim development order may —
  - (a) require a person, before commencing to carry out any specified development within the regional order area, to obtain the written approval of the Commission;
  - (b) regulate, restrict or prohibit any specified class of development within the regional order area;
  - (c) exempt from the operation of the order any development of a specified class within the regional order area;
  - (d) provide that the approval of the Commission for the carrying out of any development referred to in the order may, if granted, be granted subject to such conditions as the Commission considers necessary to impose, including, without limiting the generality of those conditions —
    - (i) a condition limiting the period during which that development may be carried out; and
    - (ii) a condition requiring the cessation of the development and removal of any structure or building erected under that approval at the expiry of the period so limited;
  - (e) provide that the Commission may refuse to grant to an applicant its approval of development of a specified class in a specified part of the regional order area;
  - (f) subject to section 108, suspend, vary, supplement or supersede any of the provisions of the local laws in force under the *Local Government Act 1995* and the *Local Government (Miscellaneous Provisions) Act 1960* in the regional order area.

- (3) In subsection (2) —

*specified* means specified in the regional interim development order concerned.

**100. Consultation with local government on development approval**

Before granting an application for approval of development referred to in section 99(2)(a), the Commission is to —

- (a) refer that application to the local government of the district in which the relevant land lies;
- (b) invite the local government to make submissions on the application within 42 days; and
- (c) have regard to any submission received under paragraph (b).

**101. Restrictions on power to grant development approval**

Despite section 129, nothing in a regional interim development order in force in respect of a regional order area empowers the Commission to grant an applicant approval of development if that development contravenes a provision of a local planning scheme in force in the regional order area.

**Division 2 — Local interim development orders**

**102. Local interim development orders**

- (1) Pending the consideration by the Minister of a proposed local planning scheme for a district or part of a district situated outside the metropolitan region, the Minister may make such local interim development orders as are necessary and in the public interest for regulating, restricting or prohibiting the development of any land within the district or such part of the district.

- (2) If a local planning scheme is already in effect in a district or part of a district and it is proposed to make a further local planning scheme for that district or part of a district, the Minister is not to make a local interim development order that has effect in that district or part of a district unless, in the opinion of the Minister, it is in the public interest to do so.

**103. Contents of local interim development orders**

- (1) A local interim development order is to specify the land affected by the order.
- (2) A local interim development order may —
- (a) require a person, before commencing to carry out any specified development within the local order area, to obtain the written approval of the local government administering the order;
  - (b) regulate, restrict or prohibit any specified class of development within the local order area;
  - (c) exempt from the operation of the order any development of a specified class within the local order area;
  - (d) in the case of land to which the *Heritage of Western Australia Act 1990* applies, require the local government administering the order before approving a development application —
    - (i) to refer the application in question to the Heritage Council;
    - (ii) not to proceed, without the consent of the Minister, with the application unless or until the advice of the Heritage Council has been received; and
    - (iii) to have regard to that advice;
  - (e) provide that the approval of the local government for the carrying out of any development referred to in the order may, if granted, be granted subject to such conditions as

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the local government considers necessary to impose, including, without limiting the generality of those conditions —

- (i) a condition limiting the period during which that development may be carried out; and
  - (ii) a condition requiring the cessation of the development and removal of any structure or building erected under that approval at the expiry of the period so limited;
- (f) provide that the local government administering the order may refuse to grant to an applicant its approval of development of a specified class in a specified part of the local order area;
- (g) subject to section 108, suspend, vary, supplement or supersede any of the provisions of the local laws in force under the *Local Government Act 1995* and the *Local Government (Miscellaneous Provisions) Act 1960* in the local order area.
- (3) In subsection (2) —  
*specified* means specified in the local interim development order concerned.

**Division 3 — Provisions applying to regional and local interim development orders**

**104. Consultation with public authorities and utility services providers**

Before making an interim development order that, in the opinion of the Commission or the local government, as the case requires, may affect the functions of a public authority or utility services provider, the Commission or the local government is to —

- (a) inform the public authority or utility services provider of the proposal;

- (b) invite that public authority or utility services provider to make submissions on the proposal within 28 days; and
- (c) provide the Minister with a copy of any submission received under paragraph (b).

**105. Publication of summary of interim development order**

- (1) On the making of a regional interim development order the Commission is to cause to be published once in the *Gazette* and 3 times in a daily newspaper circulating in the part of the State to which the order applies a notice —
  - (a) containing a summary of the order; and
  - (b) stating that copies of the order are available for inspection by any person free of charge at the offices of the Commission and of any local government within the area to which the order applies.
- (2) At the same time or before acting under subsection (1), the Commission is to publish in the *Gazette* —
  - (a) a summary of the relevant resolution made under section 35(1); and
  - (b) a description of the part of the State to which the relevant proposed region planning scheme is to apply.
- (3) On the making of a local interim development order the local government in whose district the order applies is to cause to be published once in the *Gazette* and 3 times in a daily newspaper circulating in that district a notice —
  - (a) containing a summary of the order; and
  - (b) stating that copies of the order are available for inspection by any person free of charge at the offices of the Commission and of any local government within the area to which the order applies.

**106. Administration of interim development order**

- (1) The Commission is to administer each regional interim development order.
- (2) The local government or local governments specified in a local interim development order is or are to administer the local interim development order.

**107. Effect and duration of interim development order**

- (1) Subject to subsection (2), an interim development order —
  - (a) comes into operation on the day of publication of the relevant notice in the *Gazette* under section 105; and
  - (b) has effect as if it were enacted by this Act.
- (2) An interim development order ceases to have effect in the regional order area or local order area to which it applies —
  - (a) when the relevant region planning scheme or local planning scheme, as the case requires, comes into operation in respect of that area;
  - (b) when the interim development order is revoked under section 110; or
  - (c) on the expiry of 3 years from the day on which the interim development order first applied to that area,whichever is the sooner.
- (3) Despite subsection (2) —
  - (a) the Commission may, by notice published in the *Gazette* before a regional interim development order ceases to have effect, extend its operation for a further period not exceeding 12 months and may, if the Commission thinks fit, exercise that power of extension more than once; and
  - (b) the Minister may, by notice published in the *Gazette* before a local interim development order ceases to have effect, extend its operation for a further period not

exceeding 12 months and may, if the Minister thinks fit, exercise that power of extension more than once.

**108. Effect on continued use and permitted development**

Nothing in an interim development order prevents —

- (a) the continued use of any land for the purpose for which the land was lawfully being used; or
- (b) the carrying out of any development for which an approval or approvals, if any, required under this Act or any other Act authorising that development to be carried out, had been obtained and was or were current,

immediately before the coming into operation of the order.

**109. Amendment of interim development order**

- (1) The Commission may, with the approval of the Minister, at any time make an order amending a regional interim development order.
- (2) The Minister may at any time make an order amending a local interim development order.
- (3) Sections 105(1) or (3) and 107(1) apply with any necessary modifications to such an order as if the order were an interim development order.

**110. Revocation of interim development order**

- (1) The Commission may, with the approval of the Minister, at any time by order published —
  - (a) once in the *Gazette*; and
  - (b) 3 times in a daily newspaper circulating in the part of the State to which the relevant regional interim development order applies,

revoke a regional interim development order.

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- (2) The Minister may at any time by order published —
- (a) once in the *Gazette*; and
  - (b) 3 times in a daily newspaper circulating in the part of the district to which the relevant local interim development order applies,

revoke a local interim development order.

**111. Non-conforming development by local government or public authority**

- (1) If —
- (a) a local government or public authority wishes to carry out within a regional order area any work or undertaking that is not exempted from the operation of the relevant regional interim development order and which, in the opinion of the Commission, would not be in conformity with the proposed region planning scheme for the part of the State in which the regional order area is situated; and
  - (b) after consultation between the local government or public authority and the Commission, agreement is not reached concerning the coordination of that work or undertaking with the proposals to be included in that proposed region planning scheme,

the Commission may submit the matter to the Minister for determination by the Governor.

- (2) If —
- (a) a local government or public authority wishes to carry out within a local order area any work or undertaking that is not exempted from the operation of the relevant local interim development order and which, in the opinion of the local government administering the order, would not be in conformity with the proposed local planning scheme for the district in which the local order area is situated; and

- (b) after consultation between the local government or public authority wishing to carry out the work or undertaking and the local government administering the order, agreement is not reached concerning the coordination of that work or undertaking with the proposals to be included in that proposed local planning scheme,

the local government may submit the matter to the Minister for determination by the Governor.

- (3) The Governor may, by order, in respect of a matter submitted under subsection (1) or (2) for determination —
  - (a) prohibit absolutely or for such period as the Governor thinks fit; or
  - (b) restrict, regulate or permit,

the carrying out of the work or undertaking or any part of it subject to such conditions as the Governor specifies.

- (4) An order under subsection (3) has effect subject to any written law with which it is inconsistent.

*[Section 111 amended by No. 8 of 2009 s.100(2).]*

## **Part 7 — Planning control areas**

### **112. Declaration of planning control areas**

- (1) If the Commission considers that any land situated in a region to which a region planning scheme applies may be required for one or more of the purposes specified in Schedule 6, 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 power in subsection (1) is not to be exercised in respect of any land or waters in the development control area as defined in the *Swan and Canning Rivers Management Act 2006*.
- (3) If the Commission considers that this Part should apply to any land in the Swan Valley, before seeking approval of the declaration the Commission is to —
  - (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).
- (4) This Part and the operation of any approval of development granted under this Part have effect subject to section 78 of the *Heritage of Western Australia Act 1990*.
- (5) 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 is to 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.

*[Section 112 amended by No. 52 of 2006 s. 6.]*

**113. Declaration may be amended or revoked**

The Commission may by notice published in the *Gazette* and with the approval of the Minister amend or revoke a declaration made under section 112.

**114. Duration of declaration**

A declaration made under section 112 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) it is revoked under section 113,

whichever is the sooner.

**115. 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 may apply to the local government in the district of which the planning control area is situated for approval of that development.
- (2) An applicant is to submit to the local government such plans and other information as the local government may reasonably require.
- (3) The local government, within 30 days of receiving the application, is to forward the application, together with its recommendation, to the Commission for determination.

**116. Commission may approve or refuse application**

- (1) After receiving an application and recommendation forwarded to it under section 115(3), the Commission may —
  - (a) consult with any authority that in the circumstances it thinks appropriate; and

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- (b) having regard to —
  - (i) any relevant State planning policy;
  - (ii) the purposes for which the land to which that application relates is zoned or reserved under a region planning scheme;
  - (iii) any special considerations relating to the nature of the planning control area concerned and of the development to which that application relates;  
and
  - (iv) the orderly and proper planning, and the preservation of the amenity, 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.

- (2) The Commission is to give written notice to the applicant of its decision on the application.

**117. Commission may revoke approval**

- (1) If —
  - (a) the Commission approves an application forwarded to it under section 115(3); and
  - (b) 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.

- (2) Subsection (1) does not affect the operation of a direction under section 214 or prevent proceedings for an offence against section 220 in respect of that carrying out or non-compliance alleged to have been committed during the subsistence of that approval.

**118. Effect of Part**

Nothing in this Part or section 220 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.

## **Part 8 — Improvement plans**

### **119. Commission may recommend improvement plan**

- (1) The Commission may —
  - (a) certify in writing to the Minister that for the purpose of advancing the planning, development and use of any land within a part of the State to which a region planning scheme applies —
    - (i) 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
    - (ii) 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 for those purposes, as may be appropriate or necessary;and
  - (b) recommend to the Minister that the land should be so dealt with or used for that purpose and made the subject of an improvement plan.
- (2) The recommendation is to be accompanied by a copy of the improvement plan and such supporting maps and texts as the Minister may require.
- (3) If the Minister accepts the recommendation, the Minister is to forward the recommendation to the Governor for acceptance.
- (4) An improvement plan comes into force on the day on which notice of the acceptance of the recommendation of the Governor, and a summary of the improvement plan, is published in the *Gazette*.

- (5) Section 195 applies in respect of the acquisition of land included in an improvement plan in force under this section.

**120. Improvement plan may be amended or revoked**

- (1) The Commission may —
- (a) amend an improvement plan by notice of amendment; or
  - (b) revoke an improvement plan by notice of revocation.
- (2) Section 119 applies to a notice of amendment or revocation under subsection (1) as if the notice were a recommendation under that section and the amendment or revocation were an improvement plan.

**121. Commission may develop land included in improvement plan**

- (1) For the purpose of advancing the development of land in accordance with an improvement plan 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 —
    - (i) any buildings, works, improvements or facilities and the land appurtenant to the buildings, works, improvements or facilities; and
    - (ii) any land 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;
  - (c) in respect of 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 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;

and

- (d) do any act, matter or thing for the purpose of carrying out any agreement entered into under paragraph (c).
- (2) The Commission is to notify in the *Gazette* particulars of any return, sale, lease, exchange or disposal to any person referred to in subsection (1)(b) within one month of the Governor's approval.

**122. Nothing in this Part derogates from other powers**

Nothing in this Part is to 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, body or person.

**Part 9 — Relationship between region planning schemes, local planning schemes, planning control provisions and written laws**

**123. Local planning schemes and local laws to be consistent with region planning scheme**

- (1) A local planning scheme is not to be approved by the Minister under this Act unless the provisions of the local planning scheme are in accordance with and consistent with each relevant region planning scheme.
- (2) Local laws which if made would affect or be likely to affect a region planning scheme are not to be made by a local government unless the provisions of the local laws are in accordance with and consistent with each relevant region planning scheme.

**124. Effect of region planning scheme on local planning scheme**

- (1) If a region planning scheme is inconsistent with a local planning scheme, the region planning scheme prevails over the local planning scheme to the extent of the inconsistency.
- (2) If a region planning scheme is inconsistent with a local planning scheme, the local government of the district in which the land directly affected is situated is to, not later than 90 days after the day on which the region planning scheme has effect, resolve to prepare —
  - (a) a local planning scheme which is consistent with the region planning scheme; or
  - (b) an amendment to the local planning scheme which renders the local planning scheme consistent with the region planning scheme,

and which does not contain or removes, as the case requires, any provision which would be likely to impede the implementation of the region planning scheme.

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- (3) If a region planning scheme is amended and is inconsistent with a local planning scheme, the local government of the district in which the land directly affected is situated is to, not later than 90 days after the day on which the amendment to the region planning scheme has effect, resolve to prepare in relation to the land —
- (a) a local planning scheme which is consistent with the region planning scheme; or
  - (b) an amendment to the local planning scheme which renders the local planning scheme consistent with the region planning scheme,

and which does not contain or removes, as the case requires, any provision which would be likely to impede the implementation of the region planning scheme.

- (4) In preparing the local planning scheme or amendment the local government is to have due regard to the purpose and planning objectives of the region planning scheme or amendment to the region planning scheme as set out in the statement deposited under section 43(1).
- (5) The local government is to, within such reasonable time after the passing of the resolution as is directed in writing by the Minister, forward to the Minister for approval under section 87 the local planning scheme or amendment it has prepared.

**125. Minister may direct local government to amend local planning scheme for consistency**

- (1) The Minister may, by written notice, direct a local government to prepare a local planning scheme or to amend a local planning scheme, in the time and manner set out in the notice, to ensure consistency with a region planning scheme, a proposed region planning scheme or a proposed amendment to a region planning scheme.

- (2) A local government to whom a notice is given under subsection (1) is to, within the time set out in the notice —
  - (a) resolve to prepare a local planning scheme, or an amendment to a local planning scheme, in accordance with the notice;
  - (b) prepare and advertise the local planning scheme or amendment in accordance with this Part; and
  - (c) forward to the Minister for approval under section 87 the local planning scheme or amendment prepared by it.
- (3) If the Minister so directs, the advertisement of the local planning scheme or amendment to the local planning scheme is to be published together with the notification of the relevant region planning scheme or amendment under section 43 or 58.

**126. Zoning amended by region planning scheme**

- (1) If a region planning scheme delineates land comprised in a local planning scheme as a reserve for any public purpose, then the local 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, amended to such extent (if any) as is necessary to give effect to the reservation under the region planning scheme.
- (2) Notice of any amendment effected under subsection (1) is to be published in the *Gazette*.
- (3) If —
  - (a) it is proposed that a region planning scheme delineate land comprised in a local planning scheme as land in an Urban zone;
  - (b) the local government of the district in which the land directly affected by the proposed region planning scheme zoning is situated requests the Commission to amend the local planning scheme under this subsection

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to change the zoning of that land under the local planning scheme, and the Commission agrees; and

- (c) notice of the amendment, as made by the Commission, is published in the *Gazette* on or after the coming into operation of the region planning scheme,

then the local 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, amended as set out in that notice on the date of publication of the notice.

**127. Minister may direct local government to modify proposed scheme or amendment**

- (1) The Minister may, before approving a proposed local planning scheme, or amendment to a scheme, prepared by a local government under section 124(2) or 125, direct the local government to —
- (a) modify the proposed local planning scheme or amendment in the manner specified in the direction to ensure that the proposed local planning scheme or amendment —
- (i) is consistent with the region planning scheme; and
- (ii) will not impede the implementation of the region planning scheme;
- and
- (b) forward the proposed local planning scheme or amendment as so modified to the Minister for approval under section 87.
- (2) A local government is to comply with a direction under subsection (1).

*[Section 127 amended by No. 8 of 2009 s. 100(3).]*

**128. Minister may direct local government to adopt scheme or amendment**

- (1) If a local government does not comply with —
  - (a) section 124(2);
  - (b) section 125; or
  - (c) not later than 60 days after the giving of the direction concerned, section 127(2),the Minister may —
  - (d) cause the relevant local planning scheme or amendment to be prepared or modified as the case requires and forwarded to the local government; and
  - (e) direct the local government to adopt that local planning scheme or amendment as if it were a local planning scheme proposed by owners of land with respect to which the local government might itself have prepared a scheme.
- (2) A local government is to comply with a direction under subsection (1)(e).
- (3) If a local government to which a direction has been given under subsection (1)(e) does not comply with the direction within 60 days after the relevant local planning scheme or amendment was forwarded to it, the Minister may approve of the local planning scheme or amendment and cause it to be published in the *Gazette* in accordance with Part 5.
- (4) A local planning scheme, or an amendment to an existing local planning scheme, as the case requires, published in the *Gazette* under subsection (3) takes effect from the date of publication and has effect as if it were made under Part 5.
- (5) All costs, charges and expenses incurred by the Minister in the exercise of any powers conferred on the Minister by this section may be recovered by the Minister from the local government

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concerned as a debt due to the Crown or may be deducted from any moneys payable by the Crown to the local government.

**129. Effect of interim development order on local planning scheme and local laws**

- (1) If there is an inconsistency between —
- (a) a local planning scheme in force in a regional order area, or a local law in force in a regional order area under the *Local Government Act 1995* and the *Local Government (Miscellaneous Provisions) Act 1960* or any written law for which the latter Act is in substitution; and
  - (b) a regional interim development order in force in respect of the regional order area,

the regional interim development order prevails over that local planning scheme or local law to the extent of the inconsistency.

- (2) If there is an inconsistency between —
- (a) a local planning scheme in force in a local order area, or a local law in force in a local order area under the *Local Government Act 1995* and the *Local Government (Miscellaneous Provisions) Act 1960* or any written law for which the latter Act is in substitution; and
  - (b) a local interim development order in force in respect of the local order area,

the local interim development order prevails over that local planning scheme or local law to the extent of the inconsistency.

**130. Planning control area provisions prevail**

The provisions of Part 7 prevail over —

- (a) every other provision of this Act;
- (b) any region planning scheme; and

(c) any local planning scheme,

to the extent of any inconsistency with those provisions and schemes.

**131. Compliance with local government regulations**

- (1) If there is any inconsistency between a local planning scheme and a regulation made under section 433A of the *Local Government (Miscellaneous Provisions) Act 1960*, the local planning scheme prevails to the extent of the inconsistency.
- (2) In the exercise of any power conferred on it by a local planning scheme a local government is not obliged to have regard to any regulations made under section 433A of the *Local Government (Miscellaneous Provisions) Act 1960*.

**132. Governor may suspend operation of certain written laws**

- (1) If the carrying out of any provision of a planning scheme would conflict with any provisions, limitations, or conditions of or prescribed by any Act, the responsible authority may apply to the Governor for an order modifying or suspending the provisions of that Act, so far as may be necessary to enable effect to be given to the planning scheme.
- (2) Upon application under subsection (1) the Governor may, in respect of that planning scheme but not otherwise, make an order accordingly for the suspension or modification of the provisions or any of them, subject to such conditions and limitations as the Governor thinks fit.
- (3) An order under subsection (2) does not take effect unless and until it has been approved by a resolution of both Houses of Parliament.

## **Part 10 — Subdivision and development control**

### **Division 1 — Application**

#### **133. Application to Crown land**

- (1) Except as provided in subsection (2) and section 168, this Part does not apply to Crown land.
- (2) If the Minister to whom the Governor has for the time being committed the administration of the *Land Administration Act 1997* intends to subdivide and develop any Crown land under section 27(1) of that Act for the purpose of selling the Crown land under section 74 of that Act, section 134, Division 2 (except section 136), sections 150, 151, 152 and 157, Division 4 and section 167 apply to that Crown land for the purposes of section 27 of the *Land Administration Act 1997* as if that Crown land were held in freehold.

#### **134. Application, and effect, of other written laws**

- (1) Sections 135 and 136 are subject to section 68 of the *Environmental Protection Act 1986* and to section 58(6) of the *Contaminated Sites Act 2003*.
- (2) Sections 135 and 136 do not apply to —
  - (a) the grant of, or to the transfer of or other dealing with or in, a mining tenement as defined in the *Mining Act 1904*<sup>3</sup> or the *Mining Act 1978* or a portion of such a mining tenement or any shares in the mining tenement or portion;
  - (b) the conferral of rights under section 34 of the *Dampier to Bunbury Pipeline Act 1997*; or
  - (c) the issue of a distribution licence under Part 2A of the *Energy Coordination Act 1994*.
- (3) Where an application is made to the Commission for approval under section 135 or 136 in relation to land in the Swan Valley,

unless subsection (8) applies, the Commission is to give full particulars of the application to the Swan Valley Planning Committee.

- (4) The Swan Valley Planning Committee, within 42 days after the day on which it receives particulars of an application or within such longer period as the Commission allows, is to give to the Commission its advice in writing on how the application should be determined, including any conditions to which any approval should be made subject.
- (5) If the Swan Valley Planning Committee fails to give its advice within the time allowed under subsection (4), it is to be taken to have no advice to give on the application.
- (6) The Minister may, at the request of the Commission, approve of the Commission disregarding the Committee's advice in whole or in part in determining the application.
- (7) Subject to any approval under subsection (6), the Commission is to determine the application after having due regard to the advice of the Committee, but may determine that application otherwise than in accordance with that advice.
- (8) The Swan Valley Planning Committee may determine that any particular class or description of applications under section 135 or 136 need not be referred to the Committee for advice under this section and is to notify the Commission of any such determination.

*[Section 134 amended by No. 7 of 2006 s. 20(3).]*

## **Division 2 — Approval for subdivision and certain transactions**

### **135. Approval required for subdivision**

- (1) A person is not to —
  - (a) subdivide any lot;

- (b) amalgamate any lot with any other lot, whether within the same district or otherwise; or
  - (c) lay out, grant or convey a road,
- without the approval of the Commission.
- (2) A person who contravenes subsection (1) commits an offence.
  - (3) In this section —  
*road* has the meaning given by section 4(1) and includes a private road created under Part IVA of the *Transfer of Land Act 1893* or as defined in the *Land Administration Act 1997* section 3(1).

**136. Approval required for certain transactions where land not dealt with as a lot or lots**

- (1) Subject to sections 139 and 140 a person is not to —
  - (a) lease or grant a licence to use or occupy land for any term exceeding 20 years, including any option to extend or renew the term or period;
  - (b) lease and grant a licence to use or occupy land for terms in the aggregate exceeding 20 years, including any option to renew or extend the terms or periods;
  - (c) sell or agree to sell land; or
  - (d) grant any option of purchase of land,without the approval of the Commission unless the land is dealt with by way of such lease, licence, agreement or option of purchase as a lot or lots.
- (2) A person who contravenes subsection (1) commits an offence.
- (3) In this section —  
*land*, in relation to the leasing or the granting of a licence to use or occupy or, where applicable, the leasing and the granting of such a licence, does not include the whole or a portion of a building if —

- (a) the building was constructed in accordance with a building licence granted by a local government under section 374 of the *Local Government (Miscellaneous Provisions) Act 1960* or under an Act repealed by that Act, or a building licence to construct the building is in force under that section; and
- (b) subject to subsection (4), the leasing or the granting of a licence does not relate to any land other than that building or portion;

***licence to use or occupy*** does not include an easement.

- (4) A reference in the definition of “land” in subsection (3) to the whole or a portion of a building includes a reference to any area outside that whole or portion, which area is —
  - (a) the subject of the same lease or licence to use or occupy as that whole or portion or of a lease or licence to use or occupy entered into or granted by the lessor of, or grantor of a licence to use or occupy, that whole or portion; and
  - (b) used for the purpose of ingress to or egress from that whole or portion, advertising, parking vehicles, storing goods, loading or unloading goods or passengers or for any other purpose necessary or desirable for the convenient occupation of that whole or portion.

### **137. Applications in respect of heritage land**

- (1) This section applies to land to which section 78 of the *Heritage of Western Australia Act 1990* applies.
- (2) The Commission is not to grant an application for its approval under section 135 or 136 in respect of land to which this section applies unless —
  - (a) the requirements of section 78(1) and (4) of the *Heritage of Western Australia Act 1990* have been observed; and

- (b) regard has been had to any advice received from the Heritage Council.
- (3) If section 78(2)(a) of the *Heritage of Western Australia Act 1990* applies, the holder of an approval given by the Commission under section 135 or 136 in respect of land to which this section applies is not to give effect to that approval —
  - (a) during such time as the operation of the approval is suspended under section 78 of the *Heritage of Western Australia Act 1990*; or
  - (b) otherwise than in accordance with section 78(2)(b) and (c) of the *Heritage of Western Australia Act 1990*.
- (4) In relation to any place which is entered in the Register maintained by the Heritage Council under the *Heritage of Western Australia Act 1990*, any approval given by the Commission under section 135 or 136 in respect of land to which this section applies is to be taken to be revoked under section 78(3) of the *Heritage of Western Australia Act 1990*.

**138. Approval of Commission**

- (1) The Commission may give its approval under section 135 or 136 subject to conditions which are to be carried out before the approval becomes effective.
- (2) Subject to subsection (3), in giving its approval under section 135 or 136 the Commission is to have due regard to the provisions of any local planning scheme that applies to the land under consideration and is not to give an approval that conflicts with the provisions of a local planning scheme.
- (3) The Commission may give an approval under section 135 or 136 that conflicts with the provisions of a local planning scheme if —
  - (a) the local planning scheme was not first published, or a consolidation of the local planning scheme has not been

- published, in the preceding 5 years and the approval is consistent with a State planning policy that deals with substantially the same matter;
- (b) the approval is consistent with a region planning scheme that deals with substantially the same matter;
  - (c) in the opinion of the Commission —
    - (i) the conflict is of a minor nature; or
    - (ii) the approval is consistent with the general intent of the local planning scheme;
  - (d) the local planning scheme includes provisions permitting a variation of the local planning scheme that would remove the conflict;
  - (e) in the case of an application under section 135, the local government responsible for the enforcement of the observance of the scheme has been given the plan of subdivision, or a copy, under section 142 and has not made any objection under that section; or
  - (f) the approval is given in circumstances set out in the regulations.
- (4) Despite subsection (3), the Commission is to ensure that an approval under section 135 or 136 complies with the provisions of a local planning scheme to the extent necessary for compliance with an environmental condition relevant to the land under consideration.

