



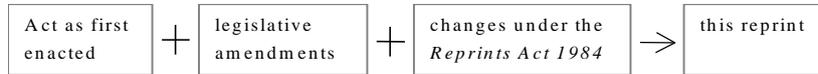
Western Australia

# **Western Australian Planning Commission Act 1985**

**Reprint 3: The Act as at 17 September 2004**

## Guide for using this reprint

### What the reprint includes



### *Endnotes, Compilation table, and Table of provisions that have not come into operation*

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### *Notes amongst text (italicised and within square brackets)*

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
  - removed (because it was repealed or deleted from the law); or
  - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

### *Reprint numbering and date*

1. The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3<sup>rd</sup> reprint since the Act was passed. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Reprinted under the  
*Reprints Act 1984* as  
at 17 September 2004

Western Australia

**Western Australian Planning  
Commission Act 1985**

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**Defined Terms**



Western Australia

Reprinted under the  
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at 17 September 2004

## **Western Australian Planning Commission Act 1985**

**An Act to establish a body with responsibility for urban, rural and regional land use planning and land development and related matters in the State, and for connected purposes.**

*[Long title amended by No. 84 of 1994 s. 18.]*

## Part I — Preliminary

### 1. Short title

This Act may be cited as the *Western Australian Planning Commission Act 1985*<sup>1</sup>.

[Section 1 amended by No. 84 of 1994 s. 19.]

### 2. Commencement

This Act shall come into operation on a day to be fixed by proclamation<sup>1</sup>.

### 3. Interpretation

In this Act, unless the contrary intention appears —

“**Account**” means the Western Australian Planning Commission Account provided for by section 45(2);

“**associate member**” means an associate member of the Commission appointed under section 6;

“**chairperson**” means chairperson of the Commission;

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

“**deputy member**” means person for the time being appointed to be the deputy of a member under section 5A(1);

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

“**District Planning Committee**” means a District Planning Committee under section 23 of the Metropolitan Scheme Act;

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

“**local government**” means a local government or a regional local government;

“**member**” means a member of the Commission;

**“metropolitan region”** and **“Metropolitan Region Scheme”** have the meanings assigned to them by the Metropolitan Scheme Act;

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

**“officer of the Commission”** means public service officer referred to in section 38;

**“public authority”** means a Minister of the Crown in right of the State, Government department, State trading concern, State instrumentality, State public utility and any other person or body, whether corporate or not, who or which, under the authority of any written law, administers or carries on for the benefit of the State, a social service or public utility;

**“region”** means region referred to in Schedule 1;

**“regional improvement plan”** means regional improvement plan referred to in section 37I;

**“regional order”** means regional interim development order made under section 21(1);

**“regional order area”** means area affected by, and specified in, a regional order;

**“regional planning control area”** means regional planning control area declared under section 37B;

**“regional planning scheme”** means town planning scheme referred to in section 18(1)(ba);

**“the Regional Minister”** means the Minister to whom the administration of the *Regional Development Commissions Act 1993* is for the time being committed by the Governor;

**“WAMA”** means the association —

- (a) known as the Western Australian Municipal Association; and

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(b) constituted as a body corporate under the *Local Government Act 1995*.

*[Section 3 amended by No. 84 of 1994 s. 20; No. 14 of 1996 s. 4; No. 59 of 1999 s. 11.]*

## **Part II — Western Australian Planning Commission and committees**

*[Part heading amended by No. 84 of 1994 s. 21.]*

*[Division heading deleted by No. 59 of 1999 s. 12.]*

### **4. Commission established**

- (1) There is established by this section a Commission by the name of the Western Australian Planning Commission.
- (2) The Commission is a body corporate with perpetual succession and a common seal and is capable of —
  - (a) acquiring, holding and disposing of real and personal property;
  - (b) suing and being sued; and
  - (c) doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.
- (3) The Commission is an agent of the Crown in right of the State.  
*[Section 4 amended by No. 84 of 1994 s. 23.]*

### **5. Constitution of Commission**

- (1) The Commission consists of —
  - (a) a chairperson appointed by the Governor on the nomination of the Minister;
  - (b) 5 other 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 the local governments within the metropolitan region submitted to the Minister by WAMA;
    - (ii) one is to be a person nominated by the Minister from a list of the names of 4 persons representing

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the interests of the local governments outside the metropolitan region submitted to the Minister by WAMA;

- (iii) one is to be a person nominated by the Minister as having experience in the field of coastal planning and management; and
- (iv) 2 are to be persons nominated by the Minister as having 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, local government or community affairs;

and

- (c) the least number of other members who include —
  - (i) the person holding or acting in the office of the chief executive officer of the department principally assisting the Minister in the administration of this Act;
  - (ii) the person holding or acting in the office of chief executive officer of the Water and Rivers Commission established by the *Water and Rivers Commission Act 1995*;
  - [(iii) *deleted*]
  - (iv) the person holding or acting in the office of the chief executive officer of the department principally assisting in the administration of the *Transport Co-ordination Act 1966*;
  - (v) the person holding or acting in the office of the chief executive officer of the department principally assisting in the administration of the *Environmental Protection Act 1986*;
  - (va) 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;

- (vi) 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 shall be made to the Minister in writing signed on behalf of WAMA within such reasonable time after the receipt by WAMA of a notice from the Minister stating that that submission is required as is specified in that notice.
- (3) If a submission is not made under subsection (2) within the time specified under that subsection, the Minister may nominate such person as he thinks fit to be a member of the Commission in place of the person referred to in subsection (1)(b)(i) or (ii).

*[Section 5 inserted by No. 84 of 1994 s. 24(1); amended by No. 73 of 1995 s. 188; No. 14 of 1996 s. 4; No. 57 of 1997 s. 131; No. 7 of 2002 s. 55; No. 69 of 2003 s. 3.]*

**5A. Deputy members**

- (1) The Governor may on the recommendation of the Minister appoint a person to be the deputy of —
  - (a) the member referred to in section 5(1)(b)(i) or (ii), in which case the provisions of section 5(1)(b)(i) or (ii), (2) and (3) apply with any necessary modifications to and in relation to that appointment;
  - [(b) deleted]*
  - (c) a member referred to in section 5(1)(b)(iv), in which case the person is to be a person nominated by the Minister as having experience in one or more of the fields referred to in that section.

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- (2) A deputy member may resign at any time by notice in writing given to the Minister.
- (3) The Governor may at any time on the recommendation of the Minister revoke the appointment of a deputy member.
- (4) While taking the place of the member concerned, a deputy member has all the functions and entitlements of, and the protection given to, that member under this Act.
- (5) A reference in this Act to a member includes a reference to a deputy member taking the place of the member.
- (6) No appointment of, and no act or omission done by, a deputy member in that capacity is to be questioned on the ground that the occasion for his or her appointment had not arisen or had ceased.

*[Section 5A inserted by No. 84 of 1994 s. 25; amended by No. 7 of 2002 s. 56.]*

**6. Associate members**

- (1) The Governor may, on the nomination of the Minister, appoint an associate member for a region.
- (2) Each nomination by the Minister for appointment as an associate member under subsection (1) shall be made on the recommendation of the Regional Minister.

*[(3) and (4) repealed]*

- (5) Where it appears to the chairperson that a regional matter is to be considered at a meeting of the Commission he or she may, by notice in writing 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.
- (6) An associate member has all of the functions of a member in relation to the consideration of a regional matter at a meeting that he or she is requested to attend under subsection (5).

- (7) In this section “*regional matter*” means a matter that, in the opinion of the chairperson, affects more than one local government in a region.

*[Section 6 amended by No. 84 of 1994 s. 26 and 42; No. 14 of 1996 s. 4.]*

**7. Terms of office**

- (1) A member or an associate member shall hold office for such term, not exceeding 5 years, as is specified in his or her instrument of appointment, and is eligible for reappointment.
- (2) A member or an associate member, unless he or she sooner resigns or is removed from office, shall continue in office until his or her successor comes into office, notwithstanding that the term for which he or she was appointed may have expired.

*[Section 7 amended by No. 84 of 1994 s. 27 and 42.]*

**8. Extent of duties of office**

- (1) A member may be appointed on terms that require him or her to devote his full time to the performance of the duties of his or her office.
- (2) Except as provided under subsection (1), appointment as a member or associate member shall be on a part-time basis.
- (3) The Minister may grant leave of absence to a member or an associate member.

*[Section 8 amended by No. 84 of 1994 s. 42.]*

**9. Relationship to Public Service**

Appointment of a person as a member or associate member does not —

- (a) render Part 3 of the *Public Sector Management Act 1994*, or any Act applying to persons as officers of the Public Service of the State, applicable to that person; or

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- (b) affect or prejudice the application to him or her of those provisions if they applied to him or her at the time of his or her appointment.

*[Section 9 amended by No. 32 of 1994 s. 19; No. 84 of 1994 s. 42.]*

**10. Extraordinary vacancies**

The office of a member or associate member becomes vacant if —

- (a) he or she resigns his or her office by written notice addressed to the Minister;
- (b) he or she is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
- (c) in the case of a member, he or she is absent, without leave of the Minister, from 3 consecutive meetings of which he or she has had notice;
- (d) in the case of an associate member, he or she is absent, without leave of the Minister, from 3 consecutive meetings which he or she was requested to attend under section 6(5);
- (e) he or she is removed from office by the Governor on the grounds of misbehaviour, incompetence, or mental or physical incapacity impairing the performance of his or her duties and proved to the satisfaction of the Governor.

*[Section 10 amended by No. 84 of 1994 s. 42.]*

**11. Remuneration and allowances of members**

A member, a deputy member, an associate member or a member of a committee of the Commission shall be paid such remuneration and travelling and other allowances as are determined, in his or her case, by the Minister on the

recommendation of the Minister for Public Sector Management<sup>2</sup>.

*[Section 11 amended by No. 84 of 1994 s. 28 and 42.]*

**12. Deputy chairperson**

- (1) The Governor may, on the nomination of the Minister, appoint a member to be deputy chairperson.
- (2) A person appointed under subsection (1) may resign at any time by notice in writing given to the Minister.
- (3) An appointment under subsection (1) may be revoked by the Governor at any time.
- (4) The deputy chairperson has, during any period when the chairperson is absent or otherwise unable to perform his or her functions, all of the functions and entitlements of the chairperson in his or her capacity as chairperson of the Commission.

