



Western Australia

# **Planning and Development (Consequential and Transitional Provisions) Act 2005**

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# Planning and Development (Consequential and Transitional Provisions) Act 2005

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## **Planning and Development (Consequential and Transitional Provisions) Act 2005**

**An Act —**

- **to repeal the following Acts —**  
*Metropolitan Region Town Planning Scheme Act 1959;*  
*Town Planning and Development Act 1928;*  
*Western Australian Planning Commission Act 1985;*
- **to amend certain other Acts; and**
- **for purposes relating to those repeals and amendments and to the enactment of the *Planning and Development Act 2005*.**

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Planning and Development (Consequential and Transitional Provisions) Act 2005*.

### **2. Commencement**

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

### **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*.

## **Part 2 — Repeal and amendment of legislation**

*[Divisions 1-3 (s. 4-14) — Consequential amendments omitted.]*

### **Division 4 — Miscellaneous amendments**

#### **15. Acts in Schedule 2 amended**

The Acts mentioned in Schedule 2 are amended as set out in that Schedule.

#### **16. Power to amend regulations**

- (1) The Governor, on the recommendation of the Minister, may make subsidiary legislation amending subsidiary legislation made under any Act.
- (2) The Minister may make a recommendation under subsection (1) only if the Minister considers that each amendment proposed to be made by the regulations is necessary or desirable as a consequence of the enactment of the PD Act or this Act.
- (3) Nothing in this section prevents subsidiary legislation from being amended in accordance with the Act under which it was made.

## **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

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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.

*[Schedules 1 and 2 — Consequential amendments omitted.]*

### **Notes**

- <sup>1</sup> This is a compilation of the *Planning and Development (Consequential and Transitional Provisions) Act 2005*. The following table contains information about that Act.

#### **Compilation table**

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<b>Short title</b>	<b>Number and Year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i>	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)

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## **Defined terms**

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
amending provision.....	18(2)
commencement day .....	3
existing Board.....	24(1)
existing Commission.....	3
existing committee.....	23(1)
MRTPS Act .....	3
PD Act .....	3
specified.....	18(5)
TPD Act.....	3
transitional matter .....	18(2)
WAPC Act.....	3