**139. Approved classes of lease or licence**

- (1) A person may without the approval of the Commission lease or grant a licence to use or occupy land for a term of any duration and otherwise than as a lot or lots if that lease or licence —
  - (a) belongs to a class of lease or licence for the time being approved under subsection (3) in respect of the person; and

- (b) complies with such conditions as are imposed under subsection (3) in respect of that person.
- (2) A person may apply to the Commission in writing for a class of lease or licence to use or occupy land to be approved under subsection (3) in respect of that person.
- (3) On receiving an application made under subsection (2) the Commission may, having regard to —
  - (a) the nature of the interest proposed to be granted under leases or licences of the class concerned;
  - (b) the classification or zoning of the land to which leases or licences of the class concerned will relate;
  - (c) the proposed terms of leases or licences of the class concerned, whether for the lives of the proposed lessees or licensees or for fixed periods;
  - (d) the anticipated number or frequency of leases or licences of the class concerned; and
  - (e) such matters other than those referred to in paragraphs (a), (b), (c) and (d) as the Commission considers relevant,

approve the class of lease or licence concerned in respect of the applicant for the purposes of subsection (1), subject to such conditions as the Commission thinks fit to impose in respect of that approval, or refuse to approve that class.

- (4) The Commission may at any time revoke or amend an approval given under subsection (3) by notice in writing of that revocation or amendment served on the person in respect of whom or which that approval was given.

**140. Saving of certain agreements**

- (1) Where an agreement to sell or grant an option to purchase, or to lease or grant or lease and grant a licence to use or occupy any portion of a lot has been entered into without the approval of the Commission having been first obtained as required under this

Division, that agreement is to be taken not to have been entered into in contravention of this Division if —

- (a) the agreement is entered into subject to the approval of the Commission being obtained; and
  - (b) an application for the approval of the Commission is made within a period of 3 months after the date of the agreement.
- (2) Nothing in this Division renders the agreement illegal or void by reason only that the agreement was entered into before the approval of the Commission was obtained.
- (3) Without prejudice to the operation of section 141, the agreement referred to in subsection (1) has no effect, unless and until the Commission gives its approval —
- (a) within a period of 6 months after the date of the agreement or within such further period as is stipulated in that agreement; or
  - (b) within such further period as is stipulated in a subsequent agreement in writing made —
    - (i) by all the parties to the first-mentioned agreement; or
    - (ii) when the subsequent agreement is made after the death of any of those parties, by the surviving party or parties and the legal personal representative of any deceased party.

**141. Refund where transaction cannot be completed**

Where, after payment of consideration for any transaction relating to any land, it is found that the transaction cannot be completed —

- (a) within a period of 6 months after the date of entering into the transaction or within such further period as is stipulated in the transaction; or

- (b) within such further period as is stipulated in a subsequent agreement in writing made —
  - (i) by all the parties to the transaction; or
  - (ii) when the subsequent agreement is made after the death of any of those parties, by the surviving party or parties and the legal personal representative of any deceased party,

because the land cannot be dealt with as a lot or lots, the person who paid the consideration is entitled to a refund of the consideration from the person to whom it was paid.

**142. Objections and recommendations**

- (1) When, in the opinion of the Commission, a plan of subdivision may affect the functions of a local government, a public authority, or a utility services provider, the Commission is to forward the plan or a copy of the plan to that local government, public authority or utility services provider for objections and recommendations.
- (2) A local government, public body or utility services provider receiving such a plan or copy is to, within 42 days of receipt of the plan or copy or within such longer period as the Commission allows, forward it to the Commission with —
  - (a) a memorandum in writing containing any objections to, or recommendations in respect of, the whole or part of that plan; and
  - (b) in the case of a local government receiving a plan or copy relating to land within the area to which an assessed scheme (as defined in the EP Act) applies, advice of any relevant environmental condition to which the assessed scheme is subject.
- (3) If a local government, public authority or utility services provider does not forward a memorandum within the time allowed under subsection (2), the Commission may determine

that it is to be taken to have no objections or recommendations to make or advice to give.

**143. How Commission is to deal with plan of subdivision**

- (1) After considering any objections or recommendations contained in a memorandum forwarded to the Commission under section 142, and any advice of a relevant environmental condition forwarded to it under that section, the Commission is to —
  - (a) approve the plan of subdivision;
  - (b) refuse to approve the plan of subdivision; or
  - (c) approve the plan of subdivision and require the applicant for approval to comply with such conditions as the Commission thinks fit before the diagram or plan of survey will be endorsed with the approval of the Commission.
- (2) The Commission is to try to deal with the plan of subdivision in one of the ways mentioned in subsection (1) within the period of 90 days after the day on which the plan was submitted to the Commission for approval or within such longer period after that day as may be agreed in writing between the Commission and the applicant for approval.

**144. Reconsideration of refusal to approve plan of subdivision**

- (1) If the Commission under section 143 refuses to approve a plan of subdivision and the applicant for approval concerned is dissatisfied with the refusal, that applicant may within 28 days of being notified of the refusal request in writing the Commission to reconsider the refusal.
- (2) On receiving a request under subsection (1), the Commission, by notice in writing served on the person who made that request, may —
  - (a) approve the plan of subdivision;

- (b) again refuse to approve the plan of subdivision; or
- (c) approve the plan of subdivision and require the applicant for approval to comply with such conditions as the Commission thinks fit before the diagram or plan of survey will be endorsed with the approval of the Commission.

**145. Endorsement of approval upon diagram or plan of survey of subdivision**

- (1) A person to whom approval of a plan of subdivision has been given may, within the prescribed period —
  - (a) submit to the Commission in the prescribed manner and form a diagram or plan of survey of the subdivision, accompanied by the prescribed fee; and
  - (b) request the Commission to approve the diagram or plan of survey of the subdivision.
- (2) In subsection (1) —

*prescribed period* means —

  - (a) in relation to a plan of subdivision creating more than 5 lots, the period of 4 years after the Commission approved the plan of subdivision; and
  - (b) in any other case, the period of 3 years after the Commission approved the plan of subdivision.
- (3) If a subdivision is being carried out in stages, a diagram or plan of survey of the subdivision may be submitted to the Commission under subsection (1) in relation to a stage of subdivision.
- (4) Subject to subsection (6), if the Commission is satisfied that —
  - (a) the diagram or plan of survey is in accordance with the plan of subdivision approved by the Commission; and
  - (b) if that approval was given subject to conditions —

- (i) the conditions have been complied with or will be complied with at the time a certificate of title is created or registered; or
- (ii) in the case of a diagram or plan of survey submitted in relation to a stage of subdivision, the conditions imposed in relation to that stage of subdivision, or that in the opinion of the Commission are relevant to that stage of subdivision or the subdivision as a whole, have been complied with or will be complied with at the time a certificate of title is created or registered,

the Commission is to endorse its approval on the diagram or plan of survey.

- (5) The Commission is to try to deal with the request under subsection (1)(b) within the period of 30 days after the day on which the request is made to the Commission or within such longer period after that day as may be agreed in writing between the Commission and the person making the request.
- (6) If, in the case of a diagram or plan of survey submitted in relation to a stage of subdivision, the Commission is of the opinion that, because of planning considerations, it is not appropriate to approve the diagram or plan of survey, the Commission may refuse to endorse its approval on the diagram or plan of survey.
- (7) If, at the expiration of the period referred to in subsection (1), a diagram or plan of survey of the subdivision has not been submitted to the Commission, the approval of the plan of subdivision ceases to have effect and the diagram or plan of survey cannot be submitted to the Commission under this section.

**146. No certificate of title for subdivided land without endorsement of Commission approval**

- (1) The Registrar of Titles is not to create or register a certificate of title under the *Transfer of Land Act 1893* for land the subject of a plan of subdivision unless a diagram or plan of survey of the subdivision of that land has been endorsed with the approval of the Commission and —
  - (a) in the case of a diagram or plan of survey endorsed with the approval of the Commission before the coming into operation of this section, the title application was lodged with the Registrar of Titles before, or is lodged with the Registrar of Titles within 5 years after, the coming into operation of this section;
  - (b) in the case of a diagram or plan of survey endorsed with the approval of the Commission on or after the coming into operation of this section, the diagram or plan of survey has been endorsed with the approval of the Commission within the 24 months preceding the lodging of a title application with the Registrar of Titles; and
  - (c) any conditions as to the registration or recording or continued registration or recording of an encumbrance or other document on or before the creation or registration of a certificate of title that are noted on the diagram or plan of survey have been complied with, or will be complied with at the time the certificate of title is created or registered.
- (2) In subsection (1)(a) and (b) —

**title application**, in relation to a diagram or plan of survey, means an application for new titles to be created and registered for land the subject of the diagram or plan of survey.
- (3) A plan containing one lot only is deemed a diagram or plan of survey of a subdivision provided that it is a portion of land comprised in —
  - (a) a certificate of title;

- (b) a registered conveyance;
- (c) a Crown grant; or
- (d) a lot on a plan deposited with the Authority.

*[Section 146 amended by No. 60 of 2006 s. 147(3).]*

**147. Approval required for certain transfers and other dealings**

- (1) The Registrar of Titles is not to register a transfer, conveyance, lease or mortgage of any land unless —
  - (a) it has first been approved in writing by the Commission;
  - (b) the land comprises the whole of one or more lots, or the land comprises part of a lot included in a diagram or plan of survey of subdivision that has been approved by the Commission; or
  - (c) in the case of a lease, the lease does not contain or purport to contain an option to purchase land other than the whole of one or more lots and —
    - (i) the term is not more than 20 years, including any option to extend or renew the term;
    - (ii) section 136(1) does not apply to the lease by virtue of the definition of “land” in section 136; or
    - (iii) the lease is a lease which may be entered into without the approval of the Commission by virtue of section 139(1).
- (2) The Registrar of Titles is not to create and register in the name of a registered proprietor a certificate of title for a portion of land, not being the whole of one or more lots, unless the application from the registered proprietor for the certificate of title has been endorsed with the approval of the Commission.

### **Division 3 — Conditions of subdivision**

#### **148. Conditions as to development**

Without limiting section 143, the Commission may impose a condition under that section that requires —

- (a) development to be integrated with the subdivision of the lot as specified by the Commission where, in the opinion of the Commission, such integration is necessary because of the size of the lots and potential impact on the amenity of the locality; and
- (b) development approval for building on the lot to be granted before the diagram or plan of survey of the subdivision will be endorsed with the approval of the Commission.

[149. *Has not come into operation*<sup>4</sup>.]

#### **150. Conditions on road access**

- (1) Without limiting section 143, the Commission may impose a condition under that section that access to and from a portion of land shown on a plan or diagram of survey relating to the subdivision to a road abutting the portion of land is to be restricted or prohibited as set out in the condition and in accordance with the regulations.
- (2) A condition referred to in subsection (1) is to specify a covenantee.
- (3) Where —
  - (a) a diagram or plan of survey of a subdivision, or a plan lodged for registration under the *Strata Titles Act 1985*, is received by the Authority; and
  - (b) it is shown on the plan or diagram that access to and from any portion of land shown on the plan or diagram to and from a road abutting the portion of land is subject

to or intended to be subject to a restriction or prohibition as set out in a condition imposed by the Commission,

the land becomes subject to a covenant so restricting or prohibiting that access —

- (c) in the case of a plan lodged for registration under the *Strata Titles Act 1985*, at the time the Registrar of Titles registers the plan under that Act; and
  - (d) in any other case, at the time the new certificate, or if more than one, all the new certificates, for the land the subject of the diagram or plan have been registered under the *Transfer of Land Act 1893*.
- (4) It is sufficient description for the purposes of subsection (3)(b) if reference is made on the plan or diagram to this section and regulations made for the purposes of this section.

*[Section 150 amended by No. 60 of 2006 s. 147(4).]*

**151. Reconsideration of conditions**

- (1) If the Commission under section 143 imposes conditions and the applicant concerned is dissatisfied with any such condition, that applicant may within 28 days of being notified of that condition request in writing the Commission to reconsider that condition.
- (2) On receiving a request under subsection (1), the Commission may by notice in writing served on the person who made that request —
  - (a) alter or revoke the condition to which that request relates; or
  - (b) confirm the condition.

**152. Certain land to vest in the Crown**

- (1) If the Commission has approved a subdivision of land subject to a condition that one or more portions of land shown on a diagram or plan of survey relating to the subdivision or a plan

under the *Strata Titles Act 1985* are to vest in the Crown for any one or more of the following purposes —

- (a) conservation or protection of the environment;
- (b) an artificial waterway;
- (c) a pedestrian accessway;
- (d) a right-of-way;
- (e) a reserve for water supply, sewerage, drainage, foreshore management, waterway management or recreation;
- (f) a public purpose specified in the condition and related to the subdivision,

then, subject to the encumbrances referred to in subsection (5), the land subject to the condition vests in the Crown by force of this section without any conveyance, transfer or assignment or the payment of any fee.

- (2) Land vested under subsection (1) is vested —
  - (a) in the case of a plan lodged for registration under the *Strata Titles Act 1985*, at the time the Registrar of Titles registers the plan under that Act; and
  - (b) in any other case, at the time the new certificate, or if more than one, all the new certificates, for the land the subject of the diagram or plan of survey, has or have been registered under the *Transfer of Land Act 1893*.
- (3) Land vested under subsection (1) —
  - (a) is Crown land;
  - (b) does not form part of a parcel comprised in a plan that is registered under the *Strata Titles Act 1985*;
  - (c) is to be taken to be reserved under section 41 of the *Land Administration Act 1997* for the purpose set out in the condition; and
  - (d) may be dealt with in accordance with the *Land Administration Act 1997*.

- (4) The Registrar of Titles is to do all things necessary to give effect to this section.
- (5) Land vested under this section is to be vested subject to —
- (a) any easement on that land created for the purposes of the subdivision, shown on the diagram or plan of survey and referred to in section 167;
  - (b) any easement on that land created under Part IVA of the *Transfer of Land Act 1893* for the purposes of the subdivision and shown on the diagram or plan of survey;
  - (c) any existing encumbrance specified in a direction of the Minister responsible for the administration of the *Land Administration Act 1997*, or a person authorised in writing by that Minister for the purposes of this section, lodged with the Registrar of Titles on or before the vesting; and
  - (d) any encumbrance prescribed, or of a class prescribed, by the regulations.

**153. When owner may pay money in lieu of land being set aside for open space**

- (1) If the Commission has approved a plan of subdivision of land on condition that a portion of the land be set aside and vested in the Crown for parks, recreation grounds or open spaces generally and —
- (a) the Commission, after consultation with the local government in whose district the portion is situated, so requires; or
  - (b) the Commission, the local government in whose district the portion is situated and the owner of the land so agree,

the owner of that land is to, in lieu of setting aside the portion, pay to that local government a sum that represents the value of the portion.

- (2) The Commission is not to impose a requirement referred to in subsection (1)(a) in respect of a plan of subdivision that creates less than 3 lots.

**154. How money received in lieu of open space is to be dealt with**

- (1) All money received by a local government under section 153 is to be paid into a separate account of the trust fund of the local government established under section 6.9 of the *Local Government Act 1995*.
- (2) The money is to be applied —
- (a) for the purchase of land by the local government for parks, recreation grounds or open spaces generally, in the locality in which the land included in the plan of subdivision referred to in section 153 is situated;
  - (b) in repaying any loans raised by the local government for the purchase of any such land;
  - (c) with the approval of the Minister, for the improvement or development as parks, recreation grounds or open spaces generally of any land in that locality vested in or administered by the local government for any of those purposes; or
  - (d) with the approval of the Commission, in reimbursing an owner (the **first owner**) of land included in a joint subdivision agreement for land that has been set aside and vested for parks, recreation grounds or open space where —
    - (i) the first owner set aside a greater proportion of land than another owner (the **second owner**); and
    - (ii) as a consequence, the local government and the Commission approved of the second owner paying to the local government a sum in lieu of land being set aside for that purpose and that sum, or the relevant proportion of that sum,

being reimbursed to the first owner for the excess proportion of land set aside by the first owner.

- (3) If interest is earned from the investment of moneys held under subsection (1), that money is to be applied for a purpose set out in subsection (2).

**155. How value of portion is determined**

- (1) In this section —

**licensed valuer** means —

- (a) a licensed valuer as defined in the *Land Valuers Licensing Act 1978*; or
- (b) the Valuer-General,

but nothing in subsection (3)(a) or in this definition is to be construed as obliging the Valuer-General to undertake a valuation for the purposes of this section;

**market value of land** means the capital sum which an unencumbered estate in fee simple in the land might reasonably be expected to realise if offered for sale on such reasonable terms and conditions as a bona fide seller would require.

- (2) For the purposes of section 153, the value of the portion is to be such percentage of the market value of the land of which the portion forms part as the area of the portion bears to the area of that land.
- (3) For the purposes of subsection (2), the market value of land —
- (a) is to be determined, at the cost of the owner of the land, by a licensed valuer agreed upon by the parties or, failing agreement, appointed by the local government; and
  - (b) is to be so determined —
    - (i) as at the date on which the valuation is made;
    - (ii) on the basis that there are no buildings, fences or other improvements of a like nature on the land;

- (iii) on the assumption that any rezoning necessary for the purpose of the subdivision has come into force; and
  - (iv) taking into account the added value of all other improvements on or appurtenant to the land.
- (4) The licensed valuer is to give the valuation to the owner of the land and the local government.
- (5) If within 90 days, or such longer time as is agreed in writing by the local government, of the date on which the valuation is made the owner of the land has not —
  - (a) paid the amount of the valuation; or
  - (b) disputed the valuation under section 156,the local government may, by written notice to the owner of the land, determine that the valuation is no longer current and that a fresh valuation is required.

**156. Dispute as to valuation**

- (1) If either the owner of the land or the local government disputes a valuation made under section 155, the valuation may be varied by agreement between the parties or the dispute may be settled by such method as they may agree upon.
- (2) If after 28 days from the date when both parties have received the valuation the dispute has not been settled or an agreement made as to the method of settlement, either the owner of the land or the local government may refer the dispute for determination by an arbitrator under the *Commercial Arbitration Act 1985*.

**157. When approval of subdivision is deemed to be approval under planning scheme**

- (1) Subject to subsection (2), when the Commission has approved a plan of subdivision of any land to which a planning scheme relates, that approval is to be taken to be approval by the

responsible authority under the planning scheme of the carrying out of works necessary to enable the subdivision of the land that are —

- (a) shown on the plan of subdivision; or
  - (b) required by the Commission to be carried out as a condition of approval of the plan of subdivision.
- (2) When approving a plan of subdivision the Commission may determine that the approval is not to be taken under subsection (1) to be approval by the responsible authority under the planning scheme of the carrying out of works specified in the determination, and the determination has effect accordingly.

#### **Division 4 — Subdivision costs**

#### **158. Expenses of road or waterway construction and road drainage**

- (1) Where a person who is subdividing land is required under this Part to construct and drain roads or construct artificial waterways shown on the plan of subdivision that person may —
- (a) carry out or cause to be carried out the construction and drainage at his or her own expense; or
  - (b) arrange for the local government to carry out the work on behalf, and at the cost and expense, of that person.
- (2) Where the person does not make the arrangement with the local government, that person is to pay to the local government, on demand, an amount (calculated under subsection (3)) to cover the reasonable costs of the local government in supervising the construction and drainage.
- (3) For the purposes of subsection (2) the amount is to be calculated as follows —
- (a) where the person has not engaged a consulting engineer and clerk of works to design and supervise the construction and drainage, the amount is to be 3% of the

cost of the construction and drainage as estimated by the local government;

- (b) where the person has engaged a consulting engineer and clerk of works to design and supervise the construction and drainage, the amount is to be 1½% of the cost of the construction and drainage as estimated by the local government.

- (4) The local government may require the person to employ a consulting engineer and clerk of works to design and supervise the construction and drainage and that person, when required to do so by the local government, is to carry out the requirement.

**159. Subdivider may recover portion of road costs from subsequent subdivider**

- (1) Where —

- (a) a person (in this section called the *later subdivider*) has subdivided land in which —
- (i) a lot or lots has or have a common boundary with; or
  - (ii) a road joins,  
an existing road to which there is access from the subdivided land;
- (b) a person (in this section called the *original subdivider*) who previously subdivided land that also has a common boundary with that existing road, in connection with that subdivision, contributed to or bore solely the cost of providing or upgrading the existing road; and
- (c) the later subdivider did not contribute to that cost,

the original subdivider may, in accordance with this Division, recover from the later subdivider a sum representing one-half of so much of the reasonable cost as was borne by the original subdivider of providing or upgrading the part of the existing

road which has a common boundary with the lot or lots, or is joined by a subdivisional road, as referred to in paragraph (a).

(2) In this section —

**CPI** means the Table described as the Consumer Price Index (All Groups Index) for Perth published by the Commonwealth Statistician under the *Census and Statistics Act 1905* of the Commonwealth, or if the same is not published, such other similar index as the Minister may reasonably determine;

**market value of land** means the capital sum, determined in accordance with section 155(3)(b)(ii), (iii) and (iv), which an unencumbered estate in fee simple in the land might reasonably be expected to realise if offered for sale on such reasonable terms and conditions as a bona fide seller would require;

**road** has the meaning given by section 4(1) and includes a private road created under Part IVA of the *Transfer of Land Act 1893* or as defined in the *Land Administration Act 1997* section 3(1).

(3) In this section a reference to the **cost of providing a road** is a reference to the aggregate of —

- (a) the value, as at the date of the subdivision referred to in subsection (1)(b), of the portion of the land provided as a road, being such percentage of the market value of the total area of land comprised in that subdivision as the area of the road bears to that total area as at the date of that subdivision; and
- (b) the reasonable cost of designing and carrying out the following works —
  - (i) the survey of the land provided as a road;
  - (ii) the formation, preparation, priming and sealing of the road; and
  - (iii) the provision of kerbing, drainage and service ducts in connection with the road,

escalated by the percentage by which the CPI last published prior to the date of the subsequent subdivision has increased over the CPI last published prior to the original subdivider subdividing the land referred to in subsection (1)(b).

**160. How subdivision costs recovered**

An amount payable under section 159 may be recovered by the original subdivider in a court of competent jurisdiction as a debt due to the original subdivider by the later subdivider; but no proceedings for recovery of the debt are to be commenced after the expiration of 6 years from the date of the later subdivision.

**161. When land is subdivided**

For the purposes of this Division land is subdivided on the date on which the approval of the Commission is endorsed on the diagram or plan of survey relating to the subdivision of the land.

**Division 5 — Development controls**

**162. Development requires approval**

- (1) Subject to this Act, where a planning scheme or interim development order provides that development referred to in the planning scheme or interim development order is not to be commenced or carried out without approval being obtained upon the making of a development application, a person must not commence or carry out that development on land to which the planning scheme or interim development order applies unless —
  - (a) the approval has been obtained and is in force under the planning scheme or interim development order; and
  - (b) the development is carried out in accordance with the conditions subject to which the approval was granted.
- (2) Nothing in this section limits or otherwise affects a right or entitlement under any other written law.

**163. Heritage places**

Where any land comprised within a place entered in the Register maintained by the Heritage Council under the *Heritage of Western Australia Act 1990*, or of which such a place forms part, is to be the subject of development, an application for approval of the development is to be made —

- (a) in the case of an application under a local planning scheme or local interim development order, to the responsible authority; and
- (b) in any other case, to the Commission.

**164. Development may be approved after commencement**

- (1) A responsible authority may grant its approval under a planning scheme or interim development order for development already commenced or carried out.
- (2) The Commission may grant its approval under section 116 for development already commenced or carried out in a planning control area.
- (3) Subsections (1) and (2) do not affect the operation of the provisions of Part 13 in respect of development commenced or carried out before approval has been granted.
- (4) Development which was unlawfully commenced or carried out is not rendered lawful by the occurrence of any subsequent event except the approval by the relevant responsible authority of that development.
- (5) The continuation of development unlawfully commenced is to be taken to be lawful upon the grant of approval for the development.

**Division 6 — Miscellaneous**

**165. Record of conditions on title**

- (1) This section applies when the Commission considers it desirable that owners or prospective owners of land comprised in —
  - (a) a plan of subdivision or proposed plan of subdivision; or
  - (b) a strata/survey-strata plan or proposed strata/survey-strata plan under the *Strata Titles Act 1985*,be made aware of hazards or other factors seriously affecting the use or enjoyment of that land and determines that the title and land register in respect of that land should be noted accordingly.
- (2) When this section applies, the Commission may cause a notification of the hazard or other factor affecting the use or enjoyment of the land to be prepared in a form acceptable to the Registrar of Titles and deposited with the Authority.
- (3) Where a notification is deposited under subsection (2), the Registrar of Titles is to endorse or note the title and land register in respect of the land with that notification.
- (4) The Commission may, at any time after the notification has been deposited under subsection (2), lodge a withdrawal of that notification with the Authority.
- (5) A withdrawal of a notification under subsection (4) is to be in a form acceptable to the Registrar of Titles.

*[Section 165 amended by No. 60 of 2006 s. 147(5).]*

**166. Encroachments**

If, after the erection of a building on land the property of one owner —

- (a) it is found that the building encroaches upon land the property of another owner to the extent of not more than one metre;

- (b) the encroaching owner desires to purchase the land upon which the encroachment stands;
- (c) an application for approval of the necessary subdivision is made by the owner of the land encroached upon; and
- (d) the Commission is satisfied that there has not been collusion and that everything has been done in good faith without intention to evade the law,

the Commission is to approve of the necessary subdivision.

**167. Easements**

(1) Where —

- (a) a diagram or plan of survey of a subdivision, or a plan lodged for registration under the *Strata Titles Act 1985*, is received by the Authority; and
- (b) it is shown on the plan or diagram that any land comprised in the diagram or plan is subject to or intended to be subject to an easement in favour of —
  - (i) the local government in whose district the land is situated, for the purposes of sewerage or drainage or access to sewerage or drainage works;
  - (ii) a licensee as defined in the *Water Services Licensing Act 1995*, for the purpose of water supply, sewerage, irrigation or drainage works or access to water supply, sewerage, irrigation or drainage works;
  - (iii) the holder of a licence under the *Electricity Industry Act 2004* for the purpose of the supply of electricity or access to electricity supply works;
  - (iv) the holder of a distribution licence under the *Energy Coordination Act 1994* for the purpose of

the supply of gas, or access to gas supply works, under the authority of that licence; or

- (v) any holder of a licence under a written law for the purpose of the supply of a utility service or access to a utility service, under the authority of that licence,

the land becomes subject to an easement in favour of the person or authority mentioned on the plan or diagram for the purpose mentioned on the diagram or plan —

- (c) in the case of a plan lodged for registration under the *Strata Titles Act 1985*, at the time the Registrar of Titles registers the plan under that Act; and
  - (d) in any other case, at the time the new certificate, or if more than one, all the new certificates, for the land the subject of the diagram or plan have been registered under the *Transfer of Land Act 1893*.
- (2) An easement in favour of a person or authority for any purpose, to which any land is subject by virtue of this section, gives that person or authority such rights, powers and privileges as are prescribed in respect of an easement in favour of that person or authority for that purpose.
- (3) If, by virtue of this section, any land is subject to an easement, the Registrar of Titles is to make all such entries or endorsements, or register any such memorial, as may be necessary or proper to evidence that the land is so subject, and, for the purpose of making any such entry or endorsement or registering any such memorial, it is sufficient description of the easement if reference is made to this section.
- (4) Where, by virtue of this section, any land is subject to an easement in favour of a person or authority for any purpose, the Registrar of Titles may, by order made —
- (a) upon application in writing by the person or authority; and

- (b) with the consent in writing of all persons having a registered interest in the land,

vary or extinguish the easement and upon such variation or extinction, the Registrar of Titles is to make all such entries or endorsements, or register any such memorial, as may be necessary or proper to evidence the variation or extinction.

- (5) The purpose of an easement in favour of a person or authority is to be taken to be varied if —
  - (a) the prescribed circumstances set out in the regulations occur; and
  - (b) the person or authority gives written consent to that variation,

and the Registrar of Titles is to make all such entries or endorsements, or register any such memorial, as may be necessary or proper to evidence the variation.