*[Section 12 amended by No. 84 of 1994 s. 42; No. 74 of 2003 s. 131(2).]*

*[13. Repealed by No. 84 of 1994 s. 29.]*

**14. Business of Commission**

Subject to this Act, the business of the Commission shall be conducted in such manner as the Commission determines.

**15. Meetings of the Commission**

The first meeting of the Commission shall be convened by the chairperson and thereafter meetings shall be held at the times and places determined by the Commission but the chairperson or any 2 members may, on reasonable notice to all members, call a meeting at any time.

*[Section 15 amended by No. 84 of 1994 s. 42.]*

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**16. Proceedings of the Commission**

- (1) At a meeting of the Commission, a number of members equal to at least one half of the number of members provided for by section 5 constitute a quorum.
- (2) The chairperson shall preside at every meeting of the Commission at which he or she is present but if the chairperson or the deputy chairperson is not present at a meeting the other members present shall select one of their number to act as chairperson.
- (3) Questions arising at a meeting of the Commission shall be decided, in open voting, by a majority of the votes of members or associate members present.
- (4) If the votes of members or associate members present at a meeting and voting on a question are equally divided the chairperson, deputy chairperson or other person presiding shall have a casting vote in addition to his or her deliberative vote.
- (5) The Commission shall keep a record of its proceedings.

*[Section 16 amended by No. 84 of 1994 s. 30 and 42; No. 7 of 2002 s. 57.]*

**17. Protection of members**

- (1) A member is not personally liable for any act done in good faith by the Commission or by him or her acting as a member.
- (2) In subsection (1) —  
“**Commission**” includes a committee of the Commission; and  
“**member**” includes an associate member and a member of a committee.

*[Section 17 amended by No. 84 of 1994 s. 42.]*

**18. Functions of Commission**

- (1) The functions of the Commission are, in addition to those conferred on it by any other written law —
- (a) to advise the Minister on —
    - (i) the coordination and promotion of urban, rural and regional land use planning and land development in the State;
    - (ii) the administration, revision and reform of legislation relating thereto; and
    - (iii) town planning schemes under the *Town Planning and Development Act 1928*, and amendments to those schemes, made or proposed to be made for any part of the State;
  - (b) to prepare a planning strategy for the State as a basis for coordinating and promoting regional land use planning and land development and for the guidance of Government departments and instrumentalities and local governments on those matters;
  - (ba) if matters of State or regional importance so require, to prepare such town planning schemes, and amendments to town planning schemes prepared by it, as may be necessary for the effective planning and coordination of land use and land development for any part of the State outside the metropolitan region;
  - (bb) to plan for the coordinated provision of infrastructure for land development and the planning of transport;
  - (c) 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 policies and their planning and development functions;
  - (d) to undertake research and develop planning methods and models relating to land use and development and associated matters;

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- (da) in relation to any part of the State to which a regional planning scheme applies —
  - (i) to keep under review the strategic planning for that part of the State and to make recommendations to the Minister on strategic planning;
  - (ii) to keep under review the regional planning scheme and to review the scheme completely whenever requested by the Minister to do so, and to submit for approval in accordance with subsection (1a) any amendment of the regional planning scheme considered necessary as a result of a review;
  - (iii) to develop, maintain and manage land held by it that is reserved under the regional planning scheme and to carry out such works, including the provision of facilities on the land, as may be incidental to the development, maintenance and management or be conducive to the use of the land for any purpose for which it is reserved; and
  - (iv) to do all things that are necessary for the purpose of carrying out Parts IIA, IIB, IIC and IID and the regional planning scheme;
- (e) in relation to the metropolitan region —
  - (i) to keep under review the strategic planning for that region and to make recommendations to the Minister thereon;
  - (ii) to keep under review the Metropolitan Region Scheme and to review that scheme completely whenever requested by the Minister to do so, and to submit for approval in accordance with Part III of the Metropolitan Scheme Act any variation, amplification or revocation of the Scheme considered necessary as a result of any review;
  - [(iii) deleted]*

- (iv) to develop, maintain and manage land held by it that is reserved under the Metropolitan Region Scheme and to carry out such works, including the provision of facilities thereon, as may be incidental to such development, maintenance and management or be conducive to the use of the land for any purpose for which it is reserved; and
  - (v) to do all things that are necessary for the purpose of carrying out the Metropolitan Scheme Act and the Metropolitan Region Scheme.
- (1a) Subject to subsection (1b), the Commission shall, in performing its functions under subsection (1)(ba), resolve to prepare a regional planning scheme or an amendment to a regional planning scheme as if it were a local government acting under section 7(1) of the *Town Planning and Development Act 1928*, but shall, immediately after so resolving, instead of ensuring compliance with the procedures set out in Part I of that Act and in any regulations made under section 9 of that Act, ensure compliance with the relevant procedures set out in sections 32A(2), 33(2), (3), (4), (5) and (6), 33A, 33E, 33F, 33G and 33H of the Metropolitan Scheme Act in respect of the regional planning scheme or that amendment as if the regional planning scheme or that amendment were an amendment to the Metropolitan Region Scheme.
- (1b) The provisions of the Metropolitan Scheme Act referred to in subsection (1a) apply to and in relation to a regional planning scheme or an amendment to a regional planning scheme as if —
  - (a) there were substituted for section 32A(2) of that Act the following subsection —
    - “
    - (2) A regional planning scheme within the meaning of the *Western Australian Planning Commission Act 1985* or an amendment to such a regional planning scheme shall not be formulated in a manner that is contrary to or inconsistent with any Order made under

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section 59 of the *Heritage of Western Australia Act 1990*, except in so far as may be ordered on an appeal or referral made under section 60 of that Act to the Town Planning Appeal Tribunal.

”;

- (b) “and any revocation of the Scheme by a subsequent Scheme” in section 33(2) of that Act were “and any revocation of a regional planning scheme within the meaning of the *Western Australian Planning Commission Act 1985* by a subsequent such regional planning scheme”;
- (c) there were substituted for section 33(2)(b) of that Act the following paragraph —

“

- (b) If the Minister consents to public submissions being sought, the Commission shall deposit copies of the regional planning scheme, or the amendment to a regional planning scheme, for public inspection during ordinary business hours free of charge at the offices of the local governments of the districts which lie within or partly within the area to which the regional planning scheme or that amendment applies and at not less than 3 other public places which the Commission considers to be most convenient for public inspection.

”;

and

- (d) references to newspapers in section 33(2)(c)(ii) and (iii) of that Act were references to —
- (i) one daily newspaper; and
  - (ii) one Sunday newspaper,
- circulating in the area to which the regional planning scheme or that amendment applies,
- and with any necessary additional modifications.

- (1ba) A regional planning scheme may be prepared for all or any of the objects, purposes, provisions, powers or works referred to in section 6 of the *Town Planning and Development Act 1928* and may provide for planning, replanning or reconstructing the whole or any part of its region.
- (1bb) If a regional planning scheme has effect under section 33(5) of the Metropolitan Scheme Act as read with subsections (1a) and (1b) —
- (a) a town planning scheme made under the *Town Planning and Development Act 1928* by a local government shall not be approved by the Minister to whom the administration of that Act is for the time being committed by the Governor; and
  - (b) local laws which if made would affect or be likely to affect the regional planning scheme shall not be made by a local government,
- unless the provisions of the town planning scheme or local laws, as the case requires, are in accordance with and consistent with the regional planning scheme.
- (1c) When the relevant procedures set out in the provisions of the Metropolitan Scheme Act referred to in subsection (1a), as read with that subsection and subsection (1b), have been complied with in respect of a regional planning scheme or an amendment to a regional planning scheme, and the regional planning scheme or that amendment, as the case requires, (in this section called “*the Commission scheme*”) is inconsistent with a town planning scheme prepared or adopted by a local government under the *Town Planning and Development Act 1928* (in this section called “*the local government scheme*”) —
- (a) the Commission scheme is to prevail over the local government scheme to the extent of that inconsistency; and

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- (b) the local government shall —
  - (i) not later than 90 days after the day on which the Commission scheme has full force and effect under those provisions, resolve to prepare —
    - (A) a town planning scheme which is consistent with the Commission scheme; or
    - (B) an amendment to the local government scheme which renders the local government scheme consistent with the Commission scheme,  
and which does not contain or which removes, as the case requires, any provision which would be likely to impede the implementation of the Commission scheme; and
  - (ii) within such reasonable time after the passing of that resolution as is directed in writing by the Minister, forward to the Minister for approval under section 7 of the *Town Planning and Development Act 1928* the town planning scheme or amendment prepared by it.
- (1d) The Minister may, before approving under section 7 of the *Town Planning and Development Act 1928* a town planning scheme or amendment forwarded to the Minister under subsection (1c)(b), direct the local government concerned to modify that town planning scheme or amendment in such manner as is specified in that direction for the purpose of achieving the consistency, or removing any impedimental provision, referred to in that subsection and to forward that town planning scheme or amendment as so modified to the Minister for approval under that section, and that local government shall comply with that direction.

- (1e) If a local government does not comply with subsection (1c) or, not later than 60 days after the giving of the direction concerned, with a direction given under subsection (1d), the Minister may cause the relevant town planning scheme or amendment to be prepared or modified, as the case requires, and forwarded to the local government, and direct the local government to adopt that town planning scheme or amendment as if it were a town planning scheme proposed by owners of land referred to in section 7(1) of the *Town Planning and Development Act 1928*, whereupon the local government shall comply with that direction.
- (1f) If a local government to which a direction has been given under subsection (1e) does not comply with that direction within 60 days after the relevant town planning scheme or amendment was forwarded to it, the Minister may approve of that town planning scheme or amendment and cause it to be published in the *Gazette* in accordance with section 7 of the *Town Planning and Development Act 1928*.
- (1g) All expenses incurred by the Minister in exercising the powers conferred on him or her by subsections (1d), (1e) and (1f) may be recovered by the Minister from the local government concerned in a court of competent jurisdiction as a debt due to the Crown or may be deducted from any moneys payable by the Crown to that local government.
- (2) The Commission may do all things that are necessary or convenient to be done for, or in connection with, the performance of its functions.
- (3) Without limiting the generality of subsection (2), the Commission may, for the purposes of subsection (1)(e)(iv), 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 referred to in that paragraph.
- (4) The Minister may give directions to the Commission with respect to the performance of its functions, either generally or

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with respect to a particular matter, and the Commission shall give effect to those directions.