*[Section 167 amended by No. 60 of 2006 s. 147(6).]*

## **168. Roads**

- (1) All land on a diagram or plan of survey of a subdivision, or a plan lodged for registration under the *Strata Titles Act 1985*, deposited with the Authority that is shown as a new road is dedicated as a road.
- (2) The local government within the district in which the dedicated road is situated has the care, control and management of the road.
- (3) All land on a diagram or plan of survey of a subdivision, or a plan lodged for registration under the *Strata Titles Act 1985*, deposited with the Authority that is shown as a road widening or is for the purpose of extending or adding to a road forms part of the road and is dedicated to the public use.

- (4) Subsections (1) and (3) operate —
- (a) in the case of a plan lodged for registration under the *Strata Titles Act 1985*, at the time the Registrar of Titles registers the plan under that Act; and
  - (b) in any other case, at the time the new certificate, or if more than one, all the new certificates, for the land the subject of the diagram or plan have been registered under the *Transfer of Land Act 1893*.
- (5) When a portion of land is transferred to the Crown or a local government for the purpose of extending or adding to a road, the transferred portion is to be taken —
- (a) to be dedicated to the public use; and
  - (b) to form part of the road,
- as and from the date of registration of the transfer.
- (6) When a road corner shown on a plan deposited with the Authority or the LAA Department is subsequently rounded off or truncated, the portion of land so excised forms part of the road and is dedicated to the public use.
- (7) The local government within the district in which the land referred to in subsection (6) is situated has the care, control and management of the land.
- (8) Subsection (6) operates —
- (a) in the case of a plan lodged for registration under the *Strata Titles Act 1985*, at the time the Registrar of Titles registers the plan under that Act;
  - (b) in the case of a plan lodged with an application for a new certificate or certificates, at the time the new certificate, or if more than one, all the new certificates, for the land the subject of the plan have been registered;
  - (c) in the case of a plan lodged with an application for registration of a document giving effect to the rounding

off or truncation, at the time of the registration of that document.

- (9) Land referred to in subsection (1), (3) or (6) does not form part of a parcel comprised in a plan that is registered under the *Strata Titles Act 1985*.

*[Section 168 amended by No. 60 of 2006 s. 147(7).]*

**169. Commission may fix minimum standards of construction**

- (1) The Commission may by notice published in the *Gazette* fix minimum standards of construction with respect to roads and artificial waterways to be constructed on a proposed subdivision.
- (2) A notice published under subsection (1) may set out particulars relating to the width, kerbing, thickness, surfacing and foundations of roads, and the materials to be used in the construction of roads and artificial waterways.
- (3) A notice published under subsection (1) is subsidiary legislation for the purposes of sections 43 and 44 of the *Interpretation Act 1984*.
- (4) A person who without the approval of the Commission constructs a road or artificial waterway on a subdivision that does not comply with the standards set out in a notice published under subsection (1) commits an offence.

**170. Local government to be provided with specifications for roads and waterways**

- (1) Before a person who is subdividing land commences to construct and drain roads or construct artificial waterways shown in the diagram or plan of survey, that person is to give to the local government —
- (a) drawings showing longitudinal and cross sections of the proposed road or artificial waterway;

- (b) specifications of the proposed road or artificial waterway; and
  - (c) such other information including information relating to levels, drainage, nature of soil, and physical features as the local government requires.
- (2) A person who does not comply with subsection (1) commits an offence.
- (3) The local government may by written notice require the person subdividing the land —
  - (a) to amend the drawings or specifications or both; and
  - (b) to comply with such further conditions as the local government thinks fit to impose in respect of the proposed road or waterway,

for the purpose of ensuring that the construction and drainage of the road or construction of the artificial waterway is consistent with the approval of the Commission.

- (4) Without limiting the powers conferred on a local government by subsection (3), where —
  - (a) a person delivers drawings and specifications of a proposed road or artificial waterway to a local government under subsection (1); and
  - (b) the proposed road or artificial waterway, if constructed in accordance with those plans and specifications, would not satisfy the minimum standards fixed under section 169 applicable to the proposed road or artificial waterway,

the local government is to by written notice require the person to so amend the drawing or specifications, or both, as to cause the proposed road or artificial waterway to satisfy those minimum standards.

- (5) A person who is aggrieved by a requirement of the local government made under subsection (3) may apply to the State

Administrative Tribunal for a review, in accordance with Part 14, of the responsible authority's decision.

- (6) A person who does not comply with a requirement of a local government made by written notice given to that person under subsection (3) commits an offence.

## **Part 11 — Compensation and acquisition**

### **Division 1 — General matters in relation to compensation**

#### **171. Only one entitlement to compensation**

- (1) If compensation has been paid under a provision of this Part in relation to a matter or thing no further compensation is payable under any other provision of this Act as a result of the same matter or thing.
- (2) When a person is entitled to compensation under this Act in respect of any matter or thing, and is also entitled to compensation in respect of the same matter or thing under any other written law, that person is not entitled to compensation in respect of that matter or thing both under this Act and that other written law, and is not entitled to any greater compensation under this Act than that person would be under the other written law.

### **Division 2 — Compensation where land injuriously affected by planning scheme**

#### **172. Meaning of terms used in this Division**

In this Division —

***Board*** means the Board of Valuers established under section 182;

***non-conforming use*** means a use of land which, though lawful immediately before the coming into operation of a planning scheme or amendment to a planning scheme, is not in conformity with a provision of that scheme which deals with a matter specified in Schedule 7 clause 6 or 7;

***public purpose*** means a purpose which serves or is intended to serve the interests of the public or a section of the public and includes a public work.

**173. Entitlement to compensation where land injuriously affected by planning scheme**

- (1) Subject to this Part any person whose land is injuriously affected by the making or amendment of a planning scheme is entitled to obtain compensation in respect of the injurious affection from the responsible authority.
- (2) Despite subsection (1) a person is not entitled to obtain compensation under this section on account of any building erected, or any contract made, or other thing done with respect to land included in a planning scheme after the date of the approval of a planning scheme or amendment, or after such other date as the Minister may fix for the purpose, being not earlier than the date of the approval of the scheme or amendment.
- (3) A responsible authority may make agreements with owners for the development of their land during the time that the planning scheme or amendment is being prepared.

**174. When land is injuriously affected**

- (1) Subject to subsection (2), land is injuriously affected by reason of the making or amendment of a planning scheme if, and only if —
  - (a) that land is reserved (whether before or after the coming into operation of this section) under the planning scheme for a public purpose;
  - (b) the scheme permits development on that land for no purpose other than a public purpose; or
  - (c) the scheme prohibits wholly or partially —
    - (i) the continuance of any non-conforming use of that land; or
    - (ii) the erection, alteration or extension on the land of any building in connection with or in furtherance of, any non-conforming use of the

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land, which, but for that prohibition, would not have been an unlawful erection, alteration or extension under the laws of the State or the local laws of the local government within whose district the land is situated.

- (2) Despite subsection (1)(c)(ii), a planning scheme which prescribes any requirement to be complied with in respect of a class or kind of building is not to be taken to have the effect of so prohibiting the erection, alteration or extension of a building of that class or kind in connection with, or in furtherance of that class or kind in connection with, or in furtherance of, non-conforming use.
- (3) Where a planning scheme wholly or partially prohibits the continuance of any non-conforming use of any land or the erection, alteration or extension of any building in connection with or in furtherance of a non-conforming use of any land, no compensation for injurious affection is payable in respect of any part of the land which immediately prior to the coming into operation of the scheme or amendment does not comprise —
  - (a) the lot or lots on which the non-conforming use is in fact being carried on;
  - (b) if the prohibition relates to a building or buildings standing on one lot, the lot on which the building stands or the buildings stand; or
  - (c) if the prohibition relates to a building or buildings standing on more than one lot, the land on which the building stands or the buildings stand and such land, which is adjacent to the building or buildings, and not being used for any other purpose authorised by the scheme, as is reasonably required for the purpose for which the building or buildings is or are being used.
- (4) If any question arises under subsection (3) as to whether at any particular date, any land —

- (a) does or does not comprise the lot or lots on which a non-conforming use is being carried on;
- (b) is or is not being used for any purpose authorised by a scheme; or
- (c) is or is not reasonably required for the purpose for which any building is being used,

the claimant or responsible authority may apply to the State Administrative Tribunal for determination of that question.

**175. No entitlement to compensation where provisions are, or could have been, in certain other laws**

When land is alleged to be injuriously affected by reason of the making or amendment of a planning scheme, no compensation is payable in respect of the injurious affection if or so far as the relevant provisions of the planning scheme are —

- (a) also contained in any Act, or in any order having the force of an Act of Parliament, in operation in the area; or
- (b) such as would have been enforceable without compensation if they had been contained in local laws.

**176. How questions determined**

- (1) A claimant or responsible authority may apply to the State Administrative Tribunal for determination of any question as to whether land is injuriously affected.
- (2) Any question as to the amount and manner of payment (whether by instalments or otherwise) of the sum which is to be paid as compensation under this Division is to be determined by arbitration under and in accordance with the *Commercial Arbitration Act 1985*, unless the parties agree on some other method of determination.

**177. When compensation is payable if land reserved for public purpose**

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- (1) Subject to subsection (3), when under a planning 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 —
    - (i) refuses an application made under the planning scheme for approval of development on the land; or
    - (ii) grants approval of development on the land subject to conditions that are unacceptable to the applicant.
- (2) Compensation for injurious affection to any land is payable only once under subsection (1) and is so payable —
- (a) under subsection (1)(a) to the person who was the owner of the land at the date of reservation referred to in subsection (1)(a); or
  - (b) under subsection (1)(b) to the person who was the owner of the land at the date of application referred to in subsection (1)(b),
- unless after the payment of that compensation further injurious affection to the land results from —
- (c) an alteration of the existing reservation of the land; or
  - (d) the imposition of another reservation of the land.
- (3) Before compensation is payable under subsection (1) —
- (a) when the land is sold, the person lawfully appointed under section 176 to determine the amount of the compensation is to be satisfied that —
    - (i) the owner of the land has sold the land at a lesser price than the owner might reasonably have

expected to receive had there been no reservation of the land under the planning scheme;

- (ii) the owner before selling the land gave written notice to the responsible authority of the owner's intention to sell the land; and
- (iii) the owner sold the land in good faith and took reasonable steps to obtain a fair and reasonable price for the land;

or

- (b) when the responsible authority refuses an application made under the planning scheme for approval of development on the land or grants approval of development on the land subject to conditions that are unacceptable to the applicant, the person lawfully appointed under section 176 to determine the amount of the compensation is to be satisfied that the application was made in good faith.

**178. When claim for compensation may be made**

- (1) A claim for compensation for injurious affection to land by the making or amendment of a planning scheme is to be made —
    - (a) in the case of a claim in respect of injurious affection referred to in section 174(1)(a) or (b), at any time within 6 months after —
      - (i) the land is sold;
      - (ii) the application for approval of development on the land is refused; or
      - (iii) the approval is granted subject to conditions that are unacceptable to the applicant;
- or
- (b) in the case of a claim in respect of injurious affection referred to in section 174(1)(c), within the time, if any, limited by the planning scheme.

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- (2) The time limited by a planning scheme under subsection (1)(b) is to be not less than 6 months after the date when notice of the approval of the scheme is published in the manner prescribed by the regulations.

**179. Amount of compensation for injurious affection arising out of reservation for public purposes**

- (1) Subject to this Division, the compensation payable for injurious affection due to or arising out of the land being reserved under a planning scheme, where no part of the land is purchased or acquired by the responsible authority, is not to exceed the difference between —
- (a) the value of the land as so affected by the existence of such reservation; and
  - (b) the value of the land as not so affected.
- (2) The values referred to in subsection (1)(a) and (b) are to be assessed as at the date on which —
- (a) the land is sold as referred to in section 178(1)(a);
  - (b) the application for approval of development on the land is refused; or
  - (c) the approval is granted subject to conditions that are unacceptable to the applicant.

**180. Notification may be lodged if compensation paid**

- (1) When compensation for injurious affection to any land has been paid under section 177, the responsible authority may lodge with the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires, a notification in a form acceptable to the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires, 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 section 179(2).
- (2) On receipt of the notification from the responsible authority, the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires, is to register the notification.

**181. Responsible authority may recover compensation if reservation revoked or reduced**

- (1) Where —
  - (a) compensation for injurious affection to land (the *original compensation*) has been paid to an owner of land in the circumstances set out in section 177; and
  - (b) as a result of the planning 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 responsible authority 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 (4) to (7)) of the value of the land as at the date on which the refund becomes payable under subsection (2).

- (2) 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 (1)(b) unless otherwise agreed by the owner and the responsible authority.
- (3) If the land is owned by 2 or more people they are jointly and severally liable to pay the refund.
- (4) When the reservation has been revoked the relevant proportion for the purposes of subsection (1) is the same as the proportion referred to in section 180(1)(c) in relation to the original compensation.

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- (5) Where the area of the reservation has been reduced the relevant proportion for the purposes of subsection (1) is to be determined as follows —
- (a) a notional amount of compensation is determined under sections 177 and 179 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 section 180(1)(c) in relation to the original compensation.

*Example:*

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

- (6) Despite subsection (4), where the reservation is revoked after an amount has been recovered under subsection (2) in respect of a previous reduction of the reservation, the relevant proportion is the same as the notional compensation proportion calculated under subsection (5)(a) and (b) in respect of the previous reduction.

- (7) Despite subsection (5), where the reservation is reduced after an amount has been recovered under subsection (2) in respect of a previous reduction of the reservation, the relevant proportion is to be determined as follows —
- (a) a notional compensation proportion is calculated under subsection (5)(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 (5)(a) and (b) in respect of the previous reduction.

*Example:*

Notional compensation proportion calculated under subsection (5)(a) and (b) on previous reduction	15%
Less	
Notional compensation proportion calculated under subsection (5)(a) and (b) on subsequent reduction	<u>8%</u>
Relevant proportion on subsequent reduction =	7%

- (8) For the purposes of subsections (1) and (5)(b) the value of the land is to be determined by one of the methods set out in section 188(2)(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.
- (9) When the responsible authority has an entitlement to recover an amount under subsection (1) it has an interest in the land and may lodge with the Registrar a notification in a form acceptable to the Registrar of the existence of that interest, and may

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withdraw, in a form acceptable to the Registrar, any notification so lodged.

- (10) On receipt of the notification or a withdrawal of notification from the responsible authority, the Registrar is to register the notification or withdrawal of notification.
- (11) Before selling or subdividing land in respect of which a notification is lodged under subsection (9), the owner of the land is to give written notice to the responsible authority, in accordance with the regulations, of the owner's intention to sell or subdivide the land.
- (12) Where a notification is lodged under subsection (9) the Registrar of Titles is not to register a transfer of the land without the consent of the responsible authority.
- (13) Where a notification as to the land is lodged under subsection (9) with the Registrar of Deeds and Transfers without the consent of the responsible authority, registration of the document the subject of the notification is null and void.
- (14) Subject to subsection (15), in the case of land reserved under a region planning scheme, subsection (1) has effect whether the reservation of the land occurred before the commencement of this section or occurs after that commencement.
- (15) In the case of land reserved under the Metropolitan Region Scheme, where the reservation occurred before the commencement of this Act, subsection (1) does not have effect if —
  - (a) the revocation or reduction of the reservation occurred before 1 July 1998; or
  - (b) the sale or subdivision referred to in subsection (2) occurred before 1 March 1995,

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

- (16) In any other case subsection (1) has effect if the revocation or reduction occurs after the commencement of this section.
- (17) In this section —
- register** means to register under the *Registration of Deeds Act 1856* or *Transfer of Land Act 1893*, as the case requires;
- Registrar** means the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires.

**182. Board of Valuers**

- (1) A Board of Valuers is established.
- (2) The Board consists of the following members appointed by the Governor —
- (a) a chairperson nominated by the Commission; and
  - (b) 3 other members nominated by the body known as The Real Estate Institute of Western Australia and incorporated under the *Associations Incorporation Act 1987*.
- (3) Each of the persons appointed to the Board is to be an Associate or a Fellow of the Australian Property Institute, an association incorporated under the laws of South Australia.
- (4) Judicial notice is to be taken of the signature of the chairperson on any finding of the Board.
- (5) Schedule 9 has effect.

**183. 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 a planning scheme for a public purpose who gives notice of intention to sell the land and claim compensation is to, unless the responsible authority waives the requirement, apply to the Board of Valuers in the prescribed manner for a valuation of the land as not so affected and the Board is to make the valuation.

- (2) Subject to subsection (4), a valuation made by the Board under subsection (1) is to be communicated to the applicant and to the responsible authority and, for the purposes of this Division, a valuation so made is final.
- (3) Upon receipt of a valuation made by the Board under this section, the responsible authority is to 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 or her under this Division.
- (4) Where any land with respect to which a valuation has been made under this section is not sold within a period of 6 months 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 so, review the valuation and either confirm the valuation or vary it.
- (5) Where the Board reviews a valuation under subsection (4), it is to notify the owner of the land and the responsible authority accordingly and upon that notification subsection (3), with such modification as circumstances require, applies to the valuation as reviewed by the Board.

### **Division 3 — Other compensation**

#### **184. Betterment, and compensation where scheme amended or repealed**

- (1) If, by the expenditure of money by the responsible authority in the making and carrying out of a planning scheme, any land or property is within 12 months of the completion of the work, or of the section of the work affecting the land, as the case may be, increased in value, the responsible authority may recover from any person whose land or property is so increased in value, one half of the amount of that increase.
- (2) A claim by a responsible authority for the purposes of subsection (1) is to be made within the time, if any, limited by

the planning scheme, not being less than 3 months after the date when notice of the approval of the scheme is first published.

- (3) If a planning scheme is amended or repealed by an order of the Minister under this Act any person who has incurred expenditure for the purpose of complying with the planning scheme is entitled to compensation from the responsible authority, in so far as any such expenditure is rendered abortive by reason of the amendment or repeal of the planning scheme.
- (4) A question as to the amount and manner of payment (whether by instalments or otherwise) of the sum which —
- (a) the responsible authority is entitled to recover under this section from a person whose land is increased in value; or
  - (b) is to be paid as compensation under this section,

is to be determined by arbitration in accordance with the *Commercial Arbitration Act 1985* or by some other method agreed by the parties.

**185. Compensation in relation to interim development order**

- (1) Compensation for injurious affection to any land within a regional order area or a local order area or for loss arising from any other cause is payable under this Part as a result of the operation of the relevant interim development order if, and only if —
- (a) the Commission or the local government administering the interim development order —
    - (i) refuses an application made under that interim development order for approval of development on that land; or
    - (ii) grants such an application subject to conditions, on the ground that the proposed planning scheme for the regional order area or local order area, as the case

requires, is to include that land within a reservation for public purposes; and

- (b) any decision for the review of which the claimant has made an application under section 249 has been affirmed in whole or in part by the State Administrative Tribunal.
- (2) The Commission or local government, as the case requires, may, and if the claimant so requests is to, purchase any land injuriously affected at a price not exceeding the value of that land at the time of —
- (a) the refusal of approval; or
  - (b) the grant of approval subject to conditions,

without regard to any increase in value attributable wholly or in part to the proposed region planning scheme or proposed local planning scheme for the regional order area or local order area in which the land is situated.

- (3) If the land is not purchased under subsection (2), when compensation of the kind referred to in subsection (1) is claimed that compensation is to be determined by arbitration in accordance with the *Commercial Arbitration Act 1985* or by some other method agreed by the parties.

**186. 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 the planning control area, had been reserved under a planning scheme for a public purpose.
- (2) Division 2 applies to compensation payable under this section as if any reference in that Division 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

of a planning control area under section 112, or the amendment of the declaration under section 113.

#### **Division 4 — Purchase or compulsory acquisition**

##### **187. Election to acquire instead of compensation**

- (1) Where compensation for injurious affection is claimed as a result of the operation of the provisions of section 174(1), the responsible authority may at its option elect to acquire the land so affected instead of paying compensation.
- (2) The responsible authority, within 3 months of the claim for injurious affection being made, is to by written notice given to the claimant —
  - (a) elect to acquire the land; or
  - (b) advise that it does not intend to acquire the land.
- (3) Where the responsible authority elects to acquire the land as provided in subsections (1) and (2), if the responsible authority and the owner of the land are unable to agree as to the price to be paid for the land by the responsible authority, the price at which the land may be acquired by the responsible authority is to be the value of the land as determined in accordance with section 188.
- (4) If —
  - (a) an owner of land claims compensation and the responsible authority elects to purchase the land instead of paying compensation; and
  - (b) the price to be paid for the land by the responsible authority has not been determined for the purposes of subsection (3),

the owner of the land may withdraw the claim for compensation and, upon that withdrawal, the election has no effect.

*[Section 187 amended by No. 8 of 2009 s. 100(4).]*

**188. How value of land is to be determined**

- (1) The value of the land referred to in section 187(3) is to be —
  - (a) the value of the land on the date the responsible authority elects to acquire the land under that section; and
  - (b) determined without regard to any increase or decrease, if any, in value attributable wholly or in part to the planning scheme.
- (2) Subject to subsection (4), the value of the land referred to in section 187(3) is to be determined —
  - (a) by arbitration in accordance with the *Commercial Arbitration Act 1985*;
  - (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 responsible authority and the owner of the land.
- (3) If arbitration has not commenced under subsection (2)(a), an application has not been made under subsection (2)(b), and no method has been agreed under subsection (2)(c), within 12 months of the date on which the responsible authority elected to acquire the land, the responsible authority may —
  - (a) refer the matter for determination by arbitration in accordance with the *Commercial Arbitration Act 1985*; or
  - (b) apply to the State Administrative Tribunal for a determination of that value,

and the value determined under this subsection is to be the value of the land for the purposes of section 187.

- (4) Where a dispute is referred for determination under subsection (3)(a) there is to be taken to be, for the purposes of the *Commercial Arbitration Act 1985*, an arbitration agreement

to refer the dispute, and the parties to the agreement are to be taken to be the owner of the land and the responsible authority.

**189. Commission may purchase land before scheme has force of law**

The Commission may, if it considers that any land to which a proposed region planning scheme or a proposed amendment to a region planning scheme is to apply is likely to be comprised in the scheme, purchase the land.

**190. Responsible authority may purchase land**

The responsible authority may, for the purpose of a planning scheme, in the name and on behalf of such responsible authority, purchase any land comprised in the planning scheme from any person who may be willing to sell the same.

**191. Responsible authority may take land comprised in scheme**

- (1) The responsible authority may, for the purpose of a planning scheme and with the consent of the Governor, take compulsorily under and subject to Part 9 of the *Land Administration Act 1997* (but subject to subsection (3)), any land comprised in the scheme, and whether situate within or without the boundaries of the district of the responsible authority.
- (2) Land acquired under subsection (1) is to be acquired in the name and on behalf of the responsible authority.
- (3) When any land is taken compulsorily under the powers conferred by this section the provisions of —
  - (a) sections 166 to 171 inclusive; and
  - (b) section 180,

of the *Land Administration Act 1997* do not apply to or in respect of the land or the taking or in any manner whatsoever, and that Act is to be read and construed as if the provisions were deleted.

**192. Valuation of land or improvements acquired by responsible authority**

- (1) Despite Part 10 of the *Land Administration Act 1997*, the value of any land or improvements on land which is compulsorily acquired by a responsible authority under section 191 is, for the purpose of assessing the amount of compensation to be paid for the land and improvements to be assessed —
- (a) 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 relevant planning scheme; and
  - (b) having regard to values current at the time of acquisition,

but in assessing the amount of compensation regard is to be had to any amounts of compensation already paid, or payable, by the responsible authority in respect of the land under Division 2.

- (2) Where compensation has been paid, or is payable, in respect of land under Division 2, then, subject to subsection (3), there is to be deducted from the compensation assessed under subsection (1) an amount that bears the same ratio to the compensation so assessed as the compensation paid or payable under that Division bears to the unaffected value of the land, as determined under this Part.
- (3) In assessing the amount to be deducted from compensation under subsection (2), the person lawfully appointed to determine the amount of compensation is to have regard to —
- (a) any improvements or demolitions lawfully made to or on the land, subsequently to the determination of the unaffected value of the land; and
  - (b) to the earlier termination of the tenure of the land, where the compensation might otherwise have been affected by an assurance given by the responsible authority, and which the responsible authority is by this paragraph

authorised to give, that the tenure was to be of a greater period.

**193. Responsible authority has powers of owner of land**

Subject to the relevant planning scheme, a responsible authority which takes or acquires land under this Part has all the powers of an owner in respect of the land, and may erect buildings on the land or otherwise improve and make use of the land in such manner as the responsible authority thinks fit.

**194. Responsible authority may grant easements**

- (1) The responsible authority may grant to any person any easement in, upon, through, under, or over, any land taken or acquired for planning purposes, subject to such conditions and payments of such rents as the responsible authority thinks fit.
- (2) A grant of an easement under subsection (1) is subject to revocation without compensation at any time the responsible authority thinks fit, or in the case of a breach of any condition under which an easement may have been granted.

**195. Commission may acquire land included in improvement plan**

- (1) The Commission may while the relevant region planning scheme has the force of law, purchase or otherwise acquire any land included in an improvement plan in force under section 119 by agreement with the owner of the land.
- (2) In default of agreement under subsection (1), the Commission may acquire the land compulsorily under and subject to Part 9 of the *Land Administration Act 1997*, as modified by this section.
- (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 is to be read as a reference to the Minister administering this Act.

- (4) Nothing in this section is to 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, body or person.

**196. Commission may dispose of land acquired by it**

- (1) The Commission is to hold for the purposes of the relevant region planning scheme any land acquired by it under this Part and may, subject to subsections (2) and (3), dispose of or alienate that land —
- (a) for or in furtherance of the provisions or likely provisions of the relevant region planning scheme; or
  - (b) if that land is no longer required by the Commission.
- (2) Subject to subsection (3), except with the consent of the Governor, the Commission is not to dispose of or alienate any land compulsorily acquired by it other than for or in furtherance of the provisions or likely provisions of the relevant region planning scheme.
- (3) In exercising a power to dispose of or alienate land conferred by this section, the Commission is to 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.

**197. Governor may declare land to be held and used for region planning scheme**

- (1) 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 a region planning scheme, the

Governor, despite Part 9 Division 5 of the *Land Administration Act 1997*, may declare by notice published in the *Gazette* that the land is to be held and may be used for the purposes of the region planning scheme.

- (2) From the date of the publication of the notice the land described in the notice, by force of this section, vests in the Commission for the purposes of the region planning scheme.
- (3) The Commission is to ensure that a memorial is lodged with the Registrar in respect of land vested in the Commission under this section as soon as is practicable after the land is so vested.
- (4) The memorial is to be —
  - (a) accompanied by the notice published under subsection (1) in respect of the relevant land; and
  - (b) in a form approved by the Registrar.
- (5) The Registrar is to register the memorial against the relevant land and take such steps as are necessary to record the vesting.
- (6) In this section —

**register** means to register under the *Registration of Deeds Act 1856* or *Transfer of Land Act 1893*, as the case requires;

**Registrar** means the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires.

## **Part 12 — Financial provisions**

### **Division 1 — Metropolitan Region Improvement Fund**

#### **198. Metropolitan Region Improvement Fund**

- (1) For the purposes of reviewing, amending, carrying out and giving effect to the Metropolitan Region Scheme, an agency special purpose account called the Metropolitan Region Improvement Account is established under section 16 of the *Financial Management Act 2006*.
- (2) The Commission is to control the MRI Account and the MRI Account may be operated for the purposes set out in subsection (1) in such manner as from time to time the Treasurer approves and is by this section authorised to approve.
- (3) The Commission is to credit to the MRI Account —
  - (a) moneys appropriated to the MRI Account under section 201(2);
  - (b) 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;
  - (c) moneys borrowed by the Commission for the performance of any function referred to in section 14 in relation to the metropolitan region; and
  - (d) any other payments made to the Commission in connection with the performance of a function referred to in paragraph (c).

*[Section 198 amended by No. 77 of 2006 s. 17.]*

#### **199. Use of MRI Account**

- (1) The Commission may apply money in the MRI Account to payment of all expenditure incurred by it for the purpose of

reviewing, amending, carrying out and giving effect to the Metropolitan Region Scheme, including —

- (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 in the metropolitan region under this Act; and
- (b) all expenses incurred by the Commission in or in connection with —
  - (i) the Metropolitan Region Scheme, a regional interim development order in respect of land in the metropolitan region or the establishment and maintenance of any works in connection with the Metropolitan Region Scheme or regional interim development order;
  - (ii) the development, maintenance and management of any land held by the Commission that is reserved under the Metropolitan Region Scheme; or
  - (iii) the carrying out of any works, including the provision of facilities, incidental to such development, maintenance and management or conducive to the use of such land for any purpose for which it is reserved.
- (2) The Commission is also authorised to apply money standing to the credit of the MRI Account 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 199 amended by No. 77 of 2006 s. 17.]*

**Division 2 — Metropolitan Region Improvement Tax**

**200. Owners' liability to pay Metropolitan Region Improvement Tax**

- (1) Subject to subsection (3), a person who, at midnight on 30 June in any year is the owner of land in the metropolitan region is liable to pay Metropolitan Region Improvement Tax on the land in accordance with this Act.
- (2) The land is chargeable with the tax imposed by and at the rate imposed by the *Metropolitan Region Improvement Tax Act 1959*.
- (3) An owner of land in 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, those sections are to apply as if references in those sections 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*.
- (4) 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 in the metropolitan region.
- (5) Despite anything contained in any other law, the amount of the tax which the Commissioner of State Revenue is to treat as having come into his or her possession under this Act in each financial year is to be the amount of the tax which becomes payable in that financial year.

**201. How tax collections are dealt with**

- (1) The proceeds of the Metropolitan Region Improvement Tax referred to in section 200 are to be credited to the Consolidated Account.

- (2) An amount equal to the amount credited to the Consolidated Account under subsection (1) is to be credited to the Metropolitan Region Improvement Account and charged to the Consolidated Account, and this subsection appropriates the Consolidated Account accordingly.

*[Section 201 amended by No. 77 of 2006 s. 4 and 17.]*

### **Division 3 — Financial provisions relating to the Commission**

#### **202. Saving**

Nothing in this Division is to be read as derogating from Division 1 and this Division has effect subject to that Division.

#### **203. Funds of the Commission**

- (1) The funds available to the Commission to enable it to perform its functions are —
- (a) moneys borrowed by the Commission under this Act; and
  - (b) other moneys lawfully received by, made available to, or payable to, the Commission under this or any other Act.
- (2) The funds referred to in subsection (1) are to be credited to, and money paid by the Commission is to be debited to, an account called the “Western Australian Planning Commission Account” that is to be established —
- (a) as an agency special purpose account under section 16 of the *Financial Management Act 2006*; or
  - (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act.

*[Section 203 amended by No. 77 of 2006 s. 17.]*

#### **204. Approval of the Minister to certain expenditure**

The Commission, without the consent of the Minister, in respect of any one work, is not to make a contract or incur any

expenditure the consideration or cost of which exceeds \$1 000 000.

**205. Borrowing restrictions**

- (1) Subject to subsection (2), the Commission may, with the prior written approval of the Treasurer and on such terms as the Treasurer approves, borrow money for the performance by the Commission of its functions.
- (2) Any moneys borrowed by the Commission under this section may be raised as one loan or as several loans and in such manner as the Treasurer may approve, but the amount of money so borrowed is not in any one year to exceed in the aggregate such amounts as the Treasurer approves.
- (3) For the purpose of making provision to repay either the whole or any part of any loan raised under this section the Commission may, subject to this section, borrow the moneys necessary for that purpose before the loan or part of it becomes payable.

**206. Borrowing from Treasurer**

- (1) In addition to the powers conferred by section 205, the Commission may borrow from the Treasurer such amounts as the Treasurer approves on such conditions relating to repayment and payment of interest as the Treasurer imposes.
- (2) Under this section the Account and the assets of the Commission are charged with the due performance by the Commission of all obligations arising from any advance made under this section.

**207. Guarantees of borrowing etc.**

- (1) The Treasurer is authorised to guarantee —
  - (a) the repayment of any amount borrowed from time to time under section 205; and

- (b) the payment of interest and such other charges in respect of such borrowings as the Treasurer has approved.
- (2) A guarantee is to be in the form, and subject to the terms and conditions, determined by the Treasurer.
- (3) The due payment of money payable by the Treasurer under a guarantee is to be charged to the Consolidated Account, which this subsection appropriates accordingly.
- (4) The Treasurer is to cause any amounts received or recovered, from the Commission or otherwise, in respect of any payment made by the Treasurer under a guarantee to be credited to the Consolidated Account.

*[Section 207 amended by No. 77 of 2006 s. 4.]*

**208. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Commission and its operations.

*[Section 208 amended by No. 77 of 2006 s. 17.]*

**209. Land of Commission not subject to rates etc.**

- (1) Subject to subsection (2), no rate, tax, or assessment is to 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.
- (2) If any land referred to in subsection (1) is leased by the Commission, the Commission is to pay in respect of the land out of the rent received 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.

**Division 4 — Financial provisions relating to local governments**

**210. Apportionment of expenses between local governments**

- (1) The Minister may order that any part of the expenses incurred by a local government under this Act, or under any local planning scheme, are to be borne by another local government (the *other local government*).
- (2) An amount ordered under subsection (1) is to be taken to be a debt due to the local government that incurred the expenses by the other local government.
- (3) In fixing the amount to be borne by the other local government the Minister is to have regard to the proportion of the expenses incurred in respect of anything done within the district of the other local government in relation to a local planning scheme, and the ratio of that proportion to the whole expense under this Act in relation to the scheme, and such other matters as are prescribed by the regulations.
- (4) A local government may apply to the State Administrative Tribunal for a review, in accordance with Part 14, of any order of the Minister under this section.

## **Part 13 — Enforcement and legal proceedings**

### **Division 1 — Enforcement**

#### **211. Minister may give orders to local government**

- (1) A person aggrieved by —
  - (a) the failure of a local government to enforce or implement effectively the observance of a local planning scheme; or
  - (b) the failure of a local government to execute any works which, under a local planning scheme or this Act, the local government is required to execute,may make representations to the Minister.
- (2) The Minister may determine not to take any action in response to the representations or, if the Minister considers it appropriate to do so, the Minister may refer the representations to the State Administrative Tribunal for its report and recommendations.
- (3) For the purposes of making a report and recommendations on a referral under subsection (2), Part 14 applies with such modifications as may be necessary, as if the referral were an application for review.
- (4) On holding an inquiry or receiving a report and recommendations from the State Administrative Tribunal, the Minister may order the local government —
  - (a) to do all things necessary for enforcing the observance of the scheme or any of the provisions of the scheme; or
  - (b) to do all things necessary for executing any works which, under the scheme or this Act the local government is required to execute,as the case requires.
- (5) The Minister is not bound by the report and recommendations of the State Administrative Tribunal.

- (6) The local government may within 28 days of service of the order appeal against the order to a Judge who may —
  - (a) confirm, vary or annul the Minister's order; and
  - (b) make such order as to costs of the appeal as the Judge thinks proper.
- (7) The decision of the Judge is final and enforceable as an order of judgment of the Supreme Court.
- (8) Subject to any rules made by the Governor —
  - (a) the proceedings on an appeal are to be as the Judge directs; and
  - (b) subject to the direction of the Judge may, as regards the summoning and attendance of witnesses, the production of documents and costs, be regulated by the appropriate Rules of the Supreme Court, with appropriate adaptations and alterations.

**212. Minister may assume powers of local government or enforce review decision**

- (1) If the Minister is satisfied that a local government has failed to —
  - (a) comply with an order under section 76;
  - (b) comply with a provision of Part 5 Division 5;
  - (c) comply with an order under section 211; or
  - (d) comply with a provision of regulations made under section 258,

the Minister may serve written notice on the local government under this section.

- (2) The notice is to —
  - (a) set out the relevant order or provision and the manner in which the local government has failed to comply with it;

- (b) specify a period (which is not to be less than 60 days after the notice is served) before which the local government is required to comply with the relevant order or provision; and
  - (c) advise the local government that the Minister intends to exercise the powers conferred by subsection (3) if the local government does not comply with the requirement made under paragraph (b).
- (3) If the local government does not comply with the requirement made under subsection (2)(b), the Minister may take all such steps and prepare or cause to be prepared all such documents as are necessary for compliance with the requirement as if the Minister were the local government.
- (4) For the purposes of subsection (3), the Minister may by order direct the local government to provide the Minister with such reports or other information specified in the order as are necessary for the exercise of the Minister's powers under this section.
- (5) The Minister is to cause a copy of an order directed to a local government under subsection (4) to be served on the local government, and the local government is to comply with the order.
- (6) For the purposes of subsection (3), the provisions of the regulations that would have applied to the local government apply to the Minister with such modifications as are necessary or are prescribed.
- (7) All costs, charges and expenses incurred by the Minister in the exercise of any powers conferred 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.

**213. Effect of amendment, scheme, consolidation or repeal prepared by Minister**

(1) When the Minister exercises powers conferred under section 212 and prepares or causes to be prepared and published in the *Gazette* —

- (a) an amendment to a local planning scheme;
- (b) a local planning scheme, incorporating, if necessary, any modifications to, or conditions on, the scheme;
- (c) a consolidated local planning scheme; or
- (d) the repeal of a local planning scheme,

that amendment, scheme, scheme as modified or with conditions, consolidation or repeal, as the case may be, has effect as if it were made, published and adopted by the local government and approved by the Minister and the local government is to implement it accordingly.

(2) A reference in this or any other Act to —

- (a) an amendment to a local planning scheme is to be read and construed as including a reference to an amendment to a local planning scheme prepared or caused to be prepared by the Minister under section 212; and
- (b) a local planning scheme is to be read and construed as including a reference to a local planning scheme prepared or caused to be prepared by the Minister in accordance with section 212.

**214. Directions by responsible authority regarding unauthorised development**

(1) For the purposes of subsections (2) and (3) —

- (a) a development is undertaken in contravention of a planning scheme or an interim development order if the development —

- (i) is required to comply with the planning scheme or interim development order; and
  - (ii) is commenced, continued or carried out otherwise than in accordance with the planning scheme or interim development order or otherwise than in accordance with any condition imposed with respect to that development by the responsible authority pursuant to its powers under that planning scheme or interim development order;
- (b) a development is undertaken in contravention of planning control area requirements if the development —
  - (i) is commenced, continued or carried out in a planning control area without the prior approval of that development obtained under section 116; or
  - (ii) is commenced, continued or carried out otherwise than in accordance with the approval referred to in subparagraph (i) or otherwise than in accordance with the conditions, if any, subject to which that approval is given.
- (2) If a development, or any part of a development, is undertaken in contravention of a planning scheme or an interim development order or in contravention of planning control area requirements, the responsible authority may give a written direction to the owner or any other person undertaking that development to stop, and not recommence, the development or that part of the development that is undertaken in contravention of the planning scheme, interim development order or planning control area requirements.
- (3) If a development has been undertaken in contravention of a planning scheme or interim development order or in contravention of planning control area requirements, the

responsible authority may give a written direction to the owner or any other person who undertook the development —

- (a) to remove, pull down, take up, or alter the development; and
  - (b) to restore the land as nearly as practicable to its condition immediately before the development started, to the satisfaction of the responsible authority.
- (4) The responsible authority may give directions under subsections (2) and (3)(a) and (b) in respect of the same development and in the same instrument.
- (5) If it appears to a responsible authority that delay in the execution of any work to be executed under a planning scheme or interim development order would prejudice the effective operation of the planning scheme or interim development order, the responsible authority may give a written direction to the person whose duty it is to execute the work to execute that work.
- (6) A direction under subsection (3) or (5) is to specify a time, being not less than 60 days after the service of the direction, within which the direction is to be complied with.
- (7) A person who —
- (a) fails to comply with a direction given to the person under subsection (2); or
  - (b) fails to comply with a direction given to the person under subsection (3) or (5) within the time specified in the direction, or within any further time allowed by the responsible authority,
- commits an offence.

**215. Responsible authority may remove or alter unauthorised development**

- (1) If —

- (a) a notice is served on a person under section 214(2), (3) or (5) and that person fails to —
  - (i) carry out the directions within the time specified in the notice; or
  - (ii) apply under section 255 for a review of any direction contained in the notice;

or

- (b) on an application by that person for a review of any direction contained in the notice, 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 section 255(2),

the responsible authority may itself remove, pull down, take up or alter the development, restore the land as nearly as practicable to its condition immediately before the development started, or execute that work, as it directed that person.

- (2) Any expenses incurred by a responsible authority under subsection (1) may be recovered from the person to whom the direction was given as a debt due in a court of competent jurisdiction.

## **216. Injunction**

- (1) Without prejudice to any proceeding for an offence against this Act, if —
  - (a) a person contravenes a provision of this Act, an interim development order or a planning scheme; or
  - (b) a responsible authority grants an application for approval of development subject to conditions and the development is commenced, continued or completed contrary to or otherwise than in accordance with any condition imposed by the responsible authority with respect to the development,

the Supreme Court may, on application by the responsible authority, grant an injunction —

- (c) if the application is with respect to a contravention of the Act, an interim development order or a planning 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, the interim development order or the planning scheme;
  - (d) if 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 responsible authority with respect to the development —
    - (i) in the case where the development is commenced but not carried out, restraining the continuation or completion of the development or any use of the development; or
    - (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) has effect for the period specified in the injunction or until further order of the Court; and
  - (b) may be varied or rescinded by the Court.

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

- (1) In this section —
- assessed scheme*** means a planning scheme, or an amendment to a planning scheme, that is an assessed scheme as defined in the EP Act;

***environmental condition*** means a condition agreed under section 48F of the EP Act or decided under section 48I of the EP Act;

***environmental harm*** has the meaning given to that term in the EP Act;

***pollution*** has the meaning given to that term in 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 responsible authority 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 non-compliance with,the environmental condition to which the Minister for the Environment's advice relates; or
  - (c) advise the responsible authority to cause such steps to be taken as are necessary for the purpose of —
    - (i) complying with; or
    - (ii) preventing non-compliance with,the environmental condition to which the Minister for the Environment's advice relates.

- (4) A person who fails to comply with an order or notice served on the person under subsection (3)(a) or (b) commits an offence.
- (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).

### **Division 2 — Offences**

#### **218. Contravention of planning scheme**

A person who —

- (a) contravenes the provisions of a planning scheme;
- (b) commences, continues or carries out any development in any part of a region the subject of a region planning scheme or any part of an area the subject of a local planning scheme otherwise than in accordance with the provisions of the planning scheme; or
- (c) commences, continues or carries out any such development which is required to comply with a planning scheme otherwise than in accordance with any condition imposed under this Act or the scheme with respect to the development, or otherwise fails to comply with any such condition,

commits an offence.

#### **219. Unauthorised subdivision works**

- (1) A person who commences, continues or carries out works for the purpose of enabling the subdivision of land otherwise than —
  - (a) as shown on a plan of subdivision approved by the Commission; or

(b) as required by the Commission to be carried out as a condition of approval of the plan of subdivision, commits an offence.

- (2) It is a defence to a charge of an offence under subsection (1) to show that the person has development approval or other lawful authority to commence, continue or carry out the works.

**220. Development in planning control area without prior approval**

A person who commences, continues or carries out development in a planning control area except —

- (a) with the prior approval of that development obtained under section 116; 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 is given,

commits an offence.

**221. Contravention of interim development order**

A person who —

- (a) contravenes an interim development order; or
- (b) commences, continues or carries out any development which is required to comply with an interim development order otherwise than in accordance with —
  - (i) the interim development order; or
  - (ii) any condition imposed in respect of that development by the Commission or the local government administering that order under its powers under the order,

commits an offence.

**222. Development in heritage place without approval**

A person who commences, continues or carries out any development, or causes or permits any development to be commenced, continued or carried out, affecting land to which section 163 applies except —

- (a) with the prior approval of that development obtained under section 163; 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,

commits an offence.

**223. Penalty for offence**

Unless otherwise provided, a person who commits an offence under this Act is liable to a penalty of \$50 000 and, in the case of a continuing offence, a further fine of \$5 000 for each day during which the offence continues.

**224. Other enforcement provisions not affected**

- (1) This Division does not prejudice or affect the operation of sections 214, 215 or 216.
- (2) A person may be prosecuted for an offence under this Division irrespective of whether or not a direction has been given under section 214.

**225. Onus of proof in vehicle offence may be shifted**

- (1) In this section —  
*vehicle offence* means an offence of which the parking, standing or leaving of a vehicle is an element.
- (2) Where a vehicle offence is alleged to have been committed and the identity of the person committing the alleged offence is not known and cannot immediately be ascertained an officer of the

relevant responsible authority who is a designated person under section 228 may give the owner of the vehicle a notice under this section.

- (3) The notice is to be in the form prescribed in the regulations and is to contain particulars of the alleged offence and require the owner to identify the person who was the driver or person in charge of the vehicle at the time when the offence is alleged to have been committed.
- (4) The notice may be addressed to the owner of the vehicle without naming, or stating the address of, the owner and may be given by —
  - (a) attaching it to the vehicle or leaving it in or on the vehicle at or about the time that the alleged offence is believed to have been committed; or
  - (b) giving it to the owner within 21 days after the alleged offence is believed to have been committed.
- (5) The notice is to include a short statement of the effect of subsection (6).
- (6) Unless, within 28 days after being served with the notice, the owner of the vehicle —
  - (a) informs the responsible authority or an officer of the responsible authority authorised for the purposes of this paragraph as to the identity and address of the person who was the person in charge of the vehicle at the time the offence is alleged to have been committed; or
  - (b) satisfies the responsible authority that the vehicle had been stolen or unlawfully taken, or was being unlawfully used, at the time the offence is alleged to have been committed,

the owner is, in the absence of proof to the contrary, deemed to have committed the offence.

*[Section 225 amended by No. 8 of 2009 s. 100(5).]*

### **Division 3 — Infringement notices**

#### **226. Interpretation**

In this Division —

*alleged offender* means a person who or which is suspected of having committed an offence under this Act or under regulations made under this Act;

*designated person* in section 228, 229, 230 or 231 means a person appointed under section 234 to be a designated person for the purposes of the section in which the term is used;

*prescribed offence* means an offence prescribed under section 227(1).

#### **227. Prescribed offences**

- (1) The regulations may prescribe an offence under this Act, or under any regulations made under this Act, to be an offence for which an infringement notice may be issued under this Division.
- (2) For each prescribed offence the regulations must prescribe —
  - (a) a modified penalty applicable in whatever the circumstances in which the offence is committed; or
  - (b) a modified penalty applicable if the offence is committed in circumstances specified in the regulations.
- (3) The modified penalty for an offence is not to exceed 20% of the maximum penalty that could be imposed for that offence by a court.

#### **228. Giving of infringement notice**

- (1) A designated person who has reason to believe that a person has committed a prescribed offence may give an infringement notice to the alleged offender.
- (2) The notice must be given within 6 months after the alleged offence is believed to have been committed.

**229. Content of infringement notice**

- (1) An infringement notice is to be in the prescribed form and is to —
  - (a) contain a description of the alleged offence;
  - (b) specify the amount of the modified penalty for the offence;
  - (c) advise that if the alleged offender does not wish to have a complaint of the alleged offence heard and determined by a court, that amount may be paid to a designated person within a period of 28 days after the giving of the notice; and
  - (d) inform the alleged offender as to who are designated persons for the purposes of receiving payment of modified penalties.
- (2) The amount referred to in subsection (1)(b) is to be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.

**230. Extension of time**

A designated person may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.

**231. Withdrawal of infringement notice**

- (1) A designated person may, whether or not the modified penalty has been paid, withdraw an infringement notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.
- (2) If an infringement notice is withdrawn after the modified penalty has been paid, the amount is to be refunded.

**232. Benefit of paying modified penalty**

- (1) Subsection (2) applies if the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn.
- (2) If this subsection applies it prevents the bringing of proceedings and the imposition of penalties to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.
- (3) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

**233. Application of penalties collected**

An amount paid as a modified penalty is, subject to section 231(2), to be dealt with as if it were a penalty imposed by a court as a penalty for an offence.

**234. Appointment of designated persons**

- (1) The chief executive officer of a responsible authority may, in writing, appoint persons or classes of persons to be designated persons for the purposes of section 228, 229, 230 or 231 or for the purposes of 2 or more of those sections.
- (2) A person who is authorised to give infringement notices under section 228 is not eligible to be a designated person for the purposes of any of the other sections.

**235. Notice placing onus on vehicle owner**

- (1) If an alleged offence is one for which a notice under section 225 can be given to the owner of a vehicle involved in the commission of the offence, that notice can be included in the same document as an infringement notice given to the owner for the alleged offence.
- (2) For the purpose of giving the vehicle owner an infringement notice that is with a notice under section 225 —

- (a) it is a sufficient ground for believing the owner to have committed the alleged offence that the person is the owner; and
  - (b) the infringement notice may be addressed and given as specified in section 225(4).
- (3) Where the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed, section 225(6) does not have effect to deem the owner to have committed the offence.
- (4) The statement required by section 225(5) is to include a description of the effect of subsection (3) if an infringement notice is given with a notice under section 225.

## **Part 14 — Applications for review**

### **Division 1 — Making and determination of applications for review**

#### **236. When this Part applies**

- (1) In this section —  
*planning scheme* includes any other instrument that regulations made under the *State Administrative Tribunal Act 2004* specify to be a planning scheme for the purposes of subsection (3).
- (2) This Part applies if a written law or a planning scheme or any other written law gives the State Administrative Tribunal jurisdiction to carry out a review in accordance with this Part.
- (3) Even if a planning scheme does not expressly give a person a right to apply to the State Administrative Tribunal for a review, in accordance with this Part, of a decision or matter, the planning scheme is to be taken to give that right if —
  - (a) the planning scheme is expressed as conferring on the person a right to appeal against the decision, or to refer the matter, under this Act; or
  - (b) the planning scheme is expressed as conferring on the person a right to appeal or apply for review in respect of the matter and the matter involves the exercise by the responsible authority of a discretionary power.
- (4) Subsection (3) applies even if the planning scheme provides for the appeal, referral or application to be made otherwise than to the State Administrative Tribunal or, in the circumstances described in paragraph (b) of that subsection, otherwise than in accordance with this Part.
- (5) A provision in a planning scheme of the kind described in subsection (3)(a) or (b) has no effect other than the effect given to that provision by subsection (3).

**237. Terms used in this Part**

In this Part, unless the contrary intention appears —

**judicial member** has the meaning given to that term in section 3(1) of the *State Administrative Tribunal Act 2004*;

**party** has the meaning given to that term in section 36 of the *State Administrative Tribunal Act 2004*;

**President** means the President of the State Administrative Tribunal;

**Tribunal member** has the meaning given to that term in section 3(1) of the *State Administrative Tribunal Act 2004*.

[Section 237 amended by No. 5 of 2008 s. 84.]

**237A. Constitution of State Administrative Tribunal**

- (1) When exercising the jurisdiction referred to in section 236(2), the State Administrative Tribunal is to be constituted under this section and section 238.
- (2) The State Administrative Tribunal is to be constituted by one Tribunal member when it is dealing with an application for a review of the determination of, or conditions imposed in respect of —
  - (a) a development application to commence a development of a value of less than \$250 000 or such other amount as is prescribed by regulations made under the *State Administrative Tribunal Act 2004*; or
  - (b) a development application to commence a development of a single house on a single lot where the development is of a value of less than \$500 000 or such other amount as is prescribed by regulations made under the *State Administrative Tribunal Act 2004*, or any development ancillary to that development; or
  - (c) an application for approval to subdivide a lot into not more than 3 lots.

- (3) The State Administrative Tribunal is to be constituted by one Tribunal member when it is dealing with an application that the applicant, with the agreement of each other party, has elected at the time of making the application to have determined by one Tribunal member.
- (4) If —
- (a) subsection (2) or (3) does not apply; or
  - (b) the President is of the opinion that an application referred to in subsection (2) or (3) is likely to raise complex or significant planning issues,

the State Administrative Tribunal is to be constituted under section 11 of the *State Administrative Tribunal Act 2004*.

*[Section 237A inserted by No. 5 of 2008 s. 85.]*

**238. Qualifications of members**

- (1) The member constituting the State Administrative Tribunal, or each of them if there is more than one, is to be a person who has knowledge of and experience in one or more of the fields of urban and regional planning, architecture and urban design, engineering, surveying, environmental science, planning law, heritage matters, public administration, commerce and industry.
- (2) If the application is for a review of a decision referred to in section 254 or a decision relating to an environmental condition, the member constituting the State Administrative Tribunal, or at least one of them if there is more than one, is to be a person who has knowledge of and experience in the field of environmental science.

*[(3), (4) deleted]*

*[Section 238 amended by No. 5 of 2008 s. 86.]*

**239. Representation**

- (1) In the case of an application described in section 237A(2) the applicant may, at the time the application is made, elect that no party to the application is to be represented by a legal practitioner.
- (2) If an applicant makes an election under subsection (1), no party to the application is entitled to be represented by a legal practitioner unless —
  - (a) the President, being of the opinion that the application is likely to raise complex or significant planning issues, directs that the parties may be so represented;
  - (b) the President, having regard to whether the application involves a question of law, directs in any other case that the parties may be so represented;
  - (c) the applicant is a legal practitioner; or
  - (d) the applicant withdraws the election.

*[Section 239 amended by No. 5 of 2008 s. 87.]*

**240. Tribunal to invite submissions from Minister for the Environment before determining certain applications**

Before determining an application for the review of a decision referred to in section 254 or a decision relating to an environmental condition, the State Administrative Tribunal is to invite the Minister for the Environment to make a submission in respect of that application.

**241. Tribunal to have regard to certain matters**

- (1) In determining an application in accordance with this Part the State Administrative Tribunal is to have due regard to relevant planning considerations including —
  - (a) any State planning policy which may affect the subject matter of the application; and

- (b) any management programme for the development control area in force under the *Swan and Canning Rivers Management Act 2006* Part 4 that may affect the subject matter of the application.
- (2) In the case of an application that relates to land to which the *Heritage of Western Australia Act 1990* applies, and whether or not a State planning policy provides for the conservation of that land, the State Administrative Tribunal —
  - (a) is to refer the matter to the Heritage Council for advice;
  - (b) may receive and hear submissions made on behalf of the Heritage Council;
  - (c) may join the Heritage Council as a party to the application; and
  - (d) is to have due regard to the objects of the *Heritage of Western Australia Act 1990*.
- (3) In determining an application for the review of the determination of, or conditions imposed in respect of, an application for approval to subdivide a lot into not more than 3 lots, the State Administrative Tribunal may have regard to claims of hardship raised by the applicant and proved to the satisfaction of the State Administrative Tribunal, if the State Administrative Tribunal is of the opinion that such regard will not affect the application of sound planning principles.

*[Section 241 amended by No. 52 of 2006 s. 6.]*

**242. Submissions from persons who are not parties**

The State Administrative Tribunal may receive or hear submissions in respect of an application from a person who is not a party to the application if the Tribunal is of the opinion that the person has a sufficient interest in the matter.

**243. Exclusion of powers to join parties**

Section 38 of the *State Administrative Tribunal Act 2004* does not apply to a proceeding for a review in accordance with this Part.