*[Section 18 amended by No. 84 of 1994 s. 31; No. 14 of 1996 s. 4; No. 23 of 1996 s. 58; No. 57 of 1997 s. 131; No. 59 of 1999 s. 13.]*

**19. Committees**

- (1) Subject to subsections (1a) to (1k), the Commission may from time to time —
- (a) establish committees and —
    - (i) prescribe the constitution of any committee; and
    - (ii) authorise a committee to establish any subcommittee;
  - (aa) appoint such —
    - (i) members of the Commission;
    - (ii) members of the Commission and other persons; or
    - (iii) persons other than members of the Commission, as the Commission thinks fit to be members or deputy members of a committee established under paragraph (a);
  - (b) discharge, alter, or reconstitute any such committee; and
  - (c) give directions to a committee with respect to the performance of its functions.
- (1a) The Commission shall establish —
- (a) a committee to be known as the Executive, Finance and Property Committee;
  - (b) a committee to be known as the Statutory Planning Committee;
  - (c) a committee to be known as the Transport Committee;
  - (d) a committee to be known as the Infrastructure Coordinating Committee; and

- (e) a committee to be known as the Coastal Planning and Coordination Council.
- (1b) The Executive, Finance and Property Committee —
  - (a) is to consist of —
    - (i) the chairperson, or a person nominated by the chairperson and approved by the Minister;
    - (ii) the member of the Commission referred to in section 5(1)(c)(i), or a person nominated by that member and approved by the Minister;
    - (iii) one other member of the Commission appointed by the Commission; and
    - (iv) such other person or persons as the Commission, after obtaining the approval of the Minister, appoints from time to time;
  - and
  - (b) 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 20 and such other functions as are delegated to it under that section.
- (1c) Subject to subsection (1d), the Statutory Planning Committee —
  - (a) is to consist of —
    - (i) the chairperson, or a person nominated by the chairperson and approved by the Minister;
    - (ii) the member of the Commission referred to in section 5(1)(c)(i), or a person nominated by that member and approved by the Minister;
    - (iii) the member of the Commission referred to in section 5(1)(c)(vi), or a deputy appointed under subsection (1f);
    - (iv) a person approved by the Minister and appointed by the Commission as having practical

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knowledge of and experience in community affairs;

- (v) 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, business management, property development, financial management, engineering, surveying, valuation, transport, housing, heritage or local government;
- (vi) a person approved by the Minister and appointed by the Commission to represent the interests of local governments; and
- (vii) such other person or persons as the Commission, after obtaining the approval of the Minister, appoints from time to time;

and

- (b) is to perform such of the functions of the Commission under this Act, Part II of the *Strata Titles Act 1985* and the *Town Planning and Development Act 1928* as are delegated to the Statutory Planning Committee under section 20 and such other functions as are delegated to it under that section.
- (1d) Should the Commission delegate to the Statutory Planning Committee under section 20 not only the functions of the Commission under this Act, Part II of the *Strata Titles Act 1985* and the *Town Planning and Development Act 1928* but also the functions of the Commission under the Metropolitan Scheme Act in respect of 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 subsection (1c)(a) 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 chairman 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.

(1e) The Transport Committee —

(a) is to consist of —

- (i) the chairperson, or a person nominated by the chairperson and approved by the Minister;
- (ii) the member of the Commission referred to in section 5(1)(c)(i), or a person nominated by that member and approved by the Minister;
- (iii) the member of the Commission referred to in section 5(1)(c)(vi), or a deputy appointed under subsection (1f);
- (iv) the member of the Commission referred to in section 5(1)(c)(iv), or a person nominated by that member and approved by the Minister;
- (v) the Commissioner within the meaning of the *Main Roads Act 1930*, or a person nominated by him or her and approved by the Minister;

*[(vi), (vii) deleted]*

- (viii) a person approved by the Minister and appointed by the Commission to represent the interests of local governments; and
- (ix) such other person or persons as the Commission, after obtaining the approval of the Minister, appoints from time to time;

and

- (b) 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

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and any other written law as are delegated to the Transport Committee under section 20.

- (1f) The Commission shall for the purposes of subsections (1c)(a)(iii) and (1e)(a)(iii) appoint one person —
- (a) nominated by the Regional Minister; and
  - (b) approved by the Minister,

to be the deputy of the member of the Commission referred to in section 5(1)(c)(vi) or, if the Regional Minister so requests, shall instead appoint one person so nominated and approved to be that deputy for the purposes of subsection (1c)(a)(iii) and another such person to be that deputy for the purposes of subsection (1e)(a)(iii).

- (1g) The Infrastructure Coordinating Committee —
- (a) is to consist of —
    - (i) the chairperson, or a person nominated by the chairperson and approved by the Minister;
    - (ii) each member of the Commission referred to in section 5(1)(c)(i) or (iv), or a person nominated by that member and approved by the Minister;
    - (iii) the Coordinator of Energy referred to in section 4 of the *Energy Coordination Act 1994* or a person nominated by him or her and approved by the Minister;
    - (iv) the chief executive officer of the department referred to in section 228 of the *School Education Act 1999*, or a person nominated by him or her and approved by the Minister;
    - (v) the Commissioner within the meaning of the *Health Act 1911*, or a person nominated by him or her and approved by the Minister;
    - (vi) the chief executive officer of the department principally assisting the Regional Minister in the administration of the *Regional Development*

*Commissions Act 1993*, or a person nominated by that chief executive officer and approved by the Minister;

- (vii) the chief executive officer of the department principally assisting the Minister to whom the administration of the *Government Agreements Act 1979* is for the time being committed by the Governor in that administration, or a person nominated by that chief executive officer and approved by the Minister;
- (viii) the chief executive officer of the department principally assisting the Minister to whom the administration of the *Mining Act 1978* is for the time being committed by the Governor in that administration, or a person nominated by that chief executive officer and approved by the Minister;
- (viiiia) the chief executive officer of the department principally assisting the Minister to whom the administration of the *Water Agencies (Powers) Act 1984* is for the time being committed by the Governor in that administration, or a person nominated by that chief executive officer and approved by the Minister;
- (ix) a person approved by the Minister and appointed by the Commission to represent the interests of local governments; and
- (x) such other person or persons as the Commission, after obtaining the approval of the Minister, appoints from time to time;

and

- (b) 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 and any

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other written law as are delegated to the Infrastructure Coordinating Committee under section 20.

(1ga) The Coastal Planning and Coordination Council —

(a) is to consist of —

- (i) a presiding member who is to be the member of the Commission referred to in section 5(1)(b)(iii);
- (ii) the member of the Commission referred to in section 5(1)(c)(i), or a person nominated by that member and approved by the Minister;
- (iii) the member of the Commission referred to in section 5(1)(c)(v), or a person nominated by that member and approved by the Minister;
- (iv) the person holding or acting in the office of 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;
- (v) the person holding or acting in the office of 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;
- (vi) the person holding or acting in the office of 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;
- (vii) the person holding or acting in the office of 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;

- (viii) a person approved by the Minister and appointed by the Commission to represent the interests of local governments within the metropolitan region;
- (ix) a person approved by the Minister and appointed by the Commission to represent the interests of local governments outside the metropolitan region;
- (x) 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 planning, urban design, commerce and industry, or the provision of coastal infrastructure; and
- (xi) such other person or persons as the Commission, after obtaining the approval of the Minister, appoints from time to time;

and

- (b) 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 and any other written law as are delegated to the Coastal Planning and Coordination Council under section 20.
- (1h) Without limiting the generality of subsection (1), the Commission may under that subsection establish a regional planning committee for the whole or any part of a region if the Commission is satisfied that the need for the regional planning committee exists.

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(1i) A regional planning committee —

(a) is to consist of —

- (i) the chairperson, or a person nominated by the chairperson and approved by the Minister;
- (ii) the member of the Commission referred to in section 5(1)(c)(i), or a person nominated by that member and approved by the Minister;
- (iii) a person approved by the Minister and appointed by the Commission as having practical knowledge of and experience in community affairs;
- (iv) not less than 3 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 region for which the regional planning committee is established submitted to the Commission by WAMA;
- (v) 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 within the meaning of the *Regional Development Commissions Act 1993* within the whole or part of the region for which the regional planning committee is established; and
- (vi) such other person or persons as the Commission, after obtaining the approval of the Minister, appoints from time to time;

and

(b) is to advise the Commission on planning for the region, or part of the region, for which the regional planning committee is established, to make recommendations to the Commission on the need for, and the extent and content of, regional planning schemes and to perform

such of the functions of the Commission under this Act, the *Strata Titles Act 1985*, the *Town Planning and Development Act 1928* and any other written law as are delegated to that committee under section 20.

- (1j) When the submission of a list of names is required for the purposes of subsection (1i)(a)(iv), that submission shall be made to the Commission in writing signed on behalf of WAMA within such reasonable time after the receipt by WAMA of a notice from the Commission stating that that submission is required as is specified in that notice.
- (1k) If a submission is not made under subsection (1j) within the time specified under that subsection, 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 subsection (1i)(a)(iv).
- (2) A committee shall comply with any direction of the Commission.
- (3) Subject to any direction of the Commission, a committee may determine its own procedure.

*[Section 19 amended by No. 35 of 1993 s. 6; No. 84 of 1994 s. 32; No. 73 of 1995 s. 188; No. 14 of 1996 s. 4; No. 22 of 1996 s. 16(13); No. 57 of 1997 s. 131; No. 36 of 1999 s. 247; No. 58 of 1999 s. 87; No. 7 of 2002 s. 58; No. 67 of 2003 s. 62; No. 69 of 2003 s. 4.]*

**19A. Delegation of ministerial approval**

- (1) The Minister may delegate to a person or body any function the Minister has of giving or declining to give approval under section 19.
- (2) The delegation must be in writing signed by the Minister.

*[Section 19A inserted by No. 7 of 2002 s. 59.]*

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**20. Delegation**

- (1) The Commission may, by resolution of which notice is published in the *Gazette*, either generally or as otherwise provided by the resolution, delegate to an eligible person or body any of its functions under this Act or any other written law.
- (2) The Commission shall not under subsection (1) empower a delegate to subdelegate any function.
- (3) The performance of a function by a delegate under subsection (1) shall be deemed to be the performance of the function by the Commission.
- (4) In subsection (1) “*eligible person or body*” means —
  - (a) a member or associate member of the Commission;
  - (b) a committee of the Commission or a member of a committee;
  - (c) a District Planning Committee;
  - (d) a public authority or a member or officer of a public authority; or
  - (e) a local government, or the council of, or an employee of, a local government, or a member of the council of a local government.
- (5) 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.