**244. Review by President**

- (1) The State Administrative Tribunal constituted by a judicial member may, of its own motion or upon an application made under subsection (3), review a direction, determination or order upon a matter involving a question of law that was made by the State Administrative Tribunal when constituted without a legally qualified member as defined in section 3(1) of the *State Administrative Tribunal Act 2004*.
- (2) The State Administrative Tribunal constituted by a judicial member may —
  - (a) affirm the direction, determination or order; or
  - (b) revoke the direction, determination or order and substitute another direction, determination or order that the State Administrative Tribunal could have made in relation to that matter.
- (3) An application for a review of a direction, determination or order upon a matter involving a question of law may be made, in accordance with the regulations and rules made under the *State Administrative Tribunal Act 2004*, by a party within one month after the direction, determination or order is given to the party.
- [(4) deleted]*
- (5) A review by the State Administrative Tribunal —
  - (a) of its own motion is not to be made later than one month after the direction, determination or order is given to the party; or

- (b) on the application of a party is not to be made later than one month after the application is made.

*[Section 244 amended by No. 5 of 2008 s. 88.]*

**245. Minister may make submissions**

- (1) If it appears to the State Administrative Tribunal that an application may be determined in a way which will have a substantial effect on the future planning of the area in which the land the subject of the application is situated, the State Administrative Tribunal may invite the Minister to make a submission as to the matters the Minister considers to be relevant to the issues before the State Administrative Tribunal.
- (2) Irrespective of whether or not there has been an invitation under subsection (1), if it appears to the Minister that an application may be determined in a way which will have a substantial effect on the future planning of the area in which the land the subject of the application is situated, the Minister may make a submission as to the matters which the Minister considers to be relevant to the issues before the State Administrative Tribunal.
- (3) A submission may be made by the Minister in writing or orally on behalf of the Minister by a representative who appears at a hearing of the application, and may be made at any time before the determination of the application.
- (4) When a written submission has been made by the Minister, a copy is to be given by the State Administrative Tribunal to the parties who are in any case to be given an opportunity of making further submissions to the State Administrative Tribunal.
- (5) In this section —
  - (a) where the area in which the land the subject of the application is situated includes or comprises land or waters that are within or abut the development control area as defined in the *Swan and Canning Rivers*

*Management Act 2006*, **Minister** includes the Minister to whom the administration of that Act is committed; and

- (b) where the area in which the land the subject of the application is situated includes, or is included in, or abuts any land or water to which an entry in the Register maintained under section 46 of the *Heritage of Western Australia Act 1990* relates, **Minister** includes the Minister to whom the administration of that Act is committed.

*[Section 245 amended by No. 52 of 2006 s. 6.]*

**246. Minister may call in application**

- (1) This section applies to an application made to the State Administrative Tribunal if the Minister considers that the application raises issues of such State or regional importance that it would be appropriate for the application to be determined by the Minister.
- (2) The Minister may direct —
- (a) the President to refer an application to which this section applies to the Minister for determination; or
  - (b) the State Administrative Tribunal to hear the application but, without determining it, to refer it with recommendations to the Minister for determination.
- (3) The Minister cannot give a direction under subsection (2) —
- (a) in respect of an application made to the State Administrative Tribunal under the *Heritage of Western Australia Act 1990*;
  - (b) more than 14 days after the application was made to the State Administrative Tribunal; or
  - (c) after a final determination has been made in relation to the application.

- (4) The Minister, within 14 days after a direction is given, is to cause a copy of it to be published in the *Gazette* and, as soon as is practicable, is to cause a copy of it to be laid before, or transmitted in accordance with section 248(1) to the Clerk of, each House of Parliament.
- (5) If the Minister gives a direction under subsection (2)(a), each party to the proceeding may present the case of that party to the Minister.
- (6) The Minister is to have regard to the submissions of the parties and may have regard to any other submission received by the Minister.
- (7) A copy or transcript of any submission to which the Minister has regard is to be —
  - (a) given to each party; and
  - (b) published in the manner prescribed by the regulations.

**247. Determination of application by Minister**

- (1) In determining an application the Minister is not limited to planning considerations but may make the determination having regard to any other matter affecting the public interest.
- (2) When the Minister determines an application that determination has effect according to its tenor.
- (3) When an application is referred to the Minister under section 246(2)(b) the executive officer of the State Administrative Tribunal is to —
  - (a) give a copy of the recommendations that accompanied the referral to each party within a reasonable time after the referral; and
  - (b) make a copy of the recommendations available during office hours for inspection by any person without charge.

- (4) The Minister is to —
- (a) give to each party written reasons for the determination of the Minister on the application;
  - (b) as soon as is practicable, cause a copy of those reasons to be laid before each House of Parliament; and
  - (c) upon payment of a fee determined in the manner prescribed by the regulations, supply a copy of those reasons to any other person.
- (5) The decision of the Minister is final.

**248. Laying before House of Parliament that is not sitting**

- (1) If section 246(4) requires the Minister, as soon as is practicable, to cause a copy of a direction to be laid before, or transmitted in accordance with this subsection to, the Clerk of each House of Parliament, and —
- (a) at the commencement of the period of 14 days after the day on which the direction is given, a House of Parliament is not sitting; and
  - (b) the Minister is of the opinion that the House will not sit during that period,

the Minister is to transmit a copy of the direction to the Clerk of that House.

- (2) A copy of a direction transmitted to the Clerk of a House is to be regarded as having been laid before that House.
- (3) The laying of a copy of a direction that is to be regarded as having occurred under subsection (2) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

**Division 2 — Decisions which may be reviewed**

**249. Application for review of decision under interim development order**

- (1) Subject to subsection (2), if an applicant for approval to carry out development under an interim development order is aggrieved by the refusal to grant the approval or by the conditions subject to which the approval is granted, the applicant may apply to the State Administrative Tribunal for a review, in accordance with this Part, of the decision to refuse or to impose the conditions.
- (2) No application for a review is to be made or heard in respect of a development that contravenes a provision of —
  - (a) a local planning scheme;
  - (b) a local law of a local government that is not superseded by the interim development order; or
  - (c) an Order made under Part 6, or Order in Council made under section 80, of the *Heritage of Western Australia Act 1990*.
- (3) The Commission is to be taken to have refused an application for approval to carry out development under a regional interim development order, and a local government is to be taken to have refused an application for approval to carry out development under a local interim development order, if the Commission or the local government, as the case requires, has not given its decision on that application to the applicant —
  - (a) within a period of 60 days after the receipt by the local government or Commission of the application; or
  - (b) in the case of land in relation to which the application has been referred to the Heritage Council in accordance with the interim development order, within a period of 60 days after referring the application.

**250. Application for review of decision in respect of development in planning control area**

- (1) An applicant whose application under section 115 has been —
  - (a) approved subject to conditions which are unacceptable to the applicant; or
  - (b) refused,may apply to the State Administrative Tribunal for a review, in accordance with this Part, 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 given by the Heritage Council or by the operation of section 78 of the *Heritage of Western Australia Act 1990* is to be referred to the Heritage Council for advice, and section (2) applies in relation to the application referred.
- (3) If the Commission has not within 60 days of receiving an application forwarded to it under section 115(3) given its decision on that application to the applicant, the application is to be taken to have been refused.

**251. Application for review of certain decisions under Part 10**

- (1) An applicant may apply to the State Administrative Tribunal for a review, in accordance with this Part, of a decision of the Commission to refuse to approve any plan, application for title, transfer, conveyance, lease, licence to use and occupy, or mortgage, in respect of which an application for approval was made to the Commission.
- (2) An applicant may apply to the State Administrative Tribunal for a review, in accordance with this Part, of conditions affixed to the granting of an approval referred to in subsection (1).
- (3) An applicant who makes a request under section 144(1) or 151(1) may apply to the State Administrative Tribunal for a

review, in accordance with this Part, of a decision of the Commission made under section 144(2) or 151(2).

- (4) An applicant given approval of a plan of subdivision who is aggrieved by the Commission's decision to refuse to endorse its approval on a diagram or plan of survey of the subdivision submitted to the Commission under section 145 may apply to the State Administrative Tribunal for a review, in accordance with this Part, of the decision of the Commission.
- (5) If the Commission refuses to endorse a plan or diagram of survey of a subdivision because a condition affixed to the approval of the plan of subdivision has not been complied with, an application under subsection (4) may include an application for a review of that condition.

**252. Application for review of exercise of discretionary power under a planning scheme**

- (1) Subject to subsection (3), if —
  - (a) under a local planning scheme or a region planning scheme, the grant of any consent, permission, approval or other authorisation is in the discretion of a responsible authority;
  - (b) a person has applied to the responsible authority for such a grant; and
  - (c) the responsible authority has —
    - (i) refused the application; or
    - (ii) granted it subject to any condition,

the applicant may apply to the State Administrative Tribunal for a review, in accordance with this Part, of the responsible authority's decision.

- (2) Subject to subsections (1) and (3), an applicant may apply to the State Administrative Tribunal for a review, in accordance with this Part, of the responsible authority's decision under a local planning scheme as to —

- (a) the classification of a use under the local planning scheme; or
  - (b) the permissibility of a use that is not listed under the local planning scheme.
- (3) Subsections (1) and (2) do not affect the operation of a right given or taken to be given by a planning scheme to apply for a review of a decision, but where rights are given or taken to be given by a planning scheme and under subsection (1) or (2), the exercise of one of those rights extinguishes the other right to apply for a review of the same decision.

**253. Notice of default for purposes of this Division**

- (1) In this section —

*applicant* includes a person making a request under section 144(1), 145(1) or 151(1);

*decision period* means —

- (a) in the case of an application for approval of a plan of subdivision, the period of 90 days specified in section 143(2) or any longer period after that day as may be agreed between the Commission and the applicant under section 143(2);
- (b) in the case of an application for endorsement of approval on a diagram or plan of survey, the period of 30 days specified in section 145(5) or any longer period after that day as may be agreed between the Commission and the applicant under section 145(5); and
- (c) in the case of any other application, or a request, referred to in subsection (2), the period of 60 days from the day on which the application or request was made, or any longer period after that day as may be agreed in writing between the responsible authority and the applicant or person so requesting.

- (2) If at any time after the end of the decision period the responsible authority has not —
- (a) approved, or refused to approve, an application referred to in section 251(1);
  - (b) given notice of a decision on the request made under section 144(1) or 151(1); or
  - (c) endorsed, or refused to endorse, a diagram or plan of survey under section 145(4),

the applicant may give written notice of default to the responsible authority.

- (3) Where a notice of default is given to a responsible authority under subsection (2), the applicant may apply to the State Administrative Tribunal for a review, in accordance with this Part, as if the responsible authority had refused to approve the application, plan or diagram, or had refused to alter or revoke the condition, as the case requires, on the day on which the notice of default was given to the responsible authority.

### **Division 3 — Other applications for review**

**254. Application for review of decision under section 48I of EP Act**

If a responsible authority makes a decision under section 48I(3)(c) or (d) of the EP Act in respect of a proposal under an assessed scheme, the applicant promoting the proposal may apply to the State Administrative Tribunal for a review, in accordance with this Part, of the decision.

**255. Application for review of section 214 direction**

- (1) A person to whom a direction is given under section 214 may apply to the State Administrative Tribunal for a review, in accordance with this Part, of the decision to give the direction.

- (2) If the State Administrative Tribunal confirms or varies the direction, it may, by written notice served on the person to whom the direction was given, direct the owner to comply with the direction as so confirmed or varied, within a period of not less than 40 days after service of the notice, as is specified in the notice.
- (3) Nothing in subsection (2) limits the functions of the State Administrative Tribunal under the *State Administrative Tribunal Act 2004*.

## **Part 15 — Subsidiary legislation**

### **Division 1 — Subsidiary legislation made by Minister**

#### **256.    General provisions of planning schemes**

- (1) The Minister may make regulations prescribing a set of general provisions (or separate sets of general provisions adapted for areas of any special character) for carrying out the general objects of local or region planning schemes, and in particular for dealing with the matters set out in Schedule 7.
- (2) Where a planning scheme is made in respect of an area, any general provision as amended from time to time that is —
  - (a) appropriate to the area; and
  - (b) in force when the scheme comes into force,

has effect as part of the scheme, except so far as the scheme provides for the variation or exclusion of that provision.

#### **257.    Court may order compensation in respect of certain breaches of general regulations**

- (1) The court by or before which a person is found guilty of an offence against regulations made under section 256 in respect of a region planning scheme 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.
- (2) 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.
- (3) When lodged, the order is to be taken to be a judgment of the court and may be enforced accordingly.

- (4) An order made against a person under subsection (1), or the institution of proceedings or the finding of a person to be guilty under regulations made under section 256, does not affect any civil remedy against the person.
- (5) In any civil proceedings arising from the same circumstances —
  - (a) any sum recovered under an order made under subsection (1) is to be taken into account in the assessment of any damages awarded; and
  - (b) the record of any criminal proceedings under regulations made under section 256 in relation to an offence is to be admissible as evidence of the matters determined in those criminal proceedings and relevant to the issues.

**258. Procedure and costs for local planning schemes**

- (1) The Minister may make regulations for regulating the procedure to be observed —
  - (a) with respect to the preparation or adoption of a local planning scheme;
  - (b) with respect to obtaining the approval of the Minister to a local planning scheme so prepared or adopted;
  - (c) with respect to the review, amendment or repeal of a local planning scheme;
  - (d) with respect to any inquiries, reports, notices, or other matters required in connection with the preparation, adoption or approval of a local planning scheme, or preliminary to the preparation, adoption or approval of the scheme; and
  - (e) in relation to —
    - (i) the carrying out of a local planning scheme;
    - (ii) enforcing the observance of the provisions of a local planning scheme; and
    - (iii) the review, amendment or repeal of a local planning scheme.

- (2) Provision is to be made by the regulations for ensuring that —
- (a) notice of the proposal to prepare or adopt a scheme is to be given, at the earliest stage possible, to any local government interested in the land;
  - (b) the local government of the district in which any land proposed to be included in a scheme is given —
    - (i) a notice of any proposal to prepare or adopt such a scheme; and
    - (ii) a copy of the draft scheme before the scheme is made;
- and
- (c) the local government is entitled to be heard at any inquiry held by the Minister in regard to the scheme.
- (3) Without limiting the generality of subsection (1) regulations made under that subsection with regard to the amendment of a scheme may require the payment by the owner of land of the costs incurred in the publication under the regulations of any notice prescribed in the regulations relating to an amendment to a local planning scheme where the amendment is made at the request of that owner and is in respect of land owned by that owner.

**259. Environmental review expenses**

The Minister may make regulations with respect to the persons from whom, and the means by which, a responsible authority may recover expenses incurred by it in undertaking an environmental review required by the EP Act under section 48C(1)(a) of the EP Act.

**260. Penalties**

Regulations made under this Division may prescribe penalties not exceeding \$5 000 for offences against the regulations.

**Division 2 — Subsidiary legislation made by Governor**

**261. Local government fees**

(1) In this section —

*fee* includes charge;

*issue* includes grant, give or renew;

*licence* includes registration, right, permit, authority, approval or exemption;

*planning matter* means any matter arising under this Act in relation to —

- (a) a local planning scheme;
- (b) subdivision; or
- (c) approval of development.

(2) The Governor may make regulations providing for, or in respect of —

- (a) the licences and services in respect of planning matters for which fees may be imposed by a local government;
- (b) the fees that may be imposed for those licences and the provision of those services, and the recovery of those fees;
- (c) any formula, index or other base to be used for the purposes of calculating or ascertaining the fee;
- (d) the payment or recovery of costs and expenses incurred by the local government in issuing a licence or providing a service in relation to a planning matter, including costs and expenses incurred by the local government in obtaining specialist or expert advice where, in the opinion of the local government, the advice was necessary for the purpose of taking the action or providing the service; and

- (e) the liability of persons for payment to the local government in respect of the issuing of a licence and the provision of services and related costs and expenses.
- (3) A local government is not to —
  - (a) impose any fee for the issue of a licence or the provision of a service in relation to a planning matter; or
  - (b) require payments for costs and expenses incurred by the local government in issuing a licence or providing a service in relation to a planning matter,unless the licence or service is prescribed under subsection (2)(a).
- (4) A fee imposed for an application for approval of development that has commenced or been carried out may include an amount prescribed by way of penalty.
- (5) A local government is not to impose a fee for an action or service in relation to a planning matter that is inconsistent with a fee prescribed or provided for under this section.

**262. Uniform general local laws**

- (1) The Governor may make uniform general local laws, or separate sets of general local laws adapted for areas of any special character, for carrying into effect all or any of the purposes mentioned in Schedule 8.
- (2) Local laws made under subsection (1) —
  - (a) have the force of law in the district of any local government which the Governor may from time to time prescribe; and
  - (b) supersede the local laws made for the same or similar purpose by the local government of the district so prescribed.
- (3) The Governor may at any time repeal any by-law made under section 248 of the *Local Government Act 1960*<sup>5</sup>.

- (4) If a by-law made under section 248 of the *Local Government Act 1960*<sup>5</sup>, or a local law made under subsection (1), is inconsistent with any local planning scheme approved before or after the making of the by-law or local law, and having effect in the district, or in part of the district, in which the by-law or local law is in force, then to the extent of such inconsistency, and in the part of the district in which the local planning scheme has effect, the provisions of the local planning scheme prevail.
- (5) In subsection (4) reference to a local planning scheme includes a reference to a redevelopment scheme approved under Part 4 of the *East Perth Redevelopment Act 1991*, Part 4 of the *Subiaco Redevelopment Act 1994*, Part 4 of the *Midland Redevelopment Act 1999* or under Part 4 of the *Armadale Redevelopment Act 2001* or a master plan approved under Part 3 of the *Hope Valley-Wattleup Redevelopment Act 2000*.
- (6) If any property is injuriously affected by the operation of any by-law made under section 248 of the *Local Government Act 1960*<sup>5</sup> or local law under subsection (1), the provisions of Part 11 apply as if the by-law or local law were a planning scheme, and as if the resolution making the by-law or local law were a resolution to prepare a planning scheme.

**263. Governor may make regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), regulations made under that subsection may —
  - (a) make provision for or with respect to the making of applications and the manner in which applications are to be made and the procedure to be followed;
  - (b) prescribe forms and fees;

- (c) prescribe the rights, powers and privileges given to, and duties imposed on, a covenantee or other person or authority specified in the regulations where road access is restricted or prohibited as set out in a condition referred to in section 150 and provide for the modification or discharge of, and other matters related to, a covenant referred to in that section;
  - (d) prescribe the rights, powers and privileges given to a specified person or authority where an easement for a specified purpose has effect in favour of that person or authority under section 167;
  - (e) impose a penalty not exceeding \$50 000 for offences against the regulations.
- (3) A fee imposed for an application for approval of development that has commenced or been carried out may include an amount prescribed by way of penalty.
- (4) To the extent that a regulation made under this section is inconsistent with or contrary to a regulation made under Division 1, the regulation made under Division 1 prevails.
- (5) If a regulation is inconsistent with a rule, the regulation prevails to the extent of the inconsistency.

### **Division 3 — General**

#### **264. Regulations may adopt codes and other texts**

- (1) A regulation made under this Act may adopt the text of any code, rules, specifications or standard issued by the Standards Association of Australia or by such other body as is specified in the regulation.
- (2) A regulation prescribing fees payable on application to the Board of Valuers may adopt the text of all or any of the maximum amount 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, are to be taken to be fees prescribed as fees payable on application to the Board of Valuers.

- (3) The text may be adopted —
  - (a) wholly or in part;
  - (b) as modified by the regulations;
  - (c) as it exists at a particular date or as amended from time to time.
- (4) The adoption may be direct, by reference made in the regulation, or indirect, by reference made in any text that is itself directly or indirectly adopted.

## Part 16 — Miscellaneous

### 265.     **Delegation by Minister**

- (1)     The Minister may, by instrument, delegate to a person or body any function of the Minister under this Act, except this power of delegation.
- (2)     The Minister is to cause the name or title of the delegate to be published in the *Gazette* as soon as is practicable after the making of the delegation concerned.
- (3)     A delegate cannot subdelegate the exercise or performance of any function unless the delegate is expressly authorised by the instrument of delegation to do so.
- (4)     A delegate exercising or performing a function as authorised under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5)     Nothing in this section limits the ability of the Minister to act through an officer or agent.

### 266.     **Duties and liabilities of persons performing functions under this Act**

- (1)     In this section —  
*function* means a function in connection with the carrying out of this Act;  
*meeting* means a meeting held in connection with the carrying out of this Act;  
*member* means any of the following —
  - (a)     a member;
  - (b)     an associate member;
  - (c)     a member of a committee established under Schedule 2;
  - (d)     a member of a public authority;
  - (e)     a member of a local government.

- (2) A member must at all times act honestly in the performance of a function.

Penalty: \$5 000.

- (3) Where a matter is before a meeting for consideration and a member participating in the meeting has a direct or indirect pecuniary interest in the matter, the member —

- (a) as soon as possible after the relevant facts have come to the member's knowledge is to disclose that the member has such an interest to the other members participating in the meeting; and
- (b) after disclosure of the interest is not to —
  - (i) be present during any consideration or discussion of the matter; or
  - (ii) vote on the matter.

Penalty: \$5 000.

- (4) A disclosure under subsection (3) is to be recorded in the minutes of the meeting.

- (5) A member is not to disclose any information acquired by virtue of the performance of any function unless the disclosure is made —

- (a) in connection with the carrying out of this Act or under a legal duty; or
- (b) for the purposes of any proceedings arising out of this Act or any report of such proceedings.

Penalty: \$5 000.

- (6) A member is not to make improper use of information acquired by virtue of the performance of any function to gain, directly or indirectly, an advantage for himself or herself or to cause detriment to the Commission.

Penalty: \$5 000.

s. 267A

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- (7) A member who commits a breach of any provision of this section is liable for any profit made by the member or for any damage suffered by the Commission as a result of the breach of that provision.
- (8) This section is in addition to and not in derogation of any other law relating to the duty or liability of the holder of a public office.

**267A. Authority to perform certain functions in relation to Crown land for purposes of this Act**

- (1) If the approval or signature of the owner of Crown land or freehold land in the name of the State is required for the purposes of this Act, the approval or signature may be given by —
- (a) the Minister as defined in the *Land Administration Act 1997* section 3(1) (the *Minister for Lands*); or
- (b) a person who is authorised in writing by the Minister for Lands to do so.
- (2) Nothing in this section limits the ability of the Minister for Lands to otherwise perform a function through an officer or agent.
- (3) Nothing in this section affects —
- (a) a right or obligation that any other person, as an owner of land mentioned in subsection (1), has under this Act in relation to that land; or
- (b) how that right may be exercised or that obligation may be satisfied.

[Section 267A inserted by No. 8 of 2010 s. 25.]

**267. Protection from liability for wrongdoing**

- (1) ~~In this section —~~  
~~member means any of the following —~~

- ~~(a) a member;~~  
~~(b) an associate member;~~  
~~(c) a member of a committee established under Schedule 2.~~  
~~(2) An action in tort does not lie against a member, or an officer of the Commission, —~~

- (a) a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act; or  
(b) a person acting under an authority mentioned in section 152(5)(c) or any other written law 267A(1) for anything that the person has done, in good faith, in the performance or purported performance of a function to which the authority applies.

[2] deleted]

- (3) The protection given by subsection (~~2~~1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act or any other written law had been enacted.
- (4) Despite subsection (~~2~~1), neither the Commission ~~nor~~ the State nor a local government is relieved of any liability that it might have for another person having done anything as described in that subsection.
- (5) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

[Section 267 amended by No. 8 of 2010 s. 26.]

## **268. Review of Act**

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from the commencement of this section.

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- (2) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause the report to be laid before each House of Parliament.

## **Schedule 1 — Constitution and proceedings of the Board**

[s. 12]

### **1. Term used in this Schedule**

In this Schedule —

*appointed member* means a member appointed under section 10(1)(a) or (b).

### **2. Term of office**

- (1) An appointed member or an associate member holds office for such period, not exceeding 5 years, as is specified in the instrument of his or her appointment, and is eligible for reappointment.
- (2) Despite subclause (1), if the period of office of an appointed member or associate member expires by effluxion of time without a person having been appointed to fill the vacancy, the appointed member or associate member continues in office until a person is appointed to fill the vacancy.

### **3. Extent of duties**

- (1) A member may be appointed on terms that require the member's duties to be performed on a full-time basis.
- (2) Except as provided in subclause (1), appointment as a member or associate member is to be on a part-time basis.

### **4. Resignation and removal**

- (1) The office of an appointed member or associate member becomes vacant if —
  - (a) the appointed member or associate member resigns the office by written notice addressed to the Minister;
  - (b) the appointed member or associate member is an insolvent under administration as defined in the *Corporations Act 2001* of the Commonwealth;
  - (c) in the case of a member appointed under section 10(1)(b)(i) or (ii) who holds office on the council of a local government

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at the time of appointment, the member ceases to hold office on the council of the local government;

- (d) in the case of an appointed member, the appointed member is absent, without leave of the Minister, from 3 consecutive meetings of which the appointed member has had notice;
  - (e) in the case of an associate member, the associate member is absent, without leave of the Minister, from 3 consecutive meetings which the associate member was requested to attend under section 11(4); or
  - (f) the appointed member or associate member is removed from office by the Governor under subclause (3).
- (2) Despite subclause (1)(c), a member referred to in that paragraph may continue in office until —
- (a) a person is appointed to fill the vacancy; or
  - (b) a period of 3 months elapses after the vacancy arises,
- whichever is the sooner.
- (3) The Governor may remove an appointed member or an associate member from office if the Governor is satisfied that the member —
- (a) is incompetent, has misbehaved or has neglected his or her duties as a member; or
  - (b) is suffering from mental or physical incapacity impairing the performance of his or her functions.

**5. Leave of absence**

The Minister may grant leave of absence to a member on such terms and conditions as the Minister thinks fit.

**6. Deputy chairperson**

- (1) The Governor, on the recommendation of the Minister, may appoint a person to be deputy chairperson.
- (2) A person appointed under subclause (1) may resign as deputy chairperson at any time by written notice given to the Minister.
- (3) The Governor, on the recommendation of the Minister, may revoke the appointment of the deputy chairperson.

- (4) Where the chairperson is unable to act because of sickness, absence or other cause, the deputy chairperson is to act in the chairperson's place.
- (5) No act or omission of the deputy chairperson acting in place of the chairperson under this clause may be questioned on the ground that the occasion for the acting had not arisen or had ceased.

**7. Deputy members**

- (1) The Governor may appoint a person to be the deputy of the member referred to in section 10(1)(b)(i) or (ii), in which case section 10(1)(b)(i) or (ii), (2) and (3) apply with any necessary modifications to and in relation to that appointment.
- (2) If a member, other than the chairperson, is unable to act because of sickness, absence or other cause, the deputy of the member may act in the place of that member, and while so acting that deputy member is to be taken to be a member.
- (3) An act or omission of a deputy member cannot be questioned on the ground that the occasion for the deputy member's acting had not arisen or had ceased.
- (4) The Governor, on the recommendation of the Minister, may revoke the appointment of a deputy member.

**8. Meetings**

- (1) Subject to subclause (2), meetings are to be held at such times and places as the board determines.
- (2) A special meeting of the board may, on reasonable notice to all members, be convened by the chairperson or any 2 members.
- (3) The chairperson is to preside at all meetings of the board at which he or she is present, or in which he or she is participating under clause 10.
- (4) If both the chairperson and the deputy chairperson are not present or participating, the members present or participating are to appoint a member to preside.

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- (5) At any meeting of the board a number of members equal to at least one half of the number of members provided for by section 10 constitute a quorum.
- (6) Questions arising at a meeting of the board are to be decided, in open voting, by a majority of the votes of members and associate members present.
- (7) If the votes of members and associate members present at a meeting and voting on a question are equally divided, the person presiding has a casting vote in addition to a deliberative vote.

**9. Resolution without meeting**

A written resolution signed by each member or assented to by each member by letter or facsimile is as effectual as if it had been passed at a meeting of the board.

**10. Telephone or similar meetings**

A communication between a majority of the members by telephone, audio-visual or other electronic means is a valid meeting of the board if—

- (a) each participating member is capable of communicating with every other participating member instantaneously at all times during the proceedings; and
- (b) all members were advised that the communication would be taking place and were given the opportunity to participate.

**11. Minutes of meetings**

The board is to cause accurate records to be kept of the proceedings at its meetings.

**12. Procedures**

Subject to this Act, the board is to determine its own procedures.

## **Schedule 2 — Committees**

[s. 19]

### **1. Committees — general**

- (1) In addition to the committees established under clauses 3 to 9, the Commission may from time to time establish other committees.
- (2) Subject to this Schedule, the Commission may —
  - (a) prescribe the constitution of a committee;
  - (b) authorise a committee to establish a subcommittee;
  - (c) appoint —
    - (i) members;
    - (ii) members and other persons; or
    - (iii) persons other than members,to be members or deputy members of a committee;
  - (d) discharge, alter or reconstitute a committee.
- (3) The office of a member who —
  - (a) is appointed to a committee by the Commission to represent the interests of local government; and
  - (b) at the time of appointment holds office on the council of a local government,becomes vacant if the member ceases to hold office on the council of the local government.
- (4) Despite subclause (3), a member referred to in that subclause may continue in office until —
  - (a) a person is appointed to fill the vacancy; or
  - (b) a period of 3 months elapses after the vacancy arises,whichever is the sooner.
- (5) The Commission may give directions to a committee with respect to the performance of its functions, either generally or with respect to a particular matter, and the committee is to give effect to those directions.

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- (6) Subject to the directions of the Commission and to the terms of any delegation under section 16, a committee may determine its own procedures.

**2. Deputy members — local government representatives**

- (1) The Commission, with the approval of the Minister, may appoint a person to be a deputy of a member of a committee appointed under clause 4(2)(f), 5(2)(f), 6(2)(j), 7(2)(h), (i) or 8(2)(d).
- (2) If a member of a committee referred to in subclause (1) is unable to act because of sickness, absence or other cause, the deputy of the member may act in the place of that member, and while so acting that deputy member is to be taken to be a member of that committee.
- (3) An act or omission of a deputy member cannot be questioned on the ground that the occasion for the deputy member's acting had not arisen or had ceased.
- (4) The Commission may revoke the appointment of a deputy member.

**3. Executive, Finance and Property Committee**

- (1) The Commission is to establish a committee to be known as the Executive, Finance and Property Committee.
- (2) The Executive, Finance and Property Committee is to consist of —
- (a) the chairperson, or a person nominated by that person and approved by the Minister;
  - (b) the chief executive officer, or a person nominated by that person and approved by the Minister;
  - (c) one other member of the board appointed by the Commission; and
  - (d) such other person or persons as the Commission, after obtaining the approval of the Minister, appoints from time to time.
- (3) The Executive, Finance and Property Committee is to perform such of the administrative, financial and property functions of the Commission under this Act or any other written law as are delegated to the Executive, Finance and Property Committee under section 16 and such other functions as are delegated to it under that section.

**4. Statutory Planning Committee**

- (1) The Commission is to establish a committee to be known as the Statutory Planning Committee.
- (2) Subject to subclause (5), the Statutory Planning Committee is to consist of —
  - (a) the chairperson, or a person nominated by that person and approved by the Minister;
  - (b) the chief executive officer, or a person nominated by that person and approved by the Minister;
  - (c) the member of the board referred to in section 10(1)(c)(viii) or a deputy appointed under subclause (3);
  - (d) a person approved by the Minister and appointed by the Commission as having practical knowledge of and experience in community affairs;
  - (e) a person approved by the Minister and appointed by the Commission as having practical knowledge of and experience in one or more of the fields of urban and regional planning, commerce and industry, engineering, surveying, valuation, transport, housing, heritage, environmental conservation, natural resource management, urban design, the planning and provision of community services or infrastructure;
  - (f) a person approved by the Minister and appointed by the Commission to represent the interests of local governments; and
  - (g) such other person or persons as the Commission, after obtaining the approval of the Minister, appoints from time to time.
- (3) The Commission, for the purpose of subclause (2)(c), is to appoint a person nominated by the Regional Minister and approved by the Minister to be the deputy of the member referred to in section 10(1)(c)(viii).
- (4) The Statutory Planning Committee is to perform such of the functions of the Commission under this Act and Part II of the *Strata Titles Act 1985* as are delegated to the Statutory Planning Committee under

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section 16 and such other functions as are delegated to it under that section.

- (5) Should the Commission delegate to the Statutory Planning Committee under section 16 not only the functions of the Commission under this Act in relation to planning schemes referred to in sections 33(2) and 34 and Part II of the *Strata Titles Act 1985* but also the functions of the Commission in relation to the Metropolitan Region Scheme, the Statutory Planning Committee may perform those latter functions only if the Statutory Planning Committee consists not merely of the persons referred to in subclause (2) but also of—
- (a) a member of the council of the City of Perth who is nominated for appointment as a member of the Statutory Planning Committee by that council and approved by the Minister; and
  - (b) 5 persons, each of whom is the chairperson of a district planning committee (other than the District Planning Committee for the City of Perth), or persons nominated by those persons and approved by the Minister.

**5. Sustainable Transport Committee**

- (1) The Commission is to establish a committee to be known as the Sustainable Transport Committee.
- (2) The Sustainable Transport Committee is to consist of—
- (a) the chairperson, or a person nominated by that person and approved by the Minister;
  - (b) the chief executive officer, or a person nominated by that person and approved by the Minister;
  - (c) the member of the board referred to in section 10(1)(c)(viii) or a deputy appointed under subclause (3);
  - (d) the member of the board referred to in section 10(1)(c)(iii), or a person nominated by that person and approved by the Minister;
  - (e) the Commissioner as defined in the *Main Roads Act 1930*, or a person nominated by that person and approved by the Minister;

- (f) a person approved by the Minister and appointed by the Commission to represent the interests of local governments; and
  - (g) such other person or persons as the Commission, after obtaining the approval of the Minister, appoints from time to time.
- (3) The Commission for the purposes of subclause (2)(c), is to appoint a person nominated by the Regional Minister and approved by the Minister to be the deputy of the member referred to in section 10(1)(c)(viii).
- (4) The Sustainable Transport Committee is to advise the Commission on all matters relating to transport planning throughout the State and to perform such of the functions of the Commission under this Act or any other written law as are delegated to the Sustainable Transport Committee under section 16.

**6. Infrastructure Coordinating Committee**

- (1) The Commission is to establish a committee to be known as the Infrastructure Coordinating Committee.
- (2) The Infrastructure Coordinating Committee is to consist of —
- (a) the chairperson, or a person nominated by that person and approved by the Minister;
  - (b) each member of the board referred to in section 10(1)(c)(i) or (iii), or a person nominated by that member and approved by the Minister;
  - (c) the chief executive officer of the department principally assisting in the administration of the *Water Agencies (Powers) Act 1984*, or a person nominated by that chief executive officer and approved by the Minister;
  - (d) the Coordinator of Energy referred to in section 4 of the *Energy Coordination Act 1994* or a person nominated by that person and approved by the Minister;
  - (e) the chief executive officer of the department referred to in section 228 of the *School Education Act 1999*, or a person nominated by that person and approved by the Minister;

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- (f) the CEO as defined in section 3 of the *Health Legislation Administration Act 1984*, or a person nominated by that person and approved by the Minister;
  - (g) the chief executive officer of the department principally assisting in the administration of the *Regional Development Commissions Act 1993*, or a person nominated by that person and approved by the Minister;
  - (h) the chief executive officer of the department principally assisting in the administration of the *Government Agreements Act 1979*, or a person nominated by that person and approved by the Minister;
  - (i) the chief executive officer of the department principally assisting in the administration of the *Mining Act 1978*, or a person nominated by that person and approved by the Minister;
  - (j) a person approved by the Minister and appointed by the Commission to represent the interests of local governments;
  - (k) not less than one person approved by the Minister and appointed by the Commission as having practical knowledge of and experience in one or more of the fields of urban and regional planning, business management, property development, financial management, engineering, surveying, valuation, transport, housing, heritage, environmental conservation, natural resource management or urban design;
  - (l) such other person or persons as the Commission, after obtaining the approval of the Minister, appoints from time to time.
- (3) The Infrastructure Coordinating Committee is to advise the Commission on planning for the provision of physical and community infrastructure throughout the State and to perform such of the functions of the Commission under this Act or any other written law as are delegated to the Infrastructure Coordinating Committee under section 16.

**7. Coastal Planning and Coordination Council**

- (1) The Commission is to establish a committee to be known as the Coastal Planning and Coordination Council.

- (2) The Coastal Planning and Coordination Council is to consist of —
- (a) a presiding member who is to be the member of the board referred to in section 10(1)(b)(iii);
  - (b) the chief executive officer, or a person nominated by that person and approved by the Minister;
  - (c) the member of the board referred to in section 10(1)(c)(iv), or a person nominated by that member and approved by the Minister;
  - (d) the chief executive officer of the department principally assisting in the administration of the *Conservation and Land Management Act 1984*, or a person nominated by that person and approved by the Minister;
  - (e) the chief executive officer of the department principally assisting in the administration of the *Fish Resources Management Act 1994*, or a person nominated by that person and approved by the Minister;
  - (f) the chief executive officer of the department principally assisting in the administration of the *Mining Act 1978*, or a person nominated by that person and approved by the Minister;
  - (g) the chief executive officer of the Western Australian Tourism Commission established by the *Western Australian Tourism Commission Act 1983*, or a person nominated by that person and approved by the Minister;
  - (h) a person approved by the Minister and appointed by the Commission to represent the interests of local governments within the metropolitan region;
  - (i) a person approved by the Minister and appointed by the Commission to represent the interests of local governments outside the metropolitan region;
  - (j) at least 2 persons approved by the Minister and appointed by the Commission as having practical knowledge of and experience in one or more of the fields of urban and regional planning, property development, engineering, heritage, community affairs, environmental conservation, indigenous affairs, natural resources management, tourism, coastal

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planning, urban design, commerce and industry or the provision of coastal infrastructure; and

- (k) such other person or persons as the Commission, after obtaining the approval of the Minister, appoints from time to time.
- (3) The Coastal Planning and Coordination Council is to advise the Commission on matters relating to coastal planning and coordination throughout the State and to perform such of the functions of the Commission under this Act or any other written law as are delegated to the Coastal Planning and Coordination Council under section 16.

*[Clause 7 amended by No. 8 of 2009 s. 100(6).]*

**8. Regional planning committees**

- (1) The Commission may establish a regional planning committee for the whole or any part of a region referred to in Schedule 4 if the Commission is satisfied that the need for the regional planning committee exists.
- (2) A regional planning committee is to consist of —
  - (a) the chairperson, or a person nominated by that person and approved by the Minister;
  - (b) the chief executive officer, or a person nominated by that person and approved by the Minister;
  - (c) a person approved by the Minister and appointed by the Commission as having practical knowledge of and experience in community affairs;
  - (d) not less than 2 persons approved by the Minister and appointed by the Commission from a list of the names of persons representing the interests of the local governments within the whole or part of the regions for which the regional planning committee is established submitted to the Commission by WALGA;
  - (e) a person nominated by the Regional Minister, approved by the Minister and appointed by the Commission to represent the interests of the commission or commissions as defined in the *Regional Development Commissions Act 1993* within the whole or part of the region for which the regional planning committee is established;

- (f) a person approved by the Minister and appointed by the Commission as having practical knowledge of and experience in one or more of the fields of urban and regional planning, commerce and industry, engineering, surveying, valuation, transport, housing, heritage, environmental conservation, natural resource management, urban design, the planning and provision of community services or infrastructure, or community affairs; and
  - (g) such other person or persons as the Commission, after obtaining the approval of the Minister, appoints from time to time.
- (3) When the submission of a list of names is required for the purposes of subclause (2)(d), that submission is to be made to the Commission in writing signed on behalf of WALGA within such reasonable time after the receipt by WALGA of a notice from the Commission stating that submission is required as is specified in the notice.
- (4) If a submission is not made under subclause (3) within the time specified under that subclause, the Commission may appoint such persons as it thinks fit to be members of the regional planning committee in place of the persons provided for in subclause (2)(d).
- (5) A regional planning committee is to —
- (a) advise the Commission on planning for the region, or part of the region, for which the regional planning committee is established;
  - (b) make recommendations to the Commission on the need for, and the extent and content of, region planning schemes; and
  - (c) perform such of the functions of the Commission under this Act, the *Strata Titles Act 1985* and any other written law as are delegated to the committee under section 16.

**9. District planning committees**

- (1) The —
- (a) City of Perth; and
  - (b) groups of local governments referred to in Schedule 5,
- are each to establish a district planning committee.

**cl. 9**

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- (2) A district planning committee —
  - (a) in the case of the City of Perth, is to consist of the City of Perth Planning Committee for the time being; and
  - (b) in the case of a district planning committee established by a group of local governments, is to consist of one member appointed by each of the local governments in the group to represent that local government.
- (3) A member appointed under subclause (2)(b) is to be the mayor or a councillor or member, as the case requires, of the local government.
- (4) If a local government does not appoint a member under subclause (2)(b), the Governor may appoint a person qualified under subclause (3) to be the member representing the local government.
- (5) A district planning committee —
  - (a) is to assist and advise the Commission;
  - (b) may, and at the direction of the Commission is to, make inquiries into and report and formulate recommendations in relation to the Metropolitan Region Scheme so far as it relates to the area or part of the area comprising the district which the district planning committee represents; and
  - (c) perform such of the functions of the Commission under this Act and any other written law as are delegated to the committee under section 16.
- (6) A district planning committee —
  - (a) is to present its reports and recommendations to the Commission; and
  - (b) if directed under subclause (5)(b), is to present the report and recommendations within the time stipulated in the direction or such extended time as the Minister may authorise.

### **Schedule 3 — Metropolitan region**

[s. 4]

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 Land Titles Office<sup>6</sup> 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 Land Titles Office Plan 7931(2), (South Latitude 32 degrees 27 minutes 24.586 seconds, East Longitude 115 degrees 44 minutes 52.324 seconds); 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.

*[Schedule 3 amended by No. 60 of 2006 s. 147(8).]*

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## Schedule 4 — Other regions

[s. 4, 11]

*Item*      *Region*

**1. Gascoyne Region**

The districts of Carnarvon, Exmouth, Shark Bay and Upper Gascoyne.

**2. Goldfields-Esperance Region**

The districts of Kalgoorlie-Boulder, Coolgardie, Dundas, Esperance, Laverton, Leonora, Menzies, Ngaanyatjarraku and Ravensthorpe.

**3. Great Southern Region**

The districts of Albany (Town), Albany (Shire), Broomehill, Cranbrook, Denmark, Gnowangerup, Jerramungup, Katanning, Kent, Kojonup, Plantagenet, Tambellup and Woodanilling.

**4. Kimberley Region**

The districts of Broome, Derby-West Kimberley, Hall's Creek and Wyndham-East Kimberley.

**5. Mid West Region**

The districts of Geraldton, Carnamah, Chapman Valley, Coorow, Cue, Greenough, Irwin, Meekatharra, Mingenew, Morawa, Mount Magnet, Mullewa, Murchison, Northampton, Perenjori, Sandstone, Three Springs, Wiluna and Yalgoo.

**6. Peel Region**

The districts of Mandurah, Boddington, Murray and Waroona.

**7. Pilbara Region**

The districts of Port Hedland, Ashburton, East Pilbara and Roebourne.

**cl. 8**

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**8. South West Region**

The districts of Bunbury, Augusta-Margaret River, Boyup Brook, Bridgetown-Greenbushes, Busselton, Capel, Collie, Dardanup, Donnybrook-Balingup, Harvey, Manjimup and Nannup.

**9. Wheatbelt Region**

The districts of Narrogin (Town), Northam (Town), Beverley, Brookton, Bruce Rock, Chittering, Corrigin, Cuballing, Cunderdin, Dandaragan, Dalwallinu, Dowerin, Dumbleyung, Gingin, Goomalling, Kellerberrin, Kondinin, Koorda, Kulin, Lake Grace, Merredin, Moora, Mount Marshall, Mukinbudin, Narambeen, Narrogin (Shire), Northam (Shire), Nungarin, Pingelly, Quairading, Tammin, Toodyay, Trayning, Victoria Plains, Wagin, Wandering, West Arthur, Westonia, Wickepin, Williams, Wongan-Ballidu, Wyalkatchem, Yilgarn and York.

**Schedule 5 — Local governments — metropolitan region**

[Sch. 2, cl. 9(1)(b)]

**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  
City of Joondalup

**cl. 4**

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**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

City of Swan

**Schedule 6 — Planning control areas: purposes for which land may be required**

[s. 112(1)]

<i>Item</i>	<i>Purpose</i>
1.	Car parks
2.	Civic and cultural amenity
3.	Commonwealth Government
4.	Cultural heritage conservation
5.	Highways and important regional roads
6.	Hospitals
7.	Parks and recreation areas
8.	Port installations
9.	Power services, including electricity and gas supply
10.	Prisons
11.	Public purpose of the State
12.	Railways
13.	Schools
14.	Special uses
15.	State forests
16.	Universities
17.	Water catchments
18.	Water services, including sewerage and drainage
19.	Waterways

**Schedule 7 — Matters which may be dealt with by  
planning scheme**

[s. 69, 256(1)]

**1. Generality preserved**

The mention of a particular matter in this Schedule does not prejudice or affect the generality of any other matter.

**2. Subdivision**

- (1) The subdivision of land generally.
- (2) The submission of plans.
- (3) The control of any activity, development or work arising as a consequence of subdivision.

**3. Reconstruction**

- (1) The reconstruction of the scheme area, or any part of the scheme area, generally.
- (2) In relation to the reconstruction —
  - (a) the pooling of the lands of several owners, or any land or roads adjacent or near to the land;
  - (b) re-planning by re-subdivision, readjustment of boundaries, adjustment of rights, exchanges of land, cancellation of subdivisions and vesting.

**4. Preservation and conservation**

- (1) The preservation of places and objects of cultural heritage significance, including control of the demolition and alteration of any building, structure or works.
- (2) The conservation of the natural environment of the scheme area including the protection of natural resources, the preservation of trees, vegetation and other flora and fauna, and the maintenance of ecological processes and genetic diversity.
- (3) The conservation of water.

**5. Roads, public works, undertakings, purposes and facilities**

- (1) Roads, intersections, corners and all objects, works, trees or shrubs associated with, constructed or located on, below or adjacent to roads, intersections and corners.
- (2) Public works and undertakings of any kind including lighting, water, sewerage, drainage, public transport and associated facilities on land and water.
- (3) The reservation of land for public purposes.
- (4) The provision and location of public facilities and conveniences and any other objects or works on the land.

**6. Zoning**

- (1) Zoning of the scheme area for appropriate purposes.
- (2) Designation of uses in zones as permitted, prohibited or requiring approval.

**7. Special controls**

Controls for land or site management for matters to which this Act relates.

**8. Development standards**

Standards for the development of any class or kind of building, structure, work or advertisement including standards in respect of —

- (a) size;
- (b) appearance;
- (c) placement;
- (d) location;
- (e) number;
- (f) landscaping;
- (g) open space;
- (h) parking;
- (i) measures to maximise energy efficiency;

**cl. 9**

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- (j) any other activity or requirement arising from the development.

**9. Development controls**

Approval, refusal or approval subject to conditions of any use or class or kind of development by a consideration of any matter to which the Act relates including the public interest.

**10. Acquisition and purchase**

Acquisition or purchase of land or buildings and any step necessary to give effect to the acquisition or purchase.

**11. Powers**

- (1) The extinguishment or variation of any restrictive covenant, easement or right of way.
- (2) Powers of entry and inspection.
- (3) Powers to remove, alter, or demolish any building which obstructs the observance or carrying out of the scheme.
- (4) Powers to recover expenses incurred or to be incurred in implementing, enforcing and giving effect to the scheme.

**12. Agreements and cooperation**

- (1) Agreements and cooperation between the responsible authority and the owners of land.
- (2) Agreements and cooperation between the responsible authority and public, statutory or responsible authority.
- (3) Agreements and cooperation between owners of land.

**13. Carrying out the scheme**

- (1) The carrying out of the scheme.
- (2) The limitation of time for the operation of a scheme, any provision of the scheme or works ancillary to the scheme.

- (3) The responsibilities of any persons or authorities to which the scheme relates.

**14. Application for review**

Where a discretionary power is vested by the scheme in the responsible authority, the conferral on a person aggrieved by the exercise of the power of a right to apply to the State Administrative Tribunal for a review of the exercise of the power.

**15. General and ancillary matters**

- (1) Policies in respect of any matter to which the Act relates.
- (2) Any other matter necessary or incidental to the sustainable development or use of land.

**Schedule 8 — Matters for which local laws may be made  
by Governor**

[s. 262(1)]

**1. Purchase and reservation of land**

Purchasing or reserving land for new main thoroughfares which it is desired to keep free of buildings by agreement between the owners of such land and the responsible authority or by cooperation between 2 or more local governments with regard to the lines, widths and direction of thoroughfares which connect adjacent parts of their respective areas.

**2. Limitation of building**

Limiting the number of buildings, rooms, dwelling units or other accommodation units to the hectare generally or in any particular locality, or on any subdivision, allotment or parcel of land, particularly or generally, and the extent to which each subdivision, allotment or parcel of land is to be built upon, and providing for adequate light and air to the windows of each house, and prescribing other requirements so far as is reasonable for the purpose of securing the convenience or amenity of the area to which local laws apply, and proper sanitary and hygienic conditions in connection with any buildings therein.

**3. Classification and zoning**

Classification or zoning reclassifying or re-zoning the area for residence, flats, trade, business, industry, commercial recreation, educational or other public or institutional purposes, and including areas for agricultural or rural use and for any other general or particular purposes whether of the same class or kind as the class or kind before enumerated or not, and fixing the sites or areas for any of the purposes included in this Schedule and prohibiting in any of these zones or classification any building or use of land of or for a general or particular nature or purpose.

**4. Prohibition of use**

Prohibiting any district or part of it from being used for any purpose other than that for which it has been classified.

**5. Prescribing characteristics of building**

Prescribing the height, location, purpose and dimensions or the general character of buildings to be erected or reconstructed as far as is reasonable for securing proper sanitary and hygienic conditions, convenience, or amenity of the area to which the local laws are to apply.

**6. Prohibition of trade etc. or erection or use of building**

Prohibiting the carrying on of any noxious trades or manufactures, or the erection or use of any buildings without adequate sanitary arrangements, or prohibiting or regulating the erection and use of buildings, advertisement hoardings, or structures for advertising purposes which are such as to be injurious to the amenity or natural beauty of the area to which the local laws are to apply.

**7. Requirements of new subdivisions**

- (1) Prescribing and determining any requirements deemed necessary in regard to new subdivisions or re-subdivisions of any land (or maps, plans, sections, or particulars thereof) contained within the area to which it is intended that the local laws are to apply, including drainage, size and shape of allotments (or separate parcels of land) and access thereto; also for the classification of and the prescribing and determining of any requirements in regard to the length or width of any road according to the use such road is likely to be put, or according to the physical features of the land, together with the design, method of construction, and completion of alignment, of any road.

- (2) In this clause —  
*road* has the meaning given by section 4(1) and includes a private road created under Part IVA of the *Transfer of Land Act 1893* or as defined in the *Land Administration Act 1997* section 3(1).

**cl. 8**

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**8. Building lines**

(1) The making, fixing, altering and ascertaining of building lines irrespective of the width or alignment of any road, to secure as far as practicable, having regard to the physical features of the site and the depths of the existing subdivisions of land, that the distance between the buildings to be erected, or buildings likely to be reconstructed on the opposite sides of any road, are to be not less than that fixed by the local laws according to the prospective traffic requirements of such road, and the making, fixing and altering building lines generally and providing that buildings generally or a building of any specified class are not to be built nearer to a building line or an ocean or waterway than is prescribed in a local law.

(2) In this clause —

*building line* means the line between which and any public place or public reserve a building may not be erected;

*road* has the meaning given by clause 7(2).

**9. Open space etc.**

Limiting of open spaces, recreation grounds, or sites for public buildings, by purchase or agreement between owners of lands and the local government.

**10. Heights**

Limiting the height, at the corner of any road (as defined in clause 7(2)) of any wall, fence, hedge, tree, or shrub or other obstruction not being an authorised building.

**11. Authority**

Providing for the authority or authorities responsible for carrying the local laws into effect and enforcing their observance.

## Schedule 9 — Board of Valuers

[s. 182(5)]

**1. Term used in this Schedule**

In this Schedule —

**Board** means the Board of Valuers established under section 182.

**2. Term of office**

Subject to clause 4 a member of the Board holds office for a term of 2 years and is eligible for reappointment.

**3. Constitution of the Board**

The Board is constituted by the chairperson of the Board and any 2 other members of the Board and may meet despite there being a vacancy on the Board.

**4. Resignation or removal from office**

- (1) A member of the Board may resign by written notice.
- (2) The Governor may remove a member of the Board from office if the member —
  - (a) misbehaves or is incompetent; or
  - (b) is suffering from a permanent physical or mental incapacity that impairs the performance of the member's functions.

**5. Fees and expenses**

- (1) 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 Minister may from time to time determine.
- (2) In determining under subclause (1) fees to which members of the Board are entitled while engaged in the business of the Board, the Minister may adopt —
  - (a) wholly or in part; and

**cl. 5**

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(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 are to be taken to be fees determined under subclause (1) as fees to which the members of the Board are entitled while engaged in the business of the Board.

- (3) An adoption made under subclause (2) 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 is not necessary to set out in the relevant determination made under subclause (1) the full text of that notice or of any provision of the notice.

## Notes

<sup>1</sup> This is a compilation of the *Planning and Development Act 2005* and includes the amendments made by the other written laws referred to in the following table <sup>1a, 7, 8, 9</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Planning and Development Act 2005</i>	37 of 2005	12 Dec 2005	s. 1 and 2: 12 Dec 2005; Act other than s. 1, 2, 149, 150 and Pt. 13 Div. 3: 9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1077) s. 150 and Pt. 13 Div. 3: 1 Jul 2009 (see s. 2 and <i>Gazette</i> 19 Jun 2009 p. 2225)
<i>Swan Valley Planning Legislation Amendment Act 2006</i> s. 20(3) <sup>10</sup>	7 of 2006	19 Apr 2006	18 Jun 2006 (see s. 2 and <i>Gazette</i> 16 Jun 2006 p. 2109)
<i>Swan and Canning Rivers (Consequential and Transitional Provisions) Act 2006</i> s. 6	52 of 2006	6 Oct 2006	25 Sep 2007 (see s. 2 and <i>Gazette</i> 25 Sep 2007 p. 4835)
<i>Land Information Authority Act 2006</i> s. 147	60 of 2006	16 Nov 2006	1 Jan 2007 (see s. 2(1) and <i>Gazette</i> 8 Dec 2006 p. 5369)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4 and 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<b>Reprint 1: The <i>Planning and Development Act 2005</i> as at 23 Nov 2007</b> (includes amendments listed above)			
<i>Acts Amendment (Justice) Act 2008</i> Pt. 18	5 of 2008	31 Mar 2008	30 Sep 2008 (see s. 2(d) and <i>Gazette</i> 11 Jul 2008 p. 3253)
<i>Legal Profession Act 2008</i> s. 690	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009</i> s. 100	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))

Short title	Number and year	Assent	Commencement
<a href="#">Approvals and Related Reforms (No. 3) (Crown Land) Act 2010 Pt. 8</a>	<a href="#">8 of 2010</a>	<a href="#">3 Jun 2010</a>	<a href="#">18 Sep 2010 (see s. 2(b) and Gazette 17 Sep 2010 p. 4757)</a>

<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**

Short title	Number and year	Assent	Commencement
<i>Planning and Development Act 2005 s. 149</i> <sup>4</sup>	37 of 2005	12 Dec 2005	To be proclaimed (see s. 2)
<del><i>Approvals and Related Reforms (No. 3) (Crown Land) Act 2010 Pt. 8</i></del> <sup>11</sup>	<del>8 of 2010</del>	<del>3 Jun 2010</del>	<del>To be proclaimed (see s. 2(b))</del>
<i>Approvals and Related Reforms (No. 4) (Planning) Act 2010 Pt. 2 Div. 1, Pt. 3, 4 and 5 Div. 1</i> <sup>12</sup>	28 of 2010	19 Aug 2010	To be proclaimed (see s. 2(b))

<sup>2</sup> Repealed by the *Land Administration Act 1997*.