- (6) Without limiting the generality of subsection (1), where the Commission has delegated its functions under section 18(1)(e)(ii) or (v), the delegation includes, subject to the instrument of delegation, a delegation of every function of the Commission under sections 33 and 33A of the Metropolitan Scheme Act.

*[Section 20 amended by No. 7 of 1990 s. 5; No. 84 of 1994 s. 33; No. 14 of 1996 s. 4.]*

*[Divisions 2 and 3 repealed by No. 84 of 1994 s. 34.]*

## **Part IIA — Regional interim development**

*[Heading inserted by No. 59 of 1999 s. 14.]*

### **21. Commission may make and administer regional interim development orders**

- (1) Subject to this Part, the Commission may, if —
- (a) the Commission is of the opinion that the development of land within the part of the State to which a regional planning scheme is to apply might materially affect the preparation or implementation of the regional planning scheme;
  - (b) the Commission has complied with subsection (2); and
  - (c) the Minister approves,

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

- (2) Before making a regional order the Commission shall —
- (a) inform each local government of a district which lies within or partly within the area to which the proposed regional 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).
- (3) A regional order —
- (a) may be made by the Commission at any time —
    - (i) after resolving under section 18(1a) to prepare a regional planning scheme; and
    - (ii) before the relevant procedures set out in the provisions of the Metropolitan Scheme Act referred to in section 18(1a), as read with section 18(1a) and (1b), have been fully

complied with in respect of the regional planning scheme;

and

- (b) is to specify the land affected by the regional order.
- (4) On the making of a regional order, the Commission shall 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 regional order applies a notice —
  - (a) containing a summary of the regional order; and
  - (b) stating that copies of the regional order will be made available by the Commission for inspection by any person free of charge at the offices of the Commission and of the local government or local governments within the area affected by the regional order.
- (5) The Commission shall, at the same time or before acting under subsection (4), publish in the *Gazette* —
  - (a) a summary of the relevant resolution made under section 18(1a); and
  - (b) a description of the part of the State to which the relevant proposed regional planning scheme is to apply.
- (6) The Commission shall administer each regional order.

*[Section 21 inserted by No. 59 of 1999 s. 14.]*

## **22. Duration of regional orders**

- (1) Subject to subsection (2), a regional order —
  - (a) comes into operation on the day of publication of the relevant notice in the *Gazette* under section 21(4); and
  - (b) has effect as though its provisions were enacted in this Act.

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- (2) A regional order ceases to have effect in its regional order area —
- (a) when the relevant regional planning scheme comes into operation in respect of that regional order area;
  - (b) when the regional order is revoked under section 23; or
  - (c) on the expiry of 3 years from the day on which the regional order first applied to that regional order area,

whichever is the sooner, but the Commission may, by notice published in the *Gazette* before the regional 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.

*[Section 22 inserted by No. 59 of 1999 s. 14.]*

**23. Revocation and amendment of regional orders**

- (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 order applies,

revoke a regional order.

- (2) An order made under subsection (1) comes into operation on the day after the day on which it is published in the *Gazette*.
- (3) The Commission may, with the approval of the Minister, at any time make an order amending a regional order and sections 21(4) and 22(1) apply with any necessary modifications to such an order as if that order were a regional order.

*[Section 23 inserted by No. 59 of 1999 s. 14.]*

**24. Contents and effect of regional orders**

- (1) A regional order may —
- (a) require a person, before commencing to carry out any specified development within the regional order area, to obtain the written permission 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 regional order any development of a specified class within the regional order area;
  - (d) in the case of land which is in the regional order area and to which the *Heritage of Western Australia Act 1990* applies, require the Commission —
    - (i) before granting an application for permission to carry out development referred to in paragraph (a), to refer that application to the Heritage Council for advice and to notify the applicant of that referral;
    - (ii) not to deal with that application unless the advice of the Heritage Council has been received; and
    - (iii) to have regard to that advice;
  - (e) provide that the permission of the Commission for the carrying out of any development referred to in the regional 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 permission at the expiry of the period so limited;

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- (f) provide that the Commission may refuse to grant to an applicant its permission for carrying out development of a specified class in a specified part of the regional order area;
  - (g) subject to subsection (4), 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.
- (2) Before granting an application for permission to carry out development referred to in subsection (1)(a), the Commission shall —
- (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).
- (3) Despite section 28, nothing in a regional order in force in respect of a regional order area empowers the Commission to grant to an applicant permission to carry out a development if that development contravenes a provision of the town planning scheme operating in the regional order area.
- (4) Nothing in a regional order prevents —
- (a) the continuance of the use of any land or building for the purposes for which the land or building was being used immediately prior to the coming into operation of the regional order; or
  - (b) the carrying out of any development for which, immediately prior to the coming into operation of the regional order, a permit or permits, if any, required under the *Town Planning and Development Act 1928* or any other Act authorising that development to be carried out had been obtained and were current.

- (5) In subsection (1) —  
“*specified*” means specified in the regional order concerned.  
*[Section 24 inserted by No. 59 of 1999 s. 14; amended by  
No. 74 of 2003 s. 131(3).]*

**25. Appeals against refusals of permission, etc.**

- (1) Subject to subsection (3), a person who is aggrieved by —
- (a) the refusal of permission; or
  - (b) a condition subject to which permission is granted,
- under a regional order as read with section 24(1) may within 60 days after the refusal is communicated, or permission is granted, to that person appeal against that refusal or condition under Part V of the *Town Planning and Development Act 1928*.
- (2) Subject to subsection (3), if the Commission does not grant or refuse permission —
- (a) within a period of 60 days after the receipt by the Commission of an application to carry out any development referred to in this Part; or
  - (b) in the case of land in relation to which the Commission has referred such an application to the Heritage Council under section 24(1)(d) and has notified the applicant for permission of that referral, within a period of 60 days after that notification,

the Commission shall on the expiry of that period be deemed to have refused that application and the applicant may within 60 days after that expiry appeal against that deemed refusal under Part V of the *Town Planning and Development Act 1928*.

- (3) An appeal shall not be made or heard under this section in respect of any development that contravenes a provision of —
- (a) a town planning scheme;
  - (b) a local law that is not superseded or suspended by the regional order; or

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- (c) an Order made under Part 6, or Order in Council made under section 80, of the *Heritage of Western Australia Act 1990*.

*[Section 25 inserted by No. 59 of 1999 s. 14.]*

**26.        Contravention of regional orders**

- (1) A person shall not —
  - (a) contravene a regional order; or
  - (b) commence or continue to carry out any development which is required to comply with a regional order otherwise than in accordance with —
    - (i) the regional order; or
    - (ii) any condition imposed in respect of that development by the Commission under the regional order as read with section 24(1).

Penalty: \$50 000, and a daily penalty of \$5 000.

- (2) This section does not prejudice or affect sections 37J or 37K.

*[Section 26 inserted by No. 59 of 1999 s. 14.]*

**27.        Non-conforming work or development**

- (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 regional order and which, in the opinion of the Commission, would not be in conformity with the proposed regional 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 regional planning scheme,

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

- (2) The Governor may, in respect of a matter submitted under subsection (1) 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.

*[Section 27 inserted by No. 59 of 1999 s. 14.]*

**28. Regional orders to prevail over inconsistent town planning schemes and local laws**

If there is an inconsistency between —

- (a) a town planning scheme operating 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 Act for which the latter Act is in substitution; and
- (b) the regional order in force in respect of the regional order area,

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

*[Section 28 inserted by No. 59 of 1999 s. 14.]*

**29. Limits on compensation payable for injurious affection, etc. as result of operation of regional order**

- (1) Compensation for injurious affection to any land within a regional order area or for loss arising from any other cause is

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not payable under this Act as a result of the operation of the relevant regional order unless —

- (a) the Commission —
    - (i) refuses an application made under that regional order for permission to carry out development on that land; or
    - (ii) grants such an application subject to conditions, on the ground that the proposed regional planning scheme for the regional order area is to include that land within a reservation for public purposes; and
  - (b) an appeal, if lawfully made by the claimant under section 25, has been disallowed wholly or in part.
- (2) When compensation of the kind referred to in subsection (1) is claimed —
- (a) that compensation shall be determined by arbitration under the *Commercial Arbitration Act 1985* or by some other method agreed by the parties; or
  - (b) the Commission may, and shall if the claimant so requests, purchase any land injuriously affected at a price not exceeding the value of that land at the time of —
    - (i) the refusal of permission; or
    - (ii) the grant of permission subject to conditions, without regard to any increase in value attributable wholly or in part to the proposed regional planning scheme for the regional order area in which the land is situated.

*[Section 29 inserted by No. 59 of 1999 s. 14.]*

**Part IIB — Application of sections 11 and 12 of *Town Planning and Development Act 1928* to regional planning schemes**

*[Heading inserted by No. 59 of 1999 s. 14.]*

**30. Construction of sections 11 and 12 of *Town Planning and Development Act 1928* in relation to regional planning schemes**

The provisions of sections 11 and 12 of the *Town Planning and Development Act 1928* apply, with such modifications as are necessary, to the provisions of a regional planning scheme and for that purpose the former provisions shall be read and construed as if —

- (a) the Commission were the “responsible authority” or “local government” wherever referred to in those sections; and
- (b) the passage, “varied, amplified or revoked by the Commission” were substituted for the passage “altered or revoked by an order of the Minister under this Act” in section 11(3) of that Act; and
- (c) those provisions included section 33(1), (2), (3) and (4) and section 34.

*[Section 30 inserted by No. 59 of 1999 s. 14.]*

**31. Claims for injurious affection**

- (1) A regional planning scheme may provide that when compensation for injurious affection is claimed as a result of the operation of the provisions of section 12(2a)(b)(i) or (ii) of the *Town Planning and Development Act 1928* the Commission may at its option elect to acquire the land so affected instead of paying compensation.

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- (2) The Commission shall, within 3 months of the claim for injurious affection being made, by notice in writing given to the claimant —
- (a) elect to acquire the land; or
  - (b) advise that it does not intend to acquire the land.