<sup>3</sup> Repealed by the *Mining Act 1978*.

<sup>4</sup> On the date as at which this compilation was prepared, the *Planning and Development Act 2005 s. 149* had not come into operation. It reads as follows:

“

**149. Conditions on rural land (tied lots)**

- (1) In this section —  
**rural land** means land zoned for agricultural or rural use under a local planning scheme.
- (2) Without limiting section 143, the Commission may approve a plan of subdivision in respect of rural land subject to conditions imposed under that section that require —
  - (a) a restrictive covenant to be created and made binding under section 129BA of the *Transfer of Land Act 1893* so

- that no dwelling may be constructed on a specified lot to be created by the subdivision; and
- (b) the lot to which the restrictive covenant is to apply (the *tied lot*) to be —
- (i) owned by a person who is the owner of another specified lot (the *principal lot*); and
  - (ii) used for agricultural purposes together with the principal lot.
- (3) The applicant is to ensure that any diagram or plan of survey for a subdivision referred to in subsection (2) includes a notation that the approval of the Commission is subject to the conditions referred to in that subsection.
- (4) The Commission is to provide the Registrar of Titles with any further information requested by the Registrar of Titles, in the form, if any, specified in the request.
- (5) When the Registrar of Titles creates or registers a certificate of title under the *Transfer of Land Act 1893* for a tied lot, the Registrar of Titles is to endorse or note —
- (a) the title of the tied lot to give a person searching the title to that land notice that it is a tied lot; and
  - (b) the title of the principal lot to give a person searching the title to the land notice that there is a tied lot in relation to the principal lot.
- (6) The Registrar of Titles is not to register a transfer, conveyance, lease or mortgage of a tied lot or a principal lot unless —
- (a) the transfer, conveyance, lease or mortgage is endorsed with the approval of the Commission; or
  - (b) the principal lot is transferred, conveyed, leased or mortgaged together with the tied lot in one and the same transaction.
- (7) A person who —
- (a) contravenes; or
  - (b) directly or indirectly, enters into a transaction relating to land for the purpose of avoiding,
- a condition referred to in subsection (2) commits an offence.
- (8) In any proceedings for an offence under subsection (7), a certificate of the Minister certifying that the purpose of the transaction in question is to avoid a condition referred to in subsection (2) and set out in that certificate is prima facie evidence of that purpose.

- (9) Subsection (7) does not apply to a transaction approved by the Commission.
- (10) Regulations made for the purposes of this section may provide for —
- (a) the rights, powers and privileges given to, and duties imposed on, a specified person or authority where a condition referred to in subsection (2) is imposed;
  - (b) the removal or modification of a restrictive covenant created pursuant to a condition referred to in subsection (2);
  - (c) the circumstances in which the Commission will approve the substitution of a principal lot or a transfer, conveyance, lease or mortgage of a tied lot or a principal lot;
  - (d) the procedure for the approval;
  - (e) the certification of relevant facts in relation to the approval; and
  - (f) any other matter necessary or convenient to be prescribed for giving effect to the purposes of this section.

”.

<sup>5</sup> Now known as the *Local Government (Miscellaneous Provisions) Act 1960*. Section 48 was repealed by the *Local Government Act 1995* s. 970.

<sup>6</sup> Lands Titles Office diagrams are now being held by the Western Australian Land Information Authority (see the *Land Information Authority Act 2006* s. 100).

<sup>7</sup> The *Planning and Development (Consequential and Transitional Provisions) Act 2005* s. 3, s. 4 (which gives effect to Sch. 1), Pt. 3 and 4 read as follows:

“

### 3. Interpretation

In this Act —

**commencement day** means the day on which this section comes into operation;

**existing Commission** means the Commission established under the WAPC Act;

**MRTPS Act** means the *Metropolitan Region Town Planning Scheme Act 1959*;

**PD Act** means the *Planning and Development Act 2005*;

**TPD Act** means the *Town Planning and Development Act 1928*;

**WAPC Act** means the *Western Australian Planning Commission Act 1985*.

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*

*Town Planning and Development Act 1928*

*Western Australian Planning Commission Act 1985*

”.

“

**Part 3 — Transitional and saving provisions**

**Division 1 — Preliminary**

17. **Application of *Interpretation Act 1984***

- (1) The provisions of the *Interpretation Act 1984* (for example, sections 16(1), 36 and 38) about the repeal of written laws and the substitution of other written laws for those so repealed apply to the repeal of an Act mentioned in Schedule 1 as if that Act were repealed and re-enacted by the PD Act.
- (2) The other provisions of this Act are additional to the provisions applied by subsection (1) and except in the case of section 14(3) and (4) do not affect the operation of the provisions applied by subsection (1).

18. **Transitional regulations**

- (1) If there is no sufficient provision in this Act for dealing with a transitional matter, regulations under this Act may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.
- (2) In subsection (1) —  
*transitional matter* means a matter that needs to be dealt with for the purpose of—
  - (a) effecting the transition from the provisions of the Acts repealed by this Act to the provisions of the PD Act; or

- (b) effecting the transition from the provisions of an Act amended by a provision of this Act (the ***amending provision***) as in force before this Act comes into operation to the provisions of that Act as in force after the amending provision comes into operation.
- (3) Regulations made under subsection (1) may provide that specified provisions of the PD Act as in force on or after the commencement of that Act, or of subsidiary legislation made under that Act, or of an Act amended by this Act —
  - (a) do not apply; or
  - (b) apply with specified modifications,to or in relation to any matter.
- (4) If regulations under subsection (1) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement day, the regulations have effect according to their terms.
- (5) In subsections (3) and (4) —  
***specified*** means specified or described in the regulations.
- (6) If regulations contain a provision referred to in subsection (4), the provision does not operate so as —
  - (a) to affect in a manner prejudicial to any person (other than the State, an authority of the State or a local government), the rights of that person existing before the day of publication of those regulations; or
  - (b) impose liabilities on any person (other than the State, an authority of the State or a local government) in respect of anything done or omitted to be done before the day of publication of those regulations.

**19. Construction of references in written laws**

- (1) Unless the context otherwise requires, a reference in a written law to an enactment repealed by this Act includes a reference to the corresponding provision, if any, of the PD Act.
- (2) A reference in a written law to a town planning scheme may, where the context so requires, be read as if it had been amended to include or be a reference to a local planning scheme under the PD Act.
- (3) A reference in a written law to a regional planning scheme under the WAPC Act may, where the context so requires, be read as if it

had been amended to include or be a reference to a region planning scheme under the PD Act.

- (4) A reference in a written law to a statement of planning policy may, where the context so requires, be read as if it had been amended to include or be a reference to a State planning policy under the PD Act.

**Division 2 — Continuation of various bodies, memberships and appointments**

**20. WAPC continues**

- (1) The Western Australian Planning Commission established under the PD Act is a continuation of and the same legal entity as the Western Australian Planning Commission established under the WAPC Act, with the same rights and obligations as the existing Commission.
- (2) If in a written law or other document or instrument there is —
- (a) a reference to the existing Commission; or
  - (b) a reference that is read and construed as a reference to the existing Commission,

the reference may, where the context so requires, be read as if it had been amended to be a reference to the Commission established under the PD Act.

**21. Membership of Commission**

- (1) The persons who were members and deputy members of the existing Commission (including the chairperson and deputy chairperson) immediately before the commencement of the PD Act continue in office, under and subject to that Act, as the chairperson, deputy chairperson, members and deputy members of the board of the Commission established under the PD Act.
- (2) A person to whom subsection (1) applies is to be regarded as having been appointed under the PD Act.
- (3) If in a written law or other document or instrument there is —
- (a) a reference to the chairperson or a member of the existing Commission; or
  - (b) a reference that is read and construed as a reference to the chairperson or a member of the existing Commission,

the reference may, where the context so requires, be read as if it had been amended to be a reference to the chairperson or a member of the board of the Commission established under the PD Act.

**22. Staff**

- (1) People who were engaged by the existing Commission immediately before the commencement of the PD Act continue, under and subject to that Act, as officers of the Commission.
- (2) A person mentioned in subsection (1) is to be regarded as having been engaged under the PD Act.
- (3) Except as otherwise agreed by the officer of the Commission, the remuneration, existing or accrued rights, rights under a superannuation scheme or continuity of service of an officer of the existing Commission are not affected, prejudiced or interrupted by the operation of subsection (1) or the repeal of the WAPC Act.
- (4) The rights under a superannuation scheme of a person who was an officer of the existing Commission are not affected, prejudiced or interrupted by the repeal of the WAPC Act.

**23. Committees**

- (1) In this section —  
*existing committee* means —
  - (a) the Executive, Finance and Property Committee established under the WAPC Act;
  - (b) the Statutory Planning Committee established under the WAPC Act;
  - (c) the Infrastructure Coordinating Committee established under the WAPC Act;
  - (d) the Coastal Planning and Coordination Council established under the WAPC Act;
  - (e) any regional planning committee established under the WAPC Act; and
  - (f) any District Planning Committee established under the MRTPS Act.
- (2) A committee established under the PD Act is a continuation of and the same legal entity as the existing committee of the same name established under the WAPC or MRTPS Act with the same rights and obligations as the existing committee.
- (3) The Sustainable Transport Committee established under the PD Act is a continuation of and the same legal entity as the Transport Committee established under the WAPC Act with the same rights and obligations as the existing committee.
- (4) If in a written law or other document or instrument there is a reference to an existing committee, the reference may, where the context so requires, be read as if it had been amended to be a

reference to the committee of the same name established under the PD Act.

- (5) If in a written law or other document or instrument there is a reference to the Transport Committee, the reference may, where the context so requires, be read as if it had been amended to be a reference to the Sustainable Transport Committee established under the PD Act.
- (6) The persons who were members of an existing committee immediately before the commencement of the PD Act continue in office, under and subject to that Act, as the members of the committee of the same name established under the PD Act.
- (7) The persons who were members of the Transport Committee immediately before the commencement of the PD Act continue in office, under and subject to that Act, as the members of the Sustainable Transport Committee established under the PD Act.

**24. Board of Valuers**

- (1) In this section —  
*existing Board* means the Board of Valuers established under the MRTPS Act.
- (2) The Board of Valuers established under the PD Act is a continuation of and the same legal entity as the existing Board with the same rights and obligations as the existing Board.
- (3) If in a written law or other document or instrument there is a reference to the existing Board, the reference may, where the context so requires, be read as if it had been amended to be a reference to the Board of Valuers established under the PD Act.
- (4) The persons who were members of the existing Board immediately before the commencement of the PD Act continue in office, under and subject to that Act, as the members of the Board of Valuers established under the PD Act.

**Division 3 — Transitional provisions**

**25. Subsidiary legislation and fees**

- (1) Regulations made under —
  - (a) section 8 of the TPD Act or section 26 of the MRTPS Act continue in force as if they were made under section 256 of the PD Act;
  - (b) section 9(1) of the TPD Act continue in force as if they were made under section 258 of the PD Act;

- (c) section 9(2b) of the TPD Act continue in force as if they were made under section 259 of the PD Act;
- (d) section 33B of the TPD Act continue in force as if they were made under section 261 of the PD Act;
- (e) section 44 of the MRTPS Act, section 58 of the WAPC Act or section 27A(5) or 34 of the TPD Act continue in force as if they were made under section 263 of the PD Act,

and may be amended or repealed accordingly.

- (2) Local laws made under section 31 of the TPD Act continue in force as if they were made under section 262 of the PD Act and may be amended or repealed accordingly.
- (3) Fees prescribed under section 29 of the TPD Act continue, until fees are set under section 20 of the PD Act, to be chargeable and payable as if the fees were set under section 20 of the PD Act.

**26. Planning schemes in course of preparation**

Any planning scheme that, on the commencement day, is being prepared under the TPD Act or the WAPC Act may continue to be prepared as if the steps taken under that Act were taken under the PD Act.

**27. Caveats**

- (1) A caveat lodged under section 36 of the MRTPS Act or section 35 or 36 of the WAPC Act but not registered before the commencement day may be registered under section 180 or 181 of the PD Act, as the case requires, as if it were a notification under that section of the PD Act.
- (2) A caveat —
  - (a) registered under section 36 of the MRTPS Act or section 35 or 36 of the WAPC Act; and
  - (b) subsisting immediately before the commencement day,is taken to be a notification registered under section 180 or 181 of the PD Act, as the case requires.

**Division 4 — Other savings**

**28. Section 9(4) and (5) TPD Act**

The repeal of section 9(4) and (5) of the TPD Act does not affect the validity of any town planning scheme, amendment to a town planning scheme, act or thing referred to in section 9(4) of the TPD Act, and those subsections continue to apply in relation to

those schemes, amendments, acts and things as if the subsections had not been repealed.

**29. Section 28A(5) TPD Act**

Section 28A(5) of the TPD Act continues to apply in relation to liability and matters referred to in that subsection as if section 28A had not been repealed.

**30. Section 37A(4a) MRTPS Act**

The repeal of section 37A(4a) of the MRTPS Act does not affect the validity of any agreement, act, matter or thing referred to in that subsection, and that subsection continues to apply in relation to those agreements, acts, matters and things as if the subsection had not been repealed.

**Part 4 — Validation provision**

**31. Validation of certain endorsed approvals**

Any approval of the Commission endorsed on a diagram or plan of survey of a stage of a subdivision under the *Town Planning and Development Act 1928* before the coming into operation of this section is taken to be, and always to have been, as valid and effective as it would have been if section 145 of the *Planning and Development Act 2005* had been in operation at the time of the endorsement and the approval had been endorsed under that section.

”

<sup>8</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 2007*. r. 1-4 and Pt. 4 Div. 2 of those regulations read as follows:

“

**1. Citation**

These regulations are the *Commonwealth Places (Mirror Taxes Administration) Regulations 2007*.

**2. Commencement**

These regulations come into operation on the day on which the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007* comes into operation.

**3. When certain modifications have effect**

- (1) The modifications prescribed in Part 2, Part 3, Part 5, Part 6 Division 2 and Part 7 have effect on and from 1 July 2003.
- (2) The modifications prescribed in Part 4 have effect on and from 9 April 2006 and prevail over the modifications in the *Commonwealth Places (Mirror Taxes Administration) Regulations 2002* Part 5 to the extent of any inconsistency.

Note: Modifications prescribed for the purposes of section 7(2) of the Act may be expressed to take effect from a date that is earlier than the date on which the modifications are published in the Gazette, see section 7(3) of the Act.

**4. Modification of State taxing laws**

- (1) 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 (2).
- (2) 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; and
  - (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; and
  - (c) the person has taken the action in accordance with the corresponding applied law; and
  - (d) the Commissioner of State Revenue has sufficient 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.

- (3) 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 4 — Metropolitan region improvement and planning**

### **Division 2 — The *Planning and Development Act 2005***

**23. Modification of the *Planning and Development Act 2005***

This Division sets out modifications of the *Planning and Development Act 2005* in its application as a law of Western Australia.

**24. Section 201A inserted**

After section 201 the following section is inserted —

“

**201A. Application of Division in non-Commonwealth places**

- (1) In this section —

*applied Planning and Development Act* means the *Planning and Development Act 2005* in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the *Commonwealth Places (Mirror Taxes) Act 1998* of the Commonwealth.

- (2) In this Division, 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; and
- (b) a reference to any of the following Acts is to be read as a reference to the Act of that name in its application as a law of Western Australia —
- (i) the *Land Tax Act 2002*;
  - (ii) the *Land Tax Assessment Act 2002*;
  - (iii) the *Metropolitan Region Improvement Tax Act 1959*;
  - (iv) the *Taxation Administration Act 2003*.

- (3) This Act is to be read with the applied Planning and Development Act as a single body of law.

9 Under the *Commonwealth Places (Mirror Taxes) Act 1998* s. 8(2) of the Commonwealth, 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) (Modification of Applied Laws (WA)) Notice 2007*. r. 1-5 and Pt. 4 Div. 2 of that notice read as follows:

“

**1. Citation**

This notice is the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007*.

**2. Commencement**

This notice comes into operation on the day after the day on which it is registered under the *Legislative Instruments Act 2003* of the Commonwealth.

**3. When certain modifications have effect**

- (1) The modifications prescribed in Part 2, Part 3, Part 5, Part 6 Division 2 and Part 7 have effect on and from 1 July 2003.
- (2) The modifications prescribed in Part 4 have effect on and from 9 April 2006 and prevail over the modifications in the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2002* Part 5 to the extent of any inconsistency.

Note: Modifications prescribed in a notice under section 8 of the Act may be expressed to take effect from a date that is earlier than the date on which the modifications are published in the *Commonwealth of Australia Gazette*, see section 8(5) of the Act.

**4. 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;

***Commissioner of State Revenue*** means the Commissioner of State Revenue of Western Australia appointed in accordance with the *Taxation Administration Act 2003* section 6 of Western Australia;

***Commonwealth Mirror Taxes Act*** means the *Commonwealth Places (Mirror Taxes) Act 1998* of the Commonwealth.

**5. Modification of applied WA laws**

- (1) For the purposes of the Commonwealth Mirror Taxes Act section 8, each applied WA law is taken to be modified to the extent necessary to give effect to subclause (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; and
  - (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; and
  - (c) the person has taken the action in accordance with the corresponding State taxing law; and
  - (d) the Commissioner of State Revenue has sufficient 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 the Commonwealth Mirror Taxes Act section 8.

**Part 4 — Metropolitan region improvement  
and planning**

**Division 2 — The applied *Planning and Development Act 2005***

**24. Modification of the applied *Planning and Development Act 2005***

This Division sets out modifications of the *Planning and Development Act 2005* of Western Australia in its application as a

law of the Commonwealth in or in relation to Commonwealth places in Western Australia.

**25. Section 201 replaced**

Section 201 is repealed and the following section is inserted instead —

“

**201. Application of Division in Commonwealth places**

(1) In this section —

*corresponding Planning and Development Act* means the *Planning and Development Act 2005* of Western Australia in its application as a law of Western Australia;

*Commonwealth Mirror Taxes Act* means the *Commonwealth Places (Mirror Taxes) Act 1998* of the Commonwealth.

(2) In this Division, 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; and

(b) a reference to any of the following enactments is to be read as a reference to the enactment of that name 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 —

- (i) the *Land Tax Act 2002*;
- (ii) the *Land Tax Assessment Act 2002*;
- (iii) the *Metropolitan Region Improvement Tax Act 1959*;
- (iv) the *Taxation Administration Act 2003*.

(3) This Act is to be read with the corresponding Planning and Development Act as a single body of law.

”  
”

<sup>10</sup> The *Swan Valley Planning Legislation Amendment Act 2006* Sch. 1 it. 4 reads as follows:

“

**4. Metropolitan Region Scheme amended**

- (1) In this item —  
*Metropolitan Region Scheme* has the same meaning as it has in the *Planning and Development Act 2005*.
- (2) The amendments in this item are to the Metropolitan Region Scheme.
- (3) The amendments to the Metropolitan Region Scheme effected by this item have effect as though the provisions were enacted by the *Planning and Development Act 2005*.
- (4) Nothing in this item affects the operation of the *Planning and Development Act 2005* with respect to the amendments to the Metropolitan Region Scheme as amended by this Act.
- (5) Clause 26 is amended as follows:
  - (a) by inserting before “Except” the subclause designation “(1)”;
  - (b) after “provided” by inserting —  
“ in subclause (2) or (3) of this clause or ”;
  - (c) at the end of the clause by inserting the following subclauses —

“

- (2) In respect of applications for approval to develop land in the Swan Valley, where the advice of the Swan Valley Planning Committee is accepted by the City of Swan, the determination of the City of Swan under the local planning scheme is taken to be a determination under this Scheme.
  - (3) In respect of applications for approval to develop land in the Swan Valley, where the advice of the Committee is not accepted by the City of Swan, the City of Swan is to refer the application, together with any recommendations provided by all bodies consulted, and the reasons why the advice of the Committee was not accepted by the City of Swan, to the Commission for determination.
  - (4) In this clause *Committee*, *Swan Valley* and *Swan Valley Planning Committee* have the same meanings as they have in the *Swan Valley Planning Act 1995*.
- ”.
- (6) Clause 30B(4) is deleted and the following subclause is inserted instead —

“

- (4) Where the responsible authority is the Commission, the Commission is required to have due regard to the advice of the Committee, but may determine the application otherwise than in accordance with that advice.

”

- (7) Clause 30B(5) is amended as follows:

- (a) by deleting “council of the Shire of Swan, the council” and inserting instead —  
“ City of Swan, the City ”;
- (b) by deleting “but may determine the application otherwise than in accordance with that advice.” and inserting instead —

“

but if the City of Swan does not accept that advice, the City of Swan is to refer the application, together with any recommendations provided by all bodies consulted, and the reasons why the advice of the Committee was not accepted by the City of Swan, to the Commission for determination.

”

- (8) Clause 30B(6) is amended by deleting “council of the Shire” and inserting instead —

“ City ”.

”

<sup>††</sup> ~~On the date as at which this compilation was prepared, the *Approvals and Related Reforms (No. 3) (Crown Land) Act 2010 Pt. 8* had not come into operation. It reads as follows:~~

~~**Part 8 — *Planning and Development Act 2005* amended**~~

~~**24. — Act amended**~~

~~— This Part amends the *Planning and Development Act 2005*.~~

~~**25. — Section 267A inserted**~~

~~— After section 266 insert:~~

~~267A. Authority to perform certain functions in relation to Crown land for purposes of this Act~~

- ~~(1) If the approval or signature of the owner of Crown land or freehold land in the name of the State is required for the purposes of this Act, the approval or signature may be given by
  - ~~(a) the Minister as defined in the *Land Administration Act 1997* section 3(1) (the *Minister for Lands*); or~~
  - ~~(b) a person who is authorised in writing by the Minister for Lands to do so.~~~~
- ~~(2) Nothing in this section limits the ability of the Minister for Lands to otherwise perform a function through an officer or agent.~~
- ~~(3) Nothing in this section affects
  - ~~(a) a right or obligation that any other person, as an owner of land mentioned in subsection (1), has under this Act in relation to that land; or~~
  - ~~(b) how that right may be exercised or that obligation may be satisfied.~~~~

~~26. Section 267 amended~~

- ~~(1) Delete section 267(1) and (2) and insert:
  - ~~(1) An action in tort does not lie against
    - ~~(a) a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act; or~~
    - ~~(b) a person acting under an authority mentioned in section 152(5)(c) or 267A(1) for anything that the person has done, in good faith, in the performance or purported performance of a function to which the authority applies.~~~~~~
- ~~(2) In section 267(3) delete “subsection (2)” and insert:
  - ~~subsection (1)~~~~
- ~~(3) In section 267(4):
  - ~~(a) delete “subsection (2)” and insert:~~~~

~~subsection (1)~~

~~(b) delete “Commission nor the State” and insert:~~

~~Commission, the State nor a local government~~

<sup>11</sup> [Footnote no longer applicable.](#)

<sup>12</sup> On the date as at which this compilation was prepared, the *Approvals and Related Reforms (No. 4) (Planning) Act 2010* Pt. 2 Div. 1, Pt. 3, 4 and 5 Div. 1 had not come into operation. They read as follows:

## **Part 2 — Improvement plans and schemes under *Planning and Development Act 2005***

### **Division 1 — *Planning and Development Act 2005* amended**

#### **3. Act amended**

This Division amends the *Planning and Development Act 2005*.

#### **4. Section 4 amended**

- (1) In section 4(1) insert in alphabetical order:

*improvement scheme* means an improvement scheme that has effect under Part 8 Division 2;

*improvement scheme area* has the meaning given in section 122A(2);

- (2) In section 4(1) in the definition of *planning scheme* delete “local or region planning scheme” and insert:

local planning scheme, region planning scheme or improvement scheme

- (3) In section 4(1) in the definition of *responsible authority*:
- (a) in paragraph (b) omit “Commission;” and insert:

Commission; and

(b) after paragraph (b) insert:

(c) in relation to an improvement scheme, the Commission;

**5. Section 5 amended**

After section 5(2) insert:

(3) An improvement scheme binds the Crown.

**6. Section 6 amended**

In section 6(1) delete “section 5(2)” and insert:

section 5(2) and (3)

**7. Section 14 amended**

In section 14:

(a) after paragraph (h) insert:

(ia) to prepare improvement plans and improvement schemes under Part 8; and

(b) in paragraph (i) delete “scheme,” and insert:

scheme and improvement scheme,

(c) in paragraph (i) delete “under Part 4 any amendment of a region planning scheme” and insert:

under Part 4 or 8 any amendment

(d) in paragraph (j) after “region planning scheme” insert:

or improvement scheme

- (e) in paragraph (l) delete “Act and region planning schemes; and” and insert:

Act, region planning schemes and improvement schemes;  
and

- (f) after each of paragraphs (a) to (k) insert:

and

**8. Section 26 amended**

In section 26(4)(b) delete “local”.

**9. Part 8 heading replaced**

Delete the heading to Part 8 and insert:

**Part 8 — Improvement plans and schemes**

**Division 1 — Improvement plans**

**10. Section 119 amended**

- (1) In section 119(1)(a) delete “land within a part of the State to which a region planning scheme applies —” and insert:

land —

- (2) After section 119(2) insert:

- (3A) The power in subsection (1) cannot be exercised in respect of any land that is —

- (a) the subject of a redevelopment scheme approved under the *East Perth Redevelopment Act 1991*, the *Subiaco Redevelopment Act 1994*, the *Midland Redevelopment Act 1999* or the *Armadale Redevelopment Act 2001*; or
- (b) in the redevelopment area as defined in the *Hope Valley-Wattleup Redevelopment Act 2000*; or
- (c) in the development control area as defined in the *Swan and Canning Rivers Management Act 2006*.

- (3B) Before making a recommendation under subsection (1)(b) in relation to an improvement plan that authorises the making of an improvement scheme to apply to land in the district of a local government, the Commission must consult with the local government.
- (3C) An improvement plan that authorises the making of an improvement scheme must set out the objectives of the improvement scheme.
- (3) After section 119(4) insert:
- (5A) The Minister must, as soon as is practicable after notice in respect of an improvement plan is published under subsection (4), cause a copy of the improvement plan to be laid before each House of Parliament or dealt with under section 268A.

**11. Part 8 Division 2 inserted**

After section 121 insert:

**Division 2 — Improvement schemes**

**122A. Content of improvement schemes**

- (1) Without limiting section 119, an improvement plan may authorise the making of an improvement scheme by the Commission in respect of some or all of the land to which the improvement plan applies.
- (2) An improvement scheme must specify the land to which it applies (the *improvement scheme area*).
- (3) An improvement scheme may, in relation to the whole or any part of the relevant improvement scheme area, provide for all or any of—
  - (a) the matters referred to in section 119(1)(a); and
  - (b) the objects, purposes, provisions, powers and works referred to in section 69(1).

**122B. Preparing, approving and reviewing improvement schemes**

- (1) Sections 75, 77 and 79 to 95 apply, with such modifications as are necessary, to and in relation to an improvement scheme as if, in each of those provisions —

- (a) a reference to a local planning scheme were a reference to the improvement scheme; and
  - (b) a reference to a local government were a reference to the Commission; and
  - (c) a reference to a local government district or land in a district were a reference to the improvement scheme area.
- (2) Section 78 applies to and in relation to an improvement scheme —
- (a) in the manner set out in subsection (1); and
  - (b) as if a reference in that section to the City of Swan were a reference to the Commission; and
  - (c) as if subsections (4) and (5) were deleted and the following subsection were inserted:
    - (4) The Commission must have regard to, but is not bound to accept, the advice of the Swan Valley Planning Committee.
- (3A) Before submitting an improvement scheme or amendment to an improvement scheme to the Minister under section 87, the Commission must consult with any affected local government.
- (3B) In subsection (3A) —
- affected local government*** means —
- (a) in the case of an improvement scheme — a local government in the district of which the improvement scheme is proposed to apply; and
  - (b) in the case of an amendment — a local government in the district of which the improvement scheme applies.
- (3) Regulations made under section 258 apply, with such modifications as are necessary, to and in relation to an improvement scheme as if the improvement scheme were a local planning scheme.
- (4) An improvement scheme may be repealed by an instrument of repeal prepared by the Commission, approved by the Minister and published in the *Gazette*.
- (5) Unless otherwise specified in an instrument of repeal, the instrument has effect on the day on which it is published in the *Gazette*.
- (6) The Minister must not approve an amendment to an improvement scheme that removes land from an improvement scheme area, or approve an instrument of repeal under subsection (4), unless

satisfied that any other planning scheme, insofar as it will apply to the improvement scheme area on the amendment day or repeal day, does not —

- (a) prevent any development that would be permitted; or
- (b) allow any development that would not be permitted,

in the improvement scheme area immediately before the amendment day or repeal day.

(7) In subsection (6) —

**amendment day**, for an improvement scheme, means the day on which the amendment to the scheme has effect;

**repeal day**, for an improvement scheme, means the day on which an instrument of repeal of that scheme has effect.

**122C. Effect of improvement scheme on development control**

- (1) This Division (other than this section) does not apply to a development that was lawfully being carried out on land immediately before an improvement scheme applied to the land.
- (2) A development referred to in subsection (1) or in respect of which all necessary approvals under the relevant region planning scheme and local planning scheme were in force immediately before the improvement scheme applied to the land —
  - (a) may be lawfully carried out as if this Division had not been enacted; and
  - (b) is governed by those schemes despite section 122D.

**122D. Effect of improvement scheme on other planning schemes**

- (1) In this section —

**start day**, for an improvement scheme, means the day on which the improvement scheme has effect under section 87(4) as applied by section 122B(1).
- (2) On the start day for an improvement scheme, any other planning scheme that applies to land in the improvement scheme area immediately before that day ceases to apply —
  - (a) to that land; and
  - (b) to any development of that land commenced on or after that day.
- (3) If, after the start day, any land is added to an improvement scheme area by an amendment to the improvement scheme, any other planning scheme that applies to the land area immediately before the amendment comes into operation ceases to apply —
  - (a) to that land; and

- (b) to any development of that land commenced on or after that time.
- (4) Subsections (2) and (3) do not affect the operation of sections 122I to 122K.
- (5) The *Interpretation Act 1984* section 37 applies in respect of subsections (2) and (3) as if a planning scheme were an enactment and the subsections repealed the scheme in so far as it applies to the land in the improvement scheme area and development of that land.
- (6) Subsection (5) has effect subject to any provision of an improvement scheme that relates to non-conforming uses.

**122E. Effect of removal of land from improvement scheme area or repeal of improvement scheme**

- (1) If land is removed from an improvement scheme area by an amendment to an improvement scheme (the *removed land*) —
  - (a) the improvement scheme for the area ceases to apply to the removed land; and
  - (b) a planning scheme that, but for section 122D, would apply to the land, applies to the land.
- (2) If an improvement scheme is repealed, a planning scheme that, but for section 122D would apply to the improvement scheme area, applies to the area.

**122F. Amended improvement scheme area: transitional provisions**

If land is added to or removed from an improvement scheme area by amendment to the improvement scheme, regulations may make provisions of a transitional nature that are expedient to be made, including provisions that save rights existing at the time of the amendment, but subject to any provisions of the improvement scheme relating to non-conforming uses.

**122G. Applications for development not finalised when land removed or improvement scheme repealed**

- (1) This section applies if —
  - (a) when land is removed from an improvement scheme area by an amendment to an improvement scheme (the *removed land*); or
  - (b) when an improvement scheme is repealed,an application for approval of development of any of the removed land or of any part of the improvement scheme area under the

repealed improvement scheme made under this Act to the Commission —

- (c) has not been determined by the Commission; or
  - (d) having been so determined, is the subject of an application to the State Administrative Tribunal for a review that has not been finalised.
- (2) This Act continues to apply, and the Commission must continue to perform its functions, in relation to the application for approval and any application for review as if the land had not been removed or the scheme had not been repealed, as the case requires.
- (3) This section applies irrespective of whether or not another planning scheme applies to the land after the land is removed or the improvement scheme is repealed.

**122H. Permanent closure of streets**

For the purposes of permanently closing a street in an improvement scheme area, the *Land Administration Act 1997* section 58 and regulations made under that Act apply as if each reference to a local government in that section and in those regulations —

- (a) were a reference to the Commission; and
- (b) were not a reference to the local government of the district in which the street is wholly or partly situated.

**122I. Certain planning schemes affecting improvement scheme area not to operate until repeal day**

- (1) A local or region planning scheme, or an amendment to a local or region planning scheme, made after an improvement scheme has effect, insofar as it purports to apply to land in an improvement scheme area, has no effect while the improvement scheme applies to the land.
- (2) Subject to subsection (1) and without limiting sections 122J to 122L, this Division does not prevent a local or region planning scheme or amendment referred to in that subsection being made after an improvement scheme has effect so as to commence when the improvement scheme ceases to apply to the land.

**122J. Minister may amend local planning scheme to conform with improvement scheme**

- (1) The Minister may, while an improvement scheme is of effect, publish in the *Gazette* a notice amending a local planning scheme so that the local planning scheme is consistent with the

improvement scheme in relation to land in the improvement scheme area.

- (2) An amendment published under subsection (1) has effect, by force of this subsection and without further action under this Act, on the day on which the improvement scheme ceases to apply to the land.

**122K. Region planning scheme may be amended to conform with improvement scheme**

- (1) A region planning scheme may be amended under Part 4 Division 4 while an improvement scheme is of effect so that the region planning scheme is consistent with the improvement scheme in relation to land in the improvement scheme area.
- (2) An amendment referred to in subsection (1) has effect on the day on which the improvement scheme ceases to apply to the land.

**122L. Other Ministerial powers**

Sections 211 and 212 apply in relation to an improvement scheme as if, in each of those sections —

- (a) a reference to a local planning scheme were a reference to the improvement scheme; and
- (b) a reference to a local government were a reference to the Commission.

**122M. Fees**

The Commission may, in relation to an improvement scheme, impose fees under section 261 as if it were a local government, and that section, and the regulations made under that section, apply accordingly.

**12. Part 8 Division 3 heading inserted**

Before section 122 insert:

**Division 3 — General**

**13. Section 122 amended**

In section 122 delete “Nothing in this Part” and insert:

Except as provided in Division 2, nothing in this Part

**14. Part 9 heading replaced**

Delete the heading to Part 9 and insert:

**Part 9 — Relationship between planning schemes,  
planning control provisions and written laws**

**15. Section 170 amended**

(1) Before section 170(1) insert:

(1A) In this section —

*responsible authority* means —

- (a) in relation to land that is subject to a local planning scheme — the local government responsible for the enforcement of the observance of the scheme; and
- (b) in relation to land that is subject to an improvement scheme — the Commission.

(2) In section 170(1) delete “local government —” and insert:

responsible authority —

(3) In section 170(3), (4), (5) and (6) delete “local government” (each occurrence) and insert:

responsible authority

**16. Section 195 amended**

In section 195(1) delete “while the relevant region planning scheme has the force of law,”.

**17. Section 196 amended**

(1) In section 196(1):

(a) after “scheme” (first occurrence) insert:

or improvement plan

(b) in paragraph (a) delete “scheme; or” and insert:

scheme or improvement plan; or

- (2) In section 196(2) delete “scheme.” and insert:

scheme or improvement plan.

**18. Section 197 amended**

- (1) In section 197(1):

- (a) delete “scheme,” and insert:

scheme or improvement plan,

- (b) delete “scheme.” and insert:

scheme or improvement plan.

- (2) In section 197(2) delete “scheme.” and insert:

scheme or improvement plan.

Note: The heading to amended section 197 is to read:  
**Governor may declare land to be held and used for region planning  
scheme or improvement plan**

**19. Section 198 amended**

In section 198(1) delete “Scheme,” and insert:

Scheme and any improvement scheme that has effect in part or all  
of the metropolitan region,

**20. Section 199 amended**

- (1) Before section 199(1) insert:

- (1A) In this section —

*metropolitan improvement scheme* means an improvement scheme that has effect in part or all of the metropolitan region.

- (2) In section 199(1):
- (a) delete “Scheme, including —” and insert:  
  
Scheme and any metropolitan improvement scheme,  
including —
  - (b) in paragraph (b)(i) after “the metropolitan region” insert:  
  
or a metropolitan improvement scheme
  - (c) in paragraph (b)(i) delete “Scheme or regional interim development order;” and insert:  
  
Scheme, regional interim development order or  
metropolitan improvement scheme; or
  - (d) in paragraph (b)(ii) delete “Scheme; or” and insert:  
  
Scheme or metropolitan improvement scheme; or

**21. Section 218 amended**

In section 218(b) after “local planning scheme” insert:

or improvement scheme

**22. Section 252 amended**

(1) In section 252(1)(a) delete “local planning scheme or a region”.

(2) In section 252(2):

(a) after “a local planning scheme” insert:

or an improvement scheme

(b) in paragraphs (a) and (b) delete “local”.

**23. Section 262 amended**

- (1) In section 262(4) delete “local planning scheme” (each occurrence) and insert:

planning scheme

- (2) In section 262(5) delete “local”.

**Part 3 — Development Assessment Panels: *Planning and Development Act 2005***

**40. Act amended**

This Part amends the *Planning and Development Act 2005*.

**41. Section 4 amended**

- (1) In section 4(1) insert in alphabetical order:

***Development Assessment Panel*** or ***DAP*** means a JDAP or LDAP;  
***JDAP*** means a Joint Development Assessment Panel established under section 171C;  
***LDAP*** means a Local Development Assessment Panel established under section 171C;

- (2) In section 4(1) in the definition of ***responsible authority*** delete “***responsible authority*** means —” and insert:

***responsible authority***, except as provided in regulations made under section 171A(2)(a), means —

**42. Section 16 amended**

After section 16(9) insert:

- (10) This section does not affect the operation of section 171B.

**43. Part 11A inserted**

After section 170 insert:

## Part 11A — Development Assessment Panels and development control

### Division 1 — Functions of DAPs

#### 171A. Prescribed development applications to be determined by DAP

(1) In this section —

*planning instrument* means —

- (a) a planning scheme; or
- (b) an interim development order;

*prescribed development application* means —

- (a) a development application of a class or kind prescribed for the purposes of subsection (2)(a); or
- (b) a development application of a class or kind prescribed for the purposes of subsection (2)(ba) in respect of which an applicant has made an election in accordance with regulations made under subsection (2)(ba)(i);

(2) The Governor may make regulations —

- (a) providing that, despite any other provision of this Act or a planning instrument, a development application of a class or kind prescribed for the purposes of this paragraph —
  - (i) must be determined by a DAP as if the DAP were the responsible authority under the relevant planning instrument in relation to the development; and
  - (ii) cannot be determined by a local government or the Commission;
- (ba) providing that, despite any other provision of this Act or a planning instrument, if —
  - (i) an applicant for approval of development elects in accordance with the prescribed procedure to have a development application determined by a DAP; and
  - (ii) the development application is of a class or kind prescribed by the regulations for the purposes of this paragraph,  
the development application —
    - (iii) must be determined by a DAP as if the DAP were the responsible authority under the relevant

- planning instrument in relation to the development; and
- (iv) cannot be determined by a local government or the Commission;
  - (b) providing for the duties and responsibilities of local governments and the Commission in relation to prescribed development applications;
  - (c) providing for the procedures for dealing with prescribed development applications;
  - (d) providing for the application of the provisions of this Act and planning instruments in relation to prescribed development applications;
  - (e) providing for the procedures to be followed by, and powers of, a DAP when determining a prescribed development application;
  - (f) providing for the effect of a determination of a prescribed development application;
  - (g) providing for the notification of a determination of a prescribed development application;
  - (h) providing for the review of a determination of a prescribed development application.
- (3) Unless otherwise provided under regulations made for the purposes of subsection (2) —
- (a) a determination by a DAP of a prescribed development application; and
  - (b) a failure by a DAP to make a determination of a prescribed development application,

is to be regarded as, and has effect as if it were, a determination or failure of the responsible authority to which the application was made.

**171B. DAP to carry out delegated functions**

- (1) In addition to the functions conferred on it by regulations made under section 171A, a DAP is to perform the functions that are delegated to it by a responsible authority in accordance with regulations made under subsection (2).
- (2) The Governor may make regulations —
  - (a) prescribing the functions under this Act or a planning scheme that may be delegated by a responsible authority to a DAP; and

- (b) making provision in relation to the making and effect of the delegation of functions by a responsible authority to a DAP.

**Division 2 — Development Assessment Panels: establishment and administration**

**171C. Establishment of Development Assessment Panels**

- (1) The Minister may, by order published in the *Gazette*, establish —
  - (a) a LDAP for a district;
  - (b) a JDAP for 2 or more districts.
- (2) The order must give the DAP a name.
- (3) A JDAP cannot be established for a district for which a LDAP is established.
- (4) A LDAP cannot be established for a district for which a JDAP is established.
- (5) If a JDAP is established for 2 or more districts, the districts need not be contiguous.
- (6) The Minister may revoke or amend an order made under subsection (1) by further order published in the *Gazette*.
- (7) The regulations may prescribe transitional provisions in relation to the revocation or amendment of an order under this section.

**171D. Constitution, procedure and conduct of DAPs**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or that are necessary or convenient to be prescribed, for the establishment and functioning of DAPs.
- (2) Without limiting subsection (1), regulations may be made about the constitution, procedure and conduct of DAPs, including but not limited to regulations about the following —
  - (a) the total number of persons who are to be on a DAP;
  - (b) the qualifications to be held by each person on a DAP;
  - (c) the procedure to be followed for nominating and appointing DAP members;
  - (d) the remuneration and allowances payable to DAP members;
  - (e) the term of office of DAP members;
  - (f) the removal of DAP members;
  - (g) compiling and maintaining a register of persons who are eligible to be DAP members;

- (h) the paid training of persons appointed to be DAP members;
  - (i) procedures at DAP meetings;
  - (j) the conduct of DAP members.
- (3) The qualifications to be held by a person on a DAP may be specified in the regulations by reference to one or more of these —
- (a) an office or position;
  - (b) an educational qualification;
  - (c) a type or level of knowledge;
  - (d) a type or level of experience.

**171E. Administration and costs of DAPs**

- (1) The Governor may make regulations about —
- (a) the administration of DAPs; and
  - (b) the payment of the costs and expenses of DAPs.
- (2) Without limiting subsection (1), regulations may be made —
- (a) about the staffing, facilities and services that are to be provided to DAPs by the chief executive officer or by local governments; and
  - (b) about the access of the Minister to information in the possession of a DAP; and
  - (c) about reporting requirements in relation to —
    - (i) directions under the regulations; and
    - (ii) expenditure in relation to DAPs; and
    - (iii) determinations by DAPs; and
    - (iv) any other matter specified in the regulations.
- (3) A local government must comply with a direction given and requirements prescribed under subsection (2).

**171F. Review of regulations**

- (1) An appropriate Standing Committee of the Legislative Council is to carry out a review of the operation and effectiveness of all regulations made under this Part as soon as practicable after the expiry of 2 years from the day on which regulations made under this Part first come into operation.
- (2) The Standing Committee is to prepare a report based on the review and, as soon as practicable after the report is prepared, is to cause the report to be laid before each House of Parliament.

**44. Section 266 amended**

- (1) In section 266(1) in the definition of *member*:
  - (a) in paragraph (e) delete “local government.” and insert:

local government;
  - (b) after paragraph (e) insert:
  - (f) a member of a DAP.
- (2) In section 266(6) delete “Commission.” and insert:

Commission or any other person.

**Part 4 — State planning policy amendments: *Planning and Development Act 2005***

**45. Act amended**

This Part amends the *Planning and Development Act 2005*.

**46. Section 77A inserted**

At the end of Part 5 Division 2 insert:

**77A. Minister may order local government to amend local planning scheme to be consistent with State planning policy**

- (1) The Minister may, on the recommendation of the Commission, order a local government to prepare and submit for the approval of the Minister an amendment to a local planning scheme for the purpose of rendering the local planning scheme consistent with a specified State planning policy.
- (2) The order must specify the following —
  - (a) the relevant State planning policy;
  - (b) the amendments that are to be made to the local planning scheme;
  - (c) the time (being sufficient time to allow the local government to comply with its obligations under Divisions 3 and 4) by which the local government must comply with the order.

(3) The Minister must, as soon as is practicable after the order is given to the local government, cause a copy of the order to be laid before each House of Parliament or dealt with under section 268A.

(4) If —

- (a) the Commission makes a recommendation for the purposes of subsection (1); and
- (b) the Minister decides not to make an order pursuant to the recommendation,

the Minister must, as soon as is practicable —

- (c) give the Commission written reasons for the Minister's decision; and
- (d) cause a copy of the reasons to be laid before each House of Parliament or dealt with under section 268A.

**47. Section 212 amended**

In section 212(1):

(a) after paragraph (a) insert:

(ba) comply with an order made under section 77A; or

(b) after each of paragraphs (a) and (b) insert:

or

**48. Section 246 amended**

In section 246(4) delete “before, or transmitted in accordance with section 248(1) to the Clerk of, each House of Parliament.” and insert:

before each House of Parliament or dealt with under section 268A.

**49. Section 248 deleted**

Delete section 248.

**50. Section 268A inserted**

After section 267 insert:

**268A. Laying before House of Parliament that is not sitting**

- (1) If section 77A(4) or (5), 119(5A) or 246(4) requires the Minister, as soon as is practicable, to cause a copy of an order, improvement plan or direction to be laid before each House of Parliament, or dealt with under this section, and —
- (a) at the commencement of the period after the day on which the order, improvement plan or direction is given, a House of Parliament is not sitting; and
  - (b) the Minister is of the opinion that the House will not sit during the period of 14 days after the order or direction is given,

the Minister is to transmit a copy of the order, improvement plan or direction to the Clerk of that House.

- (2) A copy of an order, improvement plan or direction transmitted to the Clerk of a House is to be taken to have been laid before that House.
- (3) The laying of a copy of an order, improvement plan or direction that is regarded as having occurred under subsection (2) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

**Part 5 — Other amendments related to *Planning and Development Act 2005***

**Division 1 — *Planning and Development Act 2005* amended**

**51. Act amended**

This Division amends the *Planning and Development Act 2005*.

**52. Section 4 amended**

In section 4(1) in the definition of *planning scheme* delete paragraph (a) and “and” after it and insert:

- (a) the provisions of the scheme being —
    - (i) the provisions set out in the scheme; and
    - (ii) any State planning policy that, with any modifications set out in the scheme, has effect under section 77(2)(b) as part of the scheme;
- and

- (iii) any provisions that have effect under section 257B(2) as part of the scheme;
- and

**53. Section 68 amended**

In section 68(2) delete “Nothing” and insert:

Except as provided in section 257B(3), nothing

**54. Section 69 amended**

After section 69(2) insert:

- (3) This section applies subject to section 256 and the regulations made under it and sections 257A and 257B.

**55. Section 73 amended**

- (1) In section 73(1):

- (a) in paragraph (b) delete “local government;” and insert:

local government.

- (b) delete paragraphs (c), (d) and (e).

- (2) After section 73(1) insert:

- (2A) A local planning scheme may —

- (a) supplement provisions prescribed under section 256; and
  - (b) deal with any special circumstances or contingencies for which adequate provisions are not prescribed under section 256.

**56. Section 76 amended**

- (1) In section 76(1):

- (a) in paragraph (a) after “local planning scheme” (each occurrence) insert:

or an amendment to a local planning scheme

- (b) insert “or” after paragraph (a);
- (c) in paragraph (b) delete “any scheme” and insert:  
  
a local planning scheme or an amendment to a local planning scheme
- (d) in paragraph (b) after “local planning scheme” insert:  
  
or an amendment to a local planning scheme
- (e) after “local planning scheme,” (each occurrence) insert:  
  
or an amendment to a local planning scheme

(2) In section 76(2):

- (a) delete “a scheme,” and insert:

a local planning scheme or an amendment to a local planning scheme,

- (b) delete “the scheme,” and insert:

the scheme or amendment,

- (c) delete “proposed scheme” and insert:

proposed scheme or amendment

(3) In section 76(3) delete “scheme” and insert:

local planning scheme or an amendment

Note: The heading to amended section 76 is to read:

**Minister may order local government to prepare or adopt local planning scheme or amendment**

- (4) The Minister must, as soon as is practicable after an order is given to the local government under subsection (1), cause a copy of the

order to be laid before each House of Parliament or dealt with under section 268A.

**57. Section 87 amended**

Delete section 87(3) and insert:

- (3) When the Minister notifies the Commission that the Minister has approved a local planning scheme or an amendment to a local planning scheme, the Commission is to cause the scheme or amendment to be published in the *Gazette*.
- (4A) Any costs incurred by the Commission in publishing a scheme or amendment under subsection (3) may be recovered by the Commission from the local government which prepared or adopted the scheme or amendment as a debt due to the Crown.
- (4B) When the Minister has approved a local planning scheme or an amendment to a local planning scheme, the local government which prepared or adopted the scheme or amendment is to —
  - (a) advertise the scheme or amendment in accordance with the regulations; and
  - (b) ensure that copies of the scheme or amendment are available to the public.

**58. Section 112 amended**

- (1) In section 112(1) delete “situated in a region to which a region planning scheme applies”.
- (2) Delete section 112(2) and insert:
  - (2) The power in subsection (1) cannot be exercised in respect of any land that is —
    - (a) the subject of a redevelopment scheme approved under the *East Perth Redevelopment Act 1991*, the *Subiaco Redevelopment Act 1994*, the *Midland Redevelopment Act 1999* or the *Armadale Redevelopment Act 2001*; or
    - (b) in the redevelopment area as defined in the *Hope Valley-Wattleup Redevelopment Act 2000*; or
    - (c) in the development control area as defined in the *Swan and Canning Rivers Management Act 2006*; or
    - (d) in an improvement scheme area.

**59. Section 116 amended**

In section 116(1)(b):

- (a) in subparagraph (i) delete “policy;” and insert:

policy; and

- (b) in subparagraph (ii) delete “a region planning scheme;” and insert:

any planning scheme; and

**60. Section 126 amended**

Delete section 126(3) and insert:

- (3) If a region planning scheme delineates, or it is proposed that a region planning scheme delineate, land comprised in a local planning scheme as land in an Urban zone, the Commission may publish in the *Gazette* a notice amending the local planning scheme, insofar as it operates in relation to that land, so that the land is zoned in the local planning scheme in a manner that is consistent with the objectives of the delineation or proposed delineation under the region planning scheme.
- (4) The Commission must not publish a notice under subsection (3) amending a local planning scheme until the local government that made or adopted the scheme has been consulted.
- (5) An amendment in a notice published under subsection (3) takes effect —
- (a) if the relevant region planning scheme is in operation on the day on which the notice is published under subsection (3) — on that day;
- (b) otherwise — on the day on which the relevant region planning scheme comes into operation.
- (6) When an amendment to a local planning scheme takes effect under subsection (5), the local planning scheme is, by force of this subsection and without further action under this Act, amended as set out in the notice.

**61. Section 133 amended**

In section 133(1) after “this Part” insert:

(other than Division 5)

**62. Section 136 amended**

(1) After section 136(2) insert:

(3A) Subsection (1) does not affect the operation of the *Strata Titles Act 1985* section 25(5).

(2) In section 136(3) insert in alphabetical order:

*lot* includes —

- (a) a lot, in relation to a strata scheme, as defined in the *Strata Titles Act 1985* section 3(1); and
- (b) a lot, in relation to a survey-strata scheme, as defined in the *Strata Titles Act 1985* section 3(1).

(3) In section 136(3) in the definition of *licence to use or occupy* delete “easement.” and insert:

easement;

**63. Section 181 amended**

In section 181(15)(a) delete “1998; or” and insert:

1988; or

**64. Section 256 replaced**

Delete section 256 and insert:

**256. Provisions that operate as part of, or are required to be included in, a local planning scheme**

- (1) The Minister may make regulations prescribing provisions that deal with any or all of the following —
- (a) carrying out the general objects of local planning schemes;

- (b) any matter set out in Schedule 7.
- (2) Before making regulations under subsection (1) the Minister —
  - (a) must consult with the EPA and local governments; and
  - (b) may consult with any other public authority or person the Minister considers is likely to be affected by the proposed regulations; and
  - (c) must have regard to any submissions made pursuant to consultation under paragraphs (a) and (b).
- (3) Consultation under subsection (2) may be undertaken in any way and within such period as the Minister considers appropriate in the circumstances.
- (4) Unless the regulations otherwise provide, provisions prescribed under subsection (1) apply to all local planning schemes.
- (5) The regulations must designate each provision prescribed under subsection (1) as —
  - (a) a model provision, being a provision to which section 257A applies; or
  - (b) a deemed provision, being a provision to which section 257B applies.
- (6) The regulations may include provisions of a savings or transitional nature that are necessary or convenient to be made for the purpose of dealing with matters that are incidental to or consequential on the prescribing of a model provision or a deemed provision under this section.
- (7) Without limiting subsection (6), regulations made under that subsection may provide that specified model provisions or deemed provisions of a local planning scheme —
  - (a) do not apply; or
  - (b) apply with specified modifications,to or in relation to any matter.

**257A. Effect of model provisions**

- (1) In this section —

*model provision* means a provision designated as a model provision under section 256(5)(a).
- (2) Subject to subsection (3), a local planning scheme prepared or adopted by a local government must include any model provisions that —
  - (a) are prescribed by regulations in force at the time the scheme is approved under section 87; and

- (b) apply to the scheme.
- (3) When approving a local planning scheme under section 87, the Minister may approve the exclusion from, or variation in, the scheme of a model provision.

**257B. Effect of deemed provisions**

- (1) In this section —  
*deemed provision* means a provision designated as a deemed provision under section 256(5)(b).
- (2) Deemed provisions, as amended from time to time, have effect and may be enforced as part of each local planning scheme to which they apply, whether they are prescribed before or after the scheme comes into force.
- (3) If a deemed provision that has effect as part of a local planning scheme is inconsistent with another provision of the scheme, the deemed provision prevails and the other provision is to the extent of the inconsistency of no effect.
- (4) It is sufficient compliance with section 54(a), 87(3)(a), 91(1) or 92(2)(b) if a local planning scheme is published under that provision without the deemed provisions.
- (5) Each local government, in preparing a local planning scheme or a consolidation of a local planning scheme, must ensure that the scheme is consistent with any deemed provision that applies to the scheme.

**65. Section 257 deleted**

Delete section 257.

**66. Section 258 amended**

- (1) In section 258(1):
  - (a) in paragraph (d) delete “scheme; and” and insert:  
  
scheme.
  - (b) delete paragraph (e).

**67. Section 263 amended**

After section 263(2)(d) insert:

- (ea) provide for and regulate reporting by local governments in relation to planning matters;

- (eb) regulate procedures in relation to the carrying out and enforcement of local planning schemes;

**68. Schedule 7 amended**

- (1) After Schedule 7 clause 13(3) insert:
  
- (4) Requiring the preparation and approval of documents ancillary to the carrying out of a scheme.