*[Section 31 inserted by No. 59 of 1999 s. 14.]*

**32. Price of land acquired by Commission in absence of agreement**

- (1) When the Commission elects to acquire the land as provided in section 31, if the Commission and the owner of the land are unable to agree as to the price to be paid for the land by the Commission, the price at which the land may be acquired by the Commission shall be the value of the land as determined in accordance with subsection (2).
- (2) The value of the land referred to in subsection (1) shall be the value of the land on the date the Commission elects to acquire the land under that subsection, and that value shall be determined —
- (a) by arbitration in accordance with the *Commercial Arbitration Act 1985*; or
  - (b) on the application of the owner of the land, made in the prescribed manner —
    - (i) if the value of the land claimed by the owner thereof is not more than the prescribed amount, by a Local Court sitting at a place nearest to where the land lies; or
    - (ii) if the value of the land claimed by the owner thereof is more than the prescribed amount, by the Supreme Court;

or

- (c) by some other method agreed upon by the Commission and the owner of the land,

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

- (3) For the purposes of subsection (2)(b), the prescribed amount is \$25 000 or, if a greater amount is prescribed for the purposes of this paragraph, the greater amount.

*[Section 32 inserted by No. 59 of 1999 s. 14.]*

**33. Compensation for injurious affection to land reserved for public purpose**

- (1) Subject to subsection (3), when under a regional planning scheme any land has been reserved for a public purpose, no compensation is payable by the Commission 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 Commission refuses an application made under the regional planning scheme for permission to carry out development on the land or grants permission to carry out development on the land subject to conditions that are unacceptable to the applicant.
- (2) Compensation for injurious affection to any land is payable only once under subsection (1) and is so payable —
  - (a) under paragraph (a) of that subsection to the person who was the owner of the land at the date of reservation; or
  - (b) under paragraph (b) of that subsection to the person who was the owner of the land at the date of application, referred to in that paragraph, unless after the payment of that compensation further injurious affection to the land results from —
    - (c) an alteration of the existing reservation thereof; or

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- (d) the imposition of another reservation thereon.
- (3) Before compensation is payable under subsection (1) —
  - (a) when the land is sold, the person lawfully appointed to determine the amount of the compensation shall be satisfied —
    - (i) that the owner of the land has sold the land at a lesser price than the owner might reasonably have expected to receive had there been no reservation of the land under the regional planning scheme;
    - (ii) that the owner before selling the land gave notice in writing to the Commission of the owner's intention to sell the land; and
    - (iii) that the owner sold the land in good faith and took reasonable steps to obtain a fair and reasonable price for the land;
  - or
  - (b) when the Commission refuses an application made under the regional planning scheme for permission to carry out development on the land or grants permission to carry out development on the land subject to conditions that are unacceptable to the applicant, the person lawfully appointed to determine the amount of compensation shall be satisfied that the application was made in good faith.
- (4) A claim for compensation under subsection (1) shall be made at any time within 6 months after the land is sold or the application for permission to carry out development on the land is refused or the permission is granted subject to conditions that are unacceptable to the applicant.

*[Section 33 inserted by No. 59 of 1999 s. 14.]*

**34. Amount of compensation**

- (1) Subject to this Part, the compensation payable for injurious affection due to or arising out of the land being reserved under a regional planning scheme for a public purpose, where no part of the land is purchased or acquired by the Commission, shall not 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) shall be assessed as at the date on which —
  - (a) the land is sold as referred to in section 33(1)(a);
  - (b) the application for permission to carry out development on the land is refused; or
  - (c) the permission is granted subject to conditions that are unacceptable to the applicant.

*[Section 34 inserted by No. 59 of 1999 s. 14.]*

**35. Caveat may be lodged if compensation paid**

- (1) When compensation for injurious affection to any land has been paid under section 33(1), the Commission may lodge with the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires, a caveat against the land specifying —
  - (a) the date of payment of compensation;
  - (b) the amount of compensation so paid; and
  - (c) the proportion (expressed as a percentage), which the compensation bears to the unaffected value of the land as assessed under section 34(2).
- (2) On receipt of the caveat from the Commission, the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires, shall register the caveat.

*[Section 35 inserted by No. 59 of 1999 s. 14.]*

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**36. Commission may recover compensation if reservation  
revoked or reduced**

- (1) When —
- (a) compensation for injurious affection to land (the “*original compensation*”) has been paid to an owner of the land in the circumstances set out in section 33(1); and
  - (b) as a result of the regional 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 Commission is entitled to recover from the owner of the land at the date of the revocation or reduction of the reservation an amount (“*the refund*”) which is determined by calculating the relevant proportion (as determined under subsections (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 Commission.
- (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 35(1)(c) in relation to the original compensation.
- (5) When the area of the reservation has been reduced, the relevant proportion for the purposes of subsection (1) shall be determined as follows —
  - (a) a notional amount of compensation is determined under sections 33(1) and 34 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 35(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), when 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), when 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 shall 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

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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 shall be determined by one of the methods set out in section 34(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 Commission has an entitlement to recover an amount under subsection (1) it has an interest in the land and may lodge with the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires, a caveat against the land giving notice of the existence of that interest, and may withdraw any caveat so lodged.
- (10) On receipt of the caveat from the Commission, the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires, shall register the caveat.
- (11) Before selling or subdividing land against which a caveat is lodged under subsection (9), the owner of the land shall give notice in writing to the Commission of the intention of the owner to sell or subdivide the land.
- (12) When a caveat is lodged under subsection (9) the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires, shall not register a transfer of the land without the consent of the Commission.

*[Section 36 inserted by No. 59 of 1999 s. 14.]*

**37. Valuation by Board of Valuers**

- (1) In this section —  
“**Board**” means the Board of Valuers established under section 36B of the Metropolitan Scheme Act.
- (2) The owner of land that is subjected to injurious affection due to, or arising out of, the land being reserved under a regional planning scheme for a public purpose who gives notice of his or her intention to sell the land and claim compensation shall, unless the Commission waives the requirement, apply to the Board for a valuation of the land as not so affected and the Board shall make that valuation.
- (3) The provisions of section 36C of the Metropolitan Scheme Act and the regulations made under that section apply, with such modifications as are necessary, to an application and valuation under subsection (2).

*[Section 37 inserted by No. 59 of 1999 s. 14.]*

**Part IIC — Regional planning control areas**

*[Heading inserted by No. 59 of 1999 s. 14.]*

**37A. Effect of Part IIC**

- (1) This Part shall prevail over anything in —
  - (a) any other Part;
  - (b) any town planning scheme that has effect under section 7 of the *Town Planning and Development Act 1928*;
  - (c) a regional planning scheme; or
  - (d) the *Town Planning and Development Act 1928*,to the extent of any inconsistency therewith.
  
- (2) Nothing in this Part affects —
  - (a) the continued use of any land in a regional 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 regional 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 regional planning control area.
  
- (3) This Part and the operation of any approval of development granted under this Part shall have effect subject to section 78 of the *Heritage of Western Australia Act 1990*.

*[Section 37A inserted by No. 59 of 1999 s. 14.]*

**37B. Declaration of regional planning control areas**

- (1) If the Commission considers that any land situated in a region to which a regional planning scheme applies may be required for one or more of the purposes specified in Schedule 2, the Commission may by notice published in the *Gazette* and with the approval of the Minister declare that land to be a regional planning control area.
- (2) The Commission may by notice published in the *Gazette* and with the approval of the Minister amend or revoke a declaration made under subsection (1).
- (3) A declaration made under subsection (1) remains in force until —
  - (a) the expiry of such period, not exceeding 5 years from the date on which the notice by which that declaration was so made was published in the *Gazette*, as is specified in that notice; or
  - (b) revoked under subsection (2),whichever is the sooner.
- (4) When any land is comprised within an area which the Commission considers should become a regional planning control area and is land to which the *Heritage of Western Australia Act 1990* applies, the Commission shall satisfy the Minister before seeking approval to the declaration of that land as a regional 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 37B inserted by No. 59 of 1999 s. 14.]*

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**37C. No development in regional planning control areas without prior approval**

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

- (a) with the prior approval of that development obtained under section 37D; and
- (b) in a manner which is in conformity with the approval referred to in paragraph (a) and in accordance with the conditions, if any, subject to which that approval was given.

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

*[Section 37C inserted by No. 59 of 1999 s. 14.]*

**37D. Applications for approval of development in regional planning control areas**

- (1) A person who wishes to commence and carry out development in a regional planning control area shall apply in the prescribed form to the local government in the district of which the regional planning control area is situated for approval of that development and submit to that local government such plans and other information as that local government may reasonably require.
- (2) A local government to which an application is made under subsection (1) shall, within 30 days of receiving the application, forward the application, together with its recommendation on the application, to the Commission for determination.
- (3) After receiving an application and recommendation forwarded to it under subsection (2), the Commission may —
  - (a) consult with any authority that in the circumstances it thinks appropriate; and

- (b) having regard to —
  - (i) the purpose for which the land to which that application relates is zoned or reserved under the relevant regional planning scheme;
  - (ii) any special considerations relating to the nature of the regional planning control area concerned and of the development to which that application relates; and
  - (iii) the orderly and proper planning, and the amenities, of the locality in which the land to which that application relates is situated,approve, subject to such conditions as it thinks fit, or refuse to approve that application.
- (4) If the Commission approves an application forwarded to it under subsection (2) and the development concerned is carried out in a manner which is not in conformity with that approval, or any conditions subject to which that approval was given are not complied with, the Commission may revoke that approval, but this subsection does not prevent proceedings for an offence against section 37C in respect of that carrying out or non-compliance alleged to have been committed during the subsistence of that approval.
- (5) The Commission shall issue in the prescribed form to the applicant its decision on an application forwarded to it under subsection (2).
- (6) If the Commission has not within 60 days of receiving an application forwarded to it under subsection (2) issued its decision on that application to the applicant, that application shall be deemed to have been refused.

*[Section 37D inserted by No. 59 of 1999 s. 14.]*

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**37E. Appeals**

- (1) An applicant whose application has under section 37D been —
- (a) approved subject to conditions which are unacceptable to the applicant; or
  - (b) refused,

may, except when that approval or refusal —

- (c) is in accordance with any operative town planning scheme or with the relevant regional planning scheme, if any; or
- (d) relates to land which is reserved under any such regional planning scheme for a public purpose,

appeal against that approval or refusal under Part V of the *Town Planning and Development Act 1928*.

- (2) An appeal under subsection (1) in relation to any condition which is imposed in consequence of advice furnished by the Heritage Council or by the operation of section 78 of the *Heritage of Western Australia Act 1990* shall be referred to the Heritage Council for advice, and section 56(2) of the *Town Planning and Development Act 1928* applies in relation to the appeal referred.

*[Section 37E inserted by No. 59 of 1999 s. 14; amended by No. 24 of 2002 s. 30(2).]*

## **Part IID — Miscellaneous powers of Commission and Minister**

*[Heading inserted by No. 59 of 1999 s. 14.]*

### **37F. Commission has powers of responsible authority**

Subject to this Act, in relation to a regional planning scheme the Commission has all the powers, rights, duties and authority conferred or imposed on a responsible authority under the *Town Planning and Development Act 1928* in relation to a Scheme within the meaning of that Act.

*[Section 37F inserted by No. 59 of 1999 s. 14.]*

### **37G. Power of Commission to acquire land to which proposed regional planning scheme or amendment is to apply**

The Commission may, if it considers that any land in the part of the State to which a proposed regional planning scheme or amendment to a regional planning scheme is to apply is likely to be reserved for public purposes under that regional planning scheme or amendment, acquire that land by agreement with its owner.

*[Section 37G inserted by No. 59 of 1999 s. 14.]*

### **37H. Power of Commission to dispose of land**

- (1) The Commission shall hold for the purposes of a regional planning scheme any land acquired by it under this Act 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 regional planning scheme; or
  - (b) if that land is no longer required by the Commission.
- (2) Subject to subsection (3), the Commission shall not, except with the consent of the Governor, dispose of or alienate any land compulsorily acquired by it other than for or in furtherance of

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the provisions or likely provisions of the relevant regional planning scheme.

- (3) In exercising a power to dispose of or alienate land conferred by this section, the Commission shall have regard to the general principle that in such cases land acquired by the Commission should, if in the opinion of the Minister it is reasonable and practicable to do so, be first offered for sale at a reasonable price determined by the Minister to the person from whom that land was acquired.

*[Section 37H inserted by No. 59 of 1999 s. 14.]*

**37I. Powers of Commission in relation to regional improvement plans**

- (1) When the Commission certifies 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 regional planning scheme applies —

- (a) the land should be dealt with in all or any of the following ways, namely, planned, replanned, designed, redesigned, consolidated, resubdivided, cleared, developed, reconstructed or rehabilitated; or
- (b) provision should be made for the land to be used for such residential, commercial, industrial, public, recreational, institutional, religious, charitable or other uses, buildings, works, improvements or facilities, or spaces therefor, as may be appropriate or necessary,

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

- (2) If the Governor accepts the recommendation of the Commission, the Commission may while the relevant regional planning scheme has the force of law as provided in this Act, purchase or otherwise acquire any land included in the regional improvement plan by agreement with the owner thereof or in default of such agreement, the Commission may acquire the land compulsorily under the *Land Administration Act 1997*, as modified by this section.
- (3) The Commission may —
- (a) amend a regional improvement plan by notice of amendment; or
  - (b) revoke a regional improvement plan by a notice of revocation,
- and subsection (1) applies to a notice of amendment or revocation under paragraph (a) or (b) as if it were a regional improvement plan.
- (4) Subject to this section, the provisions of Parts 9 and 10 of the *Land Administration Act 1997* apply to the taking of any land compulsorily under this section, with such modifications as circumstances require, and in so applying those provisions any reference to the Minister administering that Act shall be read as a reference to the Minister.
- (5) For the purpose of advancing the development of land in a region in accordance with a regional improvement plan referred to in subsection (1) the Commission, with the approval of the Governor, may —
- (a) construct, repair, rehabilitate or improve buildings, works, improvements or facilities on land acquired or held by it under this Act;
  - (b) return, sell, lease, exchange or otherwise dispose of any buildings, works, improvements or facilities and the land appurtenant thereto and any land acquired by the Commission under this Act, to any person, or public authority upon such terms and conditions as the

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Commission, with the approval of the Governor, thinks fit; and particulars of any return, sale, lease, exchange or disposal to any person shall within one month of the Governor's approval be notified by the Commission in the *Gazette*;

- (c) in respect of the land included in a regional 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, development, reconstruction or rehabilitation of the land;
  - (ii) the construction, repair, rehabilitation or improvement of any buildings, works, services, improvements or facilities on the land;
  - (iii) the sale, purchase, exchange, surrender, vesting, allocation or other disposal of the land, the adjustment or alteration of the boundaries of the land, the pooling of the lands of several owners, the adjustment of rights between owners of the land or other persons interested in the land whether by payments of money or transfers or exchanges of land or otherwise, the valuation of the land and the provision of land for any public open space, public work as defined by the *Public Works Act 1902* or any other public purpose;
  - (iv) the payment, satisfaction or recovery of costs incurred in implementing the agreement; and
  - (v) such other acts, matters or things as are or may be necessary to give effect to the regional improvement plan;
- (d) do any act, matter or thing for the purpose of carrying out any agreement entered into under paragraph (c).

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

*[Section 37I inserted by No. 59 of 1999 s. 14.]*

**37J. Power of Commission to direct removal, etc. of development contrary to regional order or regional planning scheme, etc.**

- (1) The Commission or a local government exercising the powers of the Commission may by notice in writing served on the owner of any land situated in a regional order area or a part of the State to which a regional planning scheme applies direct that owner —
- (a) to cease any development begun, continued or carried out; or
  - (b) to remove, pull down, take up or alter any building or work erected,
- on that land in contravention of the regional order or regional planning scheme.
- (2) The Commission may by notice in writing served on the owner of any land situated in a regional planning control area direct the owner to cease any development carried out on that land in contravention of section 37C.
- (3) The Commission or a local government exercising the powers of the Commission may, in a notice served under subsection (1) or (2) specify a time, being not less than 40 days after the service of that notice, within which the directions in the notice are to be complied with.
- (4) An owner on whom a notice is served under this section may appeal under Part V of the Town Planning Act against any direction contained in the notice.
- (5) If the Town Planning Appeal Tribunal confirms or varies the direction, the Town Planning Appeal Tribunal may, by notice in

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writing served on the owner, direct the owner to comply with the direction as so confirmed or varied, within a period of not less than 40 days after the service of the notice, as is specified in the notice.

- (6) When the direction appealed against is confirmed or varied, the owner to whom the direction was given shall comply with it to the extent to which it is so confirmed or varied and within the time specified in the notice giving the direction.
- (7) When —
- (a) a notice is served under subsection (1) or (2) on an owner of any land and the owner does not —
    - (i) carry out the directions; or
    - (ii) appeal against the direction under subsection (4), within the time specified in the notice; or
  - (b) on appeal by an owner of any land a direction specified in a notice served on the owner under subsection (1) or (2) is confirmed or varied under subsection (5) and the owner fails to carry out the direction as confirmed or varied under subsection (5) within the time specified by the Town Planning Appeal Tribunal in the notice given under subsection (5),

the Commission or local government, as the case requires, may itself cause —

- (c) the relevant development to be stopped; or
  - (d) the relevant building or work to be removed, pulled down, taken up or altered.
- (8) Any expenses incurred by the Commission or a local government under subsection (7) may be recovered from the owner of the land on which —
- (a) the relevant development was stopped; or

- (b) the relevant building or work was removed, pulled down, taken up or altered,

as a debt due in a court of competent jurisdiction.

*[Section 37J inserted by No. 59 of 1999 s. 14; amended by No. 24 of 2002 s. 30(3)-(4).]*

**37K. Injunctions**

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

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

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

- (c) if the application is with respect to a contravention of this Act, a regional order or a regional 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 regional order or the regional planning scheme; or
- (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 Commission or the local government with respect to the development —
  - (i) in the case in which the development is commenced but not completed, restraining the

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continuation or completion of the development or any use thereof;

- (ii) in the case in which the development is completed, restraining the use of the development,

until the condition is complied with.

- (2) An injunction granted under subsection (1) —
  - (a) shall have effect for such period as is specified therein or until further order of the Court; and
  - (b) may be varied or rescinded by the Court.

*[Section 37K inserted by No. 59 of 1999 s. 14.]*

**37L. Powers of Minister to ensure that environmental conditions are met**

- (1) In this section —
  - “*assessed scheme*” means regional planning scheme that is an assessed scheme within the meaning of the EP Act;
  - “*environmental condition*” means condition agreed under section 48F of the EP Act or decided under section 48J of the EP Act;
  - “*EP Act*” means *Environmental Protection Act 1986*;
  - “*Minister for the Environment*” means Minister to whom the Governor has for the time being committed the administration of the EP Act;
  - “*pollution*” has the same meaning as it has 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 that person to stop

- doing so for such period, beginning immediately and lasting for not more than 24 hours, as is specified in that order;
- (b) cause the Commission, or a local government exercising the powers of the Commission, to serve a notice on the person who is undertaking the development directing that person to take such steps as are specified in the notice, within such period as is so specified, for the purpose of —
    - (i) complying with; or
    - (ii) preventing any non-compliance with, the environmental condition to which the advice of the Minister for the Environment relates; or
  - (c) advise the Commission, or a local authority exercising the powers of the Commission, to cause such steps to be taken as are necessary for the purpose of —
    - (i) complying with; or
    - (ii) preventing any non-compliance with, the environmental condition to which the advice of the Minister for the Environment relates.
- (4) A person shall comply with an order or notice served on the person under subsection (3)(a) or (b).
- (5) Nothing in this section prevents or otherwise affects the application of Part V of the EP Act to —
- (a) a development referred to in subsection (2); or
  - (b) pollution or environmental harm caused by any non-compliance with an environmental condition referred to in subsection (3).

*[Section 37L inserted by No. 59 of 1999 s. 14; amended by No. 54 of 2003 s. 68(10).]*

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**37M. Crown bound**

A regional planning scheme binds the Crown.

*[Section 37M inserted by No. 59 of 1999 s. 14.]*

### **Part III — Staff of Commission**

**38. Staff of Commission**

There shall be appointed under Part 3 of the *Public Sector Management Act 1994* such public service officers as are necessary to enable the Commission and its committees to perform their respective functions.

*[Section 38 inserted by No. 84 of 1994 s. 35.]*

*[39 and 40. Repealed by No. 84 of 1994 s. 35.]*

**41. Engagement of consultants, etc.**

- (1) Subject to subsection (3), the Commission may, with the approval of the Minister, engage under contracts for services such consultants and professional or technical or other assistance as it considers necessary to enable the Commission to perform its functions.
- (2) The engagement of a person under subsection (1) does not —
  - (a) render Part 3 of the *Public Sector Management Act 1994* or any Act applying to persons as officers of the Public Service of the State, applicable to that person; or
  - (b) affect or prejudice the application to him or her of those provisions if they applied to him or her at the time of his or her engagement or appointment.
- (3) The Commission may, without the approval of the Minister, engage under contracts for services such consultants and professional or technical or other assistance in such circumstances and for such periods as the Minister may from time to time specify by notice in writing served on the Commission.

*[Section 41 amended by No. 32 of 1994 s. 19; No. 84 of 1994 s. 36 and 42.]*

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**42.        Use of staff and facilities of departments, agencies and instrumentalities**

The Commission may, by arrangement made between it and the Minister concerned, and on such terms and conditions as may be mutually arranged by it with that Minister and with the relevant employing authority within the meaning of the *Public Sector Management Act 1994*, make use, either full-time or part-time, of —

- (a) the services of any officer or employee employed in the Public Service of the State or in a State agency or instrumentality or otherwise in the service of the Crown in right of the State; or
- (b) any facilities of a department of the Public Service of the State or of a State agency or instrumentality.

*[Section 42 amended by No. 32 of 1994 s. 19.]*

**43.        Superannuation<sup>1a</sup>**

- (1) The Commission may request the Minister to whom the administration of the *Superannuation and Family Benefits Act 1938* is committed to recommend to the Treasurer that the Commission be included as a corporate body in the term “department” for the purposes of that Act.
- (2) The Treasurer may, if that Minister so recommends and on the Commission complying with the requirements of that Act, approve of the Commission as, and the Commission shall thereupon be deemed to be, a “department” for the purposes of that Act.

## **Part IV — Financial provisions**

**44. Saving**

Nothing in this Part shall be read as derogating from section 38 of the Metropolitan Scheme Act, and this Part shall have effect subject to that section.

**45. Funds of Commission**

- (1) The funds available to the Commission to enable it to perform its functions are —
  - (a) moneys from time to time appropriated by Parliament for the purposes of this Act or the *Town Planning and Development Act 1928*;
  - (b) moneys received by the Commission by way of fees or charges;
  - (c) moneys received by the Commission by way of gifts, bequests or other donations;
  - (d) moneys borrowed by the Commission under this Act; and
  - (e) moneys otherwise paid to or made available to the Commission.
- (2) The funds referred to in subsection (1) shall be credited to an account at the Treasury, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*, to be called the “Western Australian Planning Commission Account”.
- (3) All expenditure incurred by the Commission for the purposes of performing its functions, including the repayment of moneys borrowed by or advanced to the Commission in accordance with this Act, shall be charged to the Account and moneys standing to the credit of the Account shall be applied only for the purposes of this Act or the *Town Planning and Development Act 1928*.

*[Section 45 amended by No. 84 of 1994 s. 37; No. 49 of 1996 s. 64.]*

**46. Approval of Minister to certain expenditure**

The Commission shall not without the consent of the Minister, in respect of any one work, make a contract or incur any expenditure the consideration or cost of which exceeds \$1 000 000.

*[Section 46 amended by No. 7 of 2002 s. 60.]*

**47. Investment of funds**

The Commission may, with the approval of the Treasurer, temporarily invest any moneys standing to the credit of the Account in such manner and in such categories of investments as are approved by the Treasurer until those moneys are required for the purpose of the performance of the functions of the Commission.

**48. General borrowing by Commission**

- (1) Subject to subsection (2), the Commission may, with the prior approval in writing of the Treasurer and on such terms and conditions as he or she approves, borrow money for the performance by the Commission of its functions.
- (2) Before the Treasurer may approve of the borrowing of money under subsection (1), a proposal in writing showing —
  - (a) the terms and particulars of the proposed loan;
  - (b) the rate of interest to be paid on that loan;
  - (c) the purpose to which the money borrowed is to be applied; and
  - (d) the manner in which the loan is to be repaid,shall first be submitted by the Commission on the recommendation of the Minister to, and approved by, the Treasurer.
- (3) 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 shall not in any one year exceed in the aggregate such amounts as the Treasurer approves.

- (4) 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.

*[Section 48 amended by No. 84 of 1994 s. 42.]*

**49. Borrowing from Treasurer**

- (1) In addition to the powers conferred on it by section 48, 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) By virtue of this subsection 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.

**50. Guarantees of borrowings etc.**

- (1) The Treasurer is hereby authorised to guarantee —
- (a) the repayment of any amount borrowed from time to time under section 48; and
  - (b) the payment of interest and such other charges in respect of such borrowings as he or she has approved.
- (2) Before a guarantee is given by the Treasurer under this section, the Commission shall give to the Treasurer such security as the Treasurer may require and shall execute all such instruments as may be necessary for the purpose.
- (3) The Treasurer shall cause any money required for fulfilling any guarantee given by him or her under this section to be charged to the Consolidated Fund which, to the extent necessary, is hereby appropriated accordingly, and the Treasurer shall cause

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any amounts received or recovered from the Commission or otherwise in respect of moneys so charged by him or her to be credited to the Consolidated Fund.

*[Section 50 amended by No. 6 of 1993 s. 11; No. 84 of 1994 s. 42; No. 49 of 1996 s. 64.]*

**51. Application of *Financial Administration and Audit Act 1985***

The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Commission and its operations.

*[Section 51 inserted by No. 4 of 1986 s. 4.]*

**[52-54. Repealed by No. 4 of 1986 s. 4.]**

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## Part V — General

### 55. Duties 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 a member of —

- (a) the Commission;
- (b) a committee of the Commission;
- (c) a District Planning Committee;
- (d) a public authority; or
- (e) a local government;

“*this Act*” includes the *Town Planning and Development Act 1928* and the *Metropolitan Scheme Act*.

(2) A member shall at all times act honestly in performing any function.

(3) Where a matter is before a meeting for consideration and a member present at the meeting has a direct or indirect pecuniary interest in the matter, he or she shall as soon as possible after the relevant facts have come to his or her knowledge, disclose that he or she has an interest to the other members so present, and —

- (a) the disclosure shall be recorded in the minutes of the meeting; and
- (b) the member shall not thereafter be present during any consideration or discussion of, and shall not vote on any determination of, the matter.

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- (4) A member shall not disclose any information acquired by virtue of the performance of any function unless the disclosure is made —
  - (a) in connection with the execution of this Act or under any legal duty; or
  - (b) for the purposes of any proceedings arising out of this Act or any report of such proceedings.
- (5) A member shall not make use of any information acquired by virtue of the performance of any function to gain directly or indirectly an improper advantage to himself or herself or to cause detriment to the Commission.
- (6) A member who commits a breach of any provision of this section —
  - (a) is liable to the Commission for any profit made by him or her or for any damage suffered by the Commission as a result of the breach of that provision; and
  - (b) commits an offence against this Act and is liable to a fine of \$5 000.
- (7) 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.

*[Section 55 amended by No. 84 of 1994 s. 38 and 42; No. 14 of 1996 s. 4.]*

*[56.                      Repealed by No. 14 of 1996 s. 4.]*

**57.                      Execution of documents by Commission**

- (1) A document is duly executed by the Commission, if —
  - (a) the common seal of the Commission affixed to it in accordance with subsections (2) and (3); or
  - (b) it is signed on behalf of the Commission by the member or members or officer or officers of the Commission authorised by the Commission to do so.

- (2) The common seal of the Commission shall not be affixed to any document except by resolution of the Commission.
- (3) The common seal of the Commission shall 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 do so, and each of them shall sign the document to attest that that common seal was so affixed.
- (4) A document purporting to be executed in accordance with this section shall be presumed to be duly executed until the contrary is shown.
- (5) When a document is produced bearing a seal purporting to be the common seal of the Commission, it shall be presumed that that seal is the common seal of the Commission until the contrary is shown.

*[Section 57 amended by No. 84 of 1994 s. 42.]*

**58. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding \$50 000.

*[Section 58 amended by No. 59 of 1999 s. 15.]*

**59. Review of Act**

- (1) The Minister shall carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 5 years from its commencement, and in the course of that review the Minister shall consider and have regard to —
  - (a) the effectiveness of the operations of the Commission;

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- (b) the need for the continuation of the functions of the Commission; and
  - (c) such other matters as appear to him or her to be relevant to the operation and effectiveness of this Act.
- (2) The Minister shall prepare a report based on his or her review made under subsection (1) and shall, as soon as is practicable after the preparation thereof, cause the report to be laid before each House of Parliament.

*[Section 59 amended by No. 84 of 1994 s. 40 and 42.]*

## **Part VI — Transitional and savings**

**60. Definitions**

In this Part —

“**Authority**” means the Metropolitan Region Planning Authority constituted by section 7 of the Metropolitan Scheme Act;

“**Department**” means the Town Planning Department continued under the *Public Sector Management Act 1994*;

“**former authority**” means the Authority the Department and the Town Planning Board established by section 4 of the *Town Planning and Development Act 1928*.

*[Section 60 amended by No. 32 of 1994 s. 19.]*

**61. Interpretation Act 1984 not affected**

Nothing in this Part shall be construed so as to limit the operation of the *Interpretation Act 1984*.

**62. Town Planning Department abolished**

On the commencement of this Act the Department shall cease to exist.

**63. Devolution of rights, assets and liabilities**

On the commencement of this Act —

- (a) all rights, obligations and liabilities of a former authority existing immediately before such commencement are vested in or imposed on the Commission;
- (b) all real and personal property of whatever kind vested in or belonging to a former authority immediately before such commencement is vested in the Commission;
- (c) any proceedings which immediately before such commencement might have been brought or continued against a former authority may be brought or continued against the Commission;

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- (d) anything lawfully commenced by a former authority may, so far as it is not contrary to this Act, the *Town Planning and Development Act 1928* or the Metropolitan Scheme Act, be carried on and completed by the Commission.

**64. Saving**

All acts, matters and things that at the commencement of the *Acts Amendment (State Planning Commission) Act 1985*<sup>3</sup> were in existence or in operation under an Act amended by that Act shall, in so far as is consistent with the Act as so amended, subsist and enure as if at the time when they originated or were done that Act as so amended had been in operation and they had originated or been done thereunder.

**65. References in other laws etc.**

- (1) In any written law and in any agreement, whether in writing or not, and in every deed or other instrument unless the context is such that it would be incorrect or inappropriate, a reference to —
  - (a) a former authority shall be a reference to the Commission;
  - (b) the Town Planning Commissioner, the Chairman of the Town Planning Board, the Chairman of the Authority or the Secretary to a former authority shall be a reference to the chairperson of the Commission.
- (2) For the avoidance of doubt it is declared that “written law” in subsection (1) includes the Metropolitan Region Scheme, and any town planning scheme or interim development order under the *Town Planning and Development Act 1928*.

*[Section 65 amended by No. 84 of 1994 s. 42.]*

**66. Membership of District Planning Committees**

- (1) A person who immediately before the commencement of this Act was a member of the North-West District Planning Committee as a representative of the City of Stirling or the City of Wanneroo shall as from such commencement be a member of the North-West District Planning Committee in the same capacity.
- (2) A person who immediately before the commencement of this Act was a member of the North-West District Planning Committee as a representative of any other local government shall represent that local government as a member of the Western Suburbs District Planning Committee.

*[Section 66 amended by No. 14 of 1996 s. 4.]*

**67. Staff not under the *Public Service Act 1978***

On the commencement of this Act all persons who were employed immediately before such commencement by a former authority or in the Department, not being persons subject to the *Public Service Act 1978*, shall be deemed to have been engaged by the Commission under section 40(2) on the same terms and conditions, including the salary payable, as those on which they were employed immediately before such commencement.

**68. Transfer of appropriations**

The unexpended portion of any moneys appropriated before the commencement of this Act for a service or function to be performed by the Authority shall be deemed to have been appropriated for the performance of that service or function by the Commission.

**69. Annual reports for part of a year**

- (1) As soon as is practicable after the commencement of this Act the Authority shall prepare and deliver to the Minister a report as required by section 29<sup>4</sup> of the Metropolitan Scheme Act, for

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the period from the preceding 1 January to the date of commencement of this Act, and the report shall be laid before both Houses of Parliament.

- (2) Notwithstanding the *Acts Amendment (State Planning Commission) Act 1985*, the Authority shall continue in existence for the purposes of subsection (1).

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**Schedule 1**

[Section 3]

<b>Item</b>	<b>Region</b>
1	<b>Gascoyne Region</b> The districts of Carnarvon, Exmouth, Shark Bay and Upper Gascoyne.
2	<b>Goldfields-Esperance Region</b> The districts of Kalgoorlie-Boulder, Coolgardie, Dundas, Esperance, Laverton, Leonora, Menzies, Ngaanyatjarraku and Ravensthorpe.
3	<b>Great Southern Region</b> The districts of Albany (Town), Albany (Shire), Broomehill, Cranbrook, Denmark, Gnowangerup, Jerramungup, Katanning, Kent, Kojonup, Plantagenet, Tambellup and Woodanilling.
4	<b>Kimberley Region</b> The districts of Broome, Derby-West Kimberley, Hall's Creek and Wyndham-East Kimberley.
5	<b>Mid West Region</b> 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	<b>Peel Region</b> The districts of Mandurah, Boddington, Murray and Waroona.
7	<b>Pilbara Region</b> The districts of Port Hedland, Ashburton, East Pilbara and Roebourne.
8	<b>South West Region</b> The districts of Bunbury, Augusta-Margaret River, Boyup Brook, Bridgetown-Greenbushes, Busselton, Capel, Collie, Dardanup, Donnybrook-Balingup, Harvey, Manjimup and Nannup.
9	<b>Wheatbelt Region</b> The districts of Narrogin (Town), Northam (Town), Beverley, Brookton, Bruce Rock, Chittering, Corrigin, Cuballing,

**Schedule 1**

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<b>Item</b>	<b>Region</b>
	Cunderdin, Dandaragan, Dalwallinu, Dowerin, Dumbleyung, Gingin, Goomalling, Kellerberrin, Kondinin, Koorda, Kulin, Lake Grace, Merredin, Moora, Mount Marshall, Mukinbudin, Narembeen, Narrogin (Shire), Northam (Shire), Nungarin, Pingelly, Quairading, Tammin, Toodyay, Trayning, Victoria Plains, Wagin, Wandering, West Arthur, Westonia, Wickelup, Williams, Wongan-Ballidu, Wyalkatchem, Yilgarn and York.

*[Schedule 1 inserted by No. 84 of 1994 s. 41; amended by No. 14 of 1996 s. 4.]*

## Schedule 2

[Section 37B(1)]

### Purposes for which land may be required

<b>Item</b>	<b>Purpose</b>
1.	Car parks.
2.	Civic and cultural amenities.
3.	Commonwealth Government.
4.	Cultural heritage conservation.
5.	Highways and important regional roads.
6.	Hospitals.
7.	Parks and recreation areas.
8.	Port installations.
9.	Prisons.
10.	Public utilities.
11.	Railways.
12.	Schools.
13.	Special uses.
14.	State forests.
15.	Universities.
16.	Water catchments.
17.	Waterways.

*[Schedule 2 inserted by No. 59 of 1999 s. 16.]*



## Notes

- <sup>1</sup> This reprint is a compilation as at 17 September 2004 of the *Western Australian Planning Commission Act 1985* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>State Planning Commission Act 1985</i> <sup>5</sup>	91 of 1985	4 Dec 1985	6 Dec 1985 (see s. 2 and <i>Gazette</i> 6 Dec 1985 p. 4591)
<i>Acts Amendment (Financial Administration and Audit) Act 1986</i> s. 4	4 of 1986	27 Jun 1986	1 Jul 1986 (see s. 2)
<i>Acts Amendment and Repeal (Environmental Protection) Act 1986</i> s. 33	77 of 1986	4 Dec 1986	20 Feb 1987 (see s. 2 and <i>Gazette</i> 20 Feb 1987 p. 440)
<i>State Planning Commission (Amendment and Validation) Act 1990</i> s. 5	7 of 1990	16 Jul 1990	16 Jul 1990 (see s. 2)
<i>Financial Administration Legislation Amendment Act 1993</i> s. 11	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Planning Legislation Amendment Act 1993</i> Pt. 3	35 of 1993	16 Dec 1993	16 Dec 1993 (see s. 2)
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Planning Legislation Amendment Act (No. 2) 1994</i> Pt. 4	84 of 1994	13 Jan 1995	1 Mar 1995 (see s. 2 and <i>Gazette</i> 21 Feb 1995 p. 567)
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995</i> s. 188	73 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2 and <i>Gazette</i> 29 Dec 1995 p. 6291)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)

**Western Australian Planning Commission Act 1985**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Education Amendment Act 1996 s. 16(13)</i>	22 of 1996	11 Jul 1996	11 Jul 1996 (see s. 2(1))
<i>Planning Legislation Amendment Act 1996 Pt. 7</i>	23 of 1996	11 Jul 1996	4 Aug 1996 (see s. 2 and <i>Gazette</i> 2 Aug 1996 p. 3615)
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 131</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<b>Reprint of the Western Australian Planning Commission Act 1985 as at 19 Feb 1999</b> (includes amendments listed above)			
<i>School Education Act 1999 s. 247</i>	36 of 1999	2 Nov 1999	1 Jan 2001 (see s. 2 and <i>Gazette</i> 29 Dec 2000 p. 7904)
<i>Gas Corporation (Business Disposal) Act 1999 s. 87</i>	58 of 1999	24 Dec 1999	1 Jul 2000 (see s. 2(2) and <i>Gazette</i> 4 Jul 2000 p. 3545)
<i>Planning Legislation Amendment Act 1999 Pt. 3</i>	59 of 1999	10 Jan 2000	19 Dec 2000 (see s. 2 and <i>Gazette</i> 19 Dec 2000 p. 7273)
<b>Reprint of the Western Australian Planning Commission Act 1985 as at 16 Mar 2001</b> (includes amendments listed above)			
<i>Machinery of Government (Planning and Infrastructure) Amendment Act 2002 Pt. 10</i>	7 of 2002	19 Jun 2002	1 Jul 2002 (see s. 2 and <i>Gazette</i> 28 Jun 2002 p. 3037)
<i>Planning Appeals Amendment Act 2002 s. 30</i>	24 of 2002	24 Sep 2002	18 Apr 2003 (see s. 2 and <i>Gazette</i> 17 Apr 2003 p. 1243)
<i>Environmental Protection Amendment Act 2003 s. 68(10)</i>	54 of 2003	20 Oct 2003	19 Nov 2003 (see s. 2 and <i>Gazette</i> 18 Nov 2003 p. 4723)
<i>Economic Regulation Authority Act 2003 s. 62</i>	67 of 2003	5 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5723)
<i>Western Australian Planning Commission Amendment Act 2003</i>	69 of 2003	9 Dec 2003	6 Jan 2004
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 131</i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<b>Reprint 3: The Western Australian Planning Commission Act 1985 as at 17 Sep 2004</b> (includes amendments listed above)			

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

**Provisions that have not come into operation**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 75</i> <sup>6</sup>	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))

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<sup>2</sup> Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to the Public Service Board is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management (as defined in the *Interpretation Act 1984*). This reference was amended under the *Reprints Act 1984* s. 7(5)(a).

<sup>3</sup> Under s. 2 of this Act, the commencement date was 6 December 1985.

<sup>4</sup> Section 29 repealed by the *Acts Amendment (State Planning Commission) Act 1985* s. 18.

<sup>5</sup> Now known as the *Western Australian Planning Commission Act 1985*; Short title changed (see note under s. 1).

<sup>6</sup> On the date as at which this reprint was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 75 had not come into operation. It reads as follows:

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**75. Various provisions repealed**

The provisions listed in the Table to this section are repealed.

**Table of provisions repealed**

<b>Act</b>	<b>Provision</b>
.....	.....
<i>Western Australian Planning Commission Act 1985</i>	s. 43
.....	.....

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Defined Terms

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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.]*

Defined Term	Provision(s)
Account .....	3
assessed scheme .....	37L(1)
associate member .....	3
Authority .....	60
Board.....	37(1)
chairperson .....	3
Commission .....	3, 17(2)
Department.....	60
deputy member .....	3
district .....	3
District Planning Committee.....	3
eligible person or body.....	20(4)
environmental condition .....	37L(1)
EP Act.....	37L(1)
former authority .....	60
function .....	55(1)
Heritage Council .....	3
local government.....	3
meeting .....	55(1)
member .....	3, 17(2), 55(1)
metropolitan region.....	3
Metropolitan Region Scheme.....	3
Metropolitan Scheme Act .....	3
Minister for the Environment.....	37L(1)
officer of the Commission .....	3
original compensation .....	36(1)(a)
pollution .....	37L(1)
public authority .....	3
region .....	3
regional improvement plan .....	3
regional matter .....	6(7)
regional order.....	3
regional order area .....	3
regional planning control area.....	3
regional planning scheme .....	3
specified.....	24(5)
the Commission scheme .....	18(1c)
the local government scheme .....	18(1c)
the refund .....	36(1)

**Defined Terms**

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the Regional Minister.....	3
this Act.....	55(1)
WAMA .....